

It must test the availability of the retrieval system and verify the maintenance of the emergency towline.

(iv) *Training.* Retrieval drills must be conducted within three months after the master or mate responsible for supervising barge retrieval begins employment on a vessel that tows tank barges, and at least annually thereafter. Each drill must—

(A) Include actual operation of a retrieval system to regain control of a barge; and

(B) Be conducted at the master's discretion, under the supervision of the master or mate responsible for barge retrieval, and in open waters free from navigational hazards so as to minimize risk to personnel and the environment.

(3) *Measure 3.* Each owner or operator of a barge or towing vessel described in

paragraph (a) of this section may invoke this paragraph as a substitute for Measure 2 in paragraph (b)(2). First, you must ensure that your alternative measure, system, or combination of measures used to arrest or retrieve a barge is approved by the Commandant (G-MSE). To be approved, it must provide protection against grounding of the tank vessel comparable to that provided by the systems and measures described in paragraph (b)(1) or (2) of this section.

TITLE 46—SHIPPING

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

4. The authority citation for part 32 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101-380, 104 Stat. 515.

5. In § 32.15-15, revise paragraphs (a) and (d); and add new paragraphs (e) and (f) to read as follows:

§ 32.15-15 Anchors, Chains, and Hawsers-TB/ALL.

(a) *Application.* Use the following table to determine which provisions of this section apply to you:

If you own . . .	And . . .	Then . . .
(1) A tankship or a manned seagoing barge	It was constructed before June 15, 1987,	It must meet the requirements of paragraphs (d) and (f).
(2) A tankship or a manned seagoing barge	It was constructed on or after June 15, 1987,	It must meet all the requirements of this section except paragraphs (d) and (e). It must meet the requirements of paragraphs (e) and (f).
(3) An unmanned barge equipped with anchors.		

* * * * *

(d) *Tankships and Barges Constructed Before June 15, 1987.* For each tankship or manned seagoing barge constructed before June 15, 1987, except a barge specified in paragraph (e) of this section, the equipment previously accepted or approved is satisfactory for the same service so long as it is maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection (OCMI). If the service of the vessel changes, the OCMI will evaluate the suitability of the equipment.

(e) *Barges Equipped with Anchors to Comply with 33 CFR 155.230(b)(1).* Each barge equipped with an anchor, to comply with 33 CFR 155.230(b)(1), must be fitted with an operable anchoring system that includes a cable or chain, and a winch or windlass. All components of the system must be in substantial agreement with the standards issued by the American Bureau of Shipping (ABS). The current standards of other recognized classification societies are acceptable if they are approved by the Commandant (G-MSE).

(f) *Operation and Performance.* Each anchor, exposed length of chain or cable, and hawser must be visually inspected before the barge begins each voyage. The anchor must be stowed so that it is ready for immediate use in an emergency. The barge must have a

working means for releasing the anchor that can be operated safely by one or two persons.

Dated: December 21, 1998.
J.C. Card,
Vice Admiral, U.S. Coast Guard, Acting Commandant.
 [FR Doc. 98-34415 Filed 12-24-98; 8:54 am]
 BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1-98-151]

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 is establishing a permanent Regulated Navigation Area (RNA) within the navigable waters of the First Coast Guard District to increase operational safety for towing vessels and tank barges. This rulemaking implements section 311(b)(1)(A), Pub. L. 105-383, Coast Guard Authorization Act of 1998, and requires four measures for towing vessels and tank barges operating in the

waters of the Northeastern United States: positive control for barges, enhanced communications, voyage planning, and areas of restricted navigation. These measures should reduce the risk of oil spills from the many tank barges operating in the waters of the region, and so to reduce the risk of environmental damage to the unique and extremely sensitive marine environment.

DATES: This final rule is effective January 29, 1999.

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: For questions on this rule, 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

On October 13, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area: Navigable Waters Within the First Coast Guard District" in the **Federal Register** (63 FR 54639). On November 13, 1998, the Coast Guard Authorization Act of 1998 (Act) was enacted into law. Section 311 of the Act requires the Commandant, under

delegated authority from the Secretary of Transportation, to promulgate regulations for towing vessel and tank barge safety. The First District Commander, under authority delegated from the Commandant, is addressing those areas that are within his authority, by creating a regulated navigation area. The Coast Guard received 12 letters commenting on the proposed rulemaking. No public meeting was requested, and none was held.

Background and Purpose

This final rule will improve the navigational safety for towing vessels and tank barges operating in the waters of the Northeastern United States. Between January 1992 and December 1996, there were 289 marine casualties involving tank barges in the First Coast Guard District. Not all of these casualties were major or significant, but several resulted in oil spills.

During 1996 and 1997, there were 12 marine casualties involving engine failure with tugs while they were towing tank barges in the waters of the First Coast Guard District. At least four of those tank barges were loaded with a combined cargo totaling about 21 million gallons of petroleum products. In each of the 12 instances, the towing vessel was able to mitigate the casualty by switching propulsion to the second engine, which was sufficient to control the barge. None of the casualties resulted in any pollution.

Development of the Report of the Regional Risk Assessment Team (RRAT)

On June 5 and 6, 1996, the Commander of the First Coast Guard District hosted a two-day Workshop on Safety of Towing Vessels and Tank Barges at the Massachusetts Maritime Academy. Nearly 150 people gathered to discuss goals for the safety of the marine environment, and economic and operational considerations of the tank barge industry in the Northeast. The participants represented the Coast Guard, the industry, the States of New York, Connecticut, Rhode Island, and Maine, the Commonwealth of Massachusetts, and various environmental interests.

The RRAT was chartered and established by the American Waterways Operators and Coast Guard National Quality Steering Committee on July 10, 1996. The 25-member team, with similar representative stakeholders from the two-day workshop, conducted a risk assessment of the tank barge transportation network in the Northeastern United States. The RRAT's report, entitled *REGIONAL RISK*

ASSESSMENT OF PETROLEUM TRANSPORTATION ON THE WATERS OF THE NORTHEAST UNITED STATES, and completed February 6, 1997, examined current operational and navigational practices for towing vessels and tank barges operating in the Northeast. Although it did not evaluate the measures for cost-effectiveness, it developed ten measures to improve the safe navigation of these vessels, eight of which were recommended for rulemaking. This rule codifies four of those eight measures that are within the First District Commander's authority to address by the rulemaking. The remaining recommendations for rulemaking will become the subjects of national rulemaking.

This rule takes a regional approach responsive to the particular risks inherent in the transportation of petroleum products on the waterways in the Northeastern United States. The network of sounds, estuaries, coastal ponds, and shallow coastal shelves hosts one of the most prolific habitats for marine life in the nation. This sensitive region contains 4 of the 20 Estuaries of National Significance, designated by Section 320 of the Federal Clean Water Act—Long Island Sound, Narragansett Bay, Buzzards Bay, and Casco Bay—and 5 of the 22 National Estuarine Research Reserves established to monitor the health of the nation's most valued estuaries. Moreover, the shelves encompassing the Great South Channel, Massachusetts Bay, and Cape Cod Bay provide the seasonal habitat for the Northern Right Whale, one of the world's most endangered species of whale with a population of only about 300. One of the whale's primary food sources, plankton, is particularly susceptible to damage from oil spills.

In addition, the fishing grounds of the Northeastern United States are among the most productive in the world. It is estimated that over 25,000 vessels are employed in the Northwest Atlantic Ocean fisheries trade. The threat to the productive fishing grounds from a tank barge spill further supports the need for this rule.

In the aftermath of the NORTH CAPE oil spill as described in the NPRM, several states in the Northeast drafted or enacted legislation to regulate the tank barge industry. The Rhode Island legislature enacted an Oil Spill Pollution Prevention and Control Act, which it amended with a Tank Vessel Safety Act (codified as Chapter 32 of its Public Laws). Further, Maine officials are considering a legislative initiative to regulate the petroleum transportation industry. The states' differing legislative

initiatives might result in inconsistent regulation of the industry.

The several operating conditions codified in this rule will reduce the risks to the marine environment posed by tank barges transporting oil in the region without imposing undue economic burden on the industry.

Discussion of Comments and Changes

The Coast Guard received 33 comments on the NPRM, contained in 12 individual letters to the docket.

General

Four comments stated that the rulemaking was a step in the right direction. They noted that this rule codified some of the already-standard practices being used by prudent tugboat operators. They also noted that the rule would help close the safety gap that exists when a tug, not normally engaged in the petroleum trade, must move a barge carrying petroleum products.

Three comments stated that the proposed rule addressed only four of the eight operational measures contained in the recommendations of the RRAT. The comments noted that the RRAT made many recommendations, some targeted for inclusion in a regional rule applicable to the entire First Coast Guard District. The comments urged that we adopt all of the regulatory recommendations of the RRAT. We acknowledge the comments, but find that adoption of the remaining four recommendations is beyond the scope of this rulemaking. Those remaining recommendations for rulemaking from the RRAT are Manning, Anchoring and Barge Retrieval Systems, Navigation Safety Equipment, and Crew Fatigue: The Human Factor. While the RRAT considered the remaining recommendations also suitable for regional rulemaking, they are not authorized subjects for an RNA, and are thus beyond the authority of the First District Commander. On a national level, Coast Guard Headquarters is also publishing today in the **Federal Register**, rules on emergency control measures for tank barges, USCG-1998-4443, RIN 2115-AF65.

Two comments noted the Coast Guard is taking a regional approach for four of the eight measures recommended by the RRAT, and that the remaining four measures would be addressed in a future national rulemaking. The same two comments expressed concern about efforts by individual States to enact their own requirements on safety and the environment, thereby creating a confusing patchwork of rules. They strongly supported the Coast Guard's efforts to implement new requirements

on a national basis. The comments recommended that the Coast Guard minimize the potential for varying requirements or interpretations of them. The commenters agree that the enhanced communications requirements and navigational restrictions are appropriate for regional rulemaking. They also recommend that positive control of barges and voyage planning be addressed on a national, rather than a regional, basis. We agree with the comment that the rulemaking for enhanced communications and navigation restriction areas are appropriate for regional rulemaking, however, due to the unique environment of the region we disagree that positive control of barges and voyage planning should be addressed by national rulemaking. As such, section 311 of the Coast Guard Authorization Act of 1998 requires the Coast Guard to implement these regional rules with a detailed explanation of any RRAT recommendation that is not adopted.

One comment noted that two of the proposed measures showed some promise for their potential ability to allow increased awareness of and protection to endangered and threatened species. It recommended that the section on voyage planning require vessel operators to review relevant sections of the Coast Pilot that pertain to Right Whales and to participate in the program called the Right Whale Early Warning System (EWS). The comment also questioned whether we had considered including some measure in the rule that would aid in the protection of the critical habitat in the Great South Channel which, like Cape Cod Bay, is a critical habitat for the Northern Right Whales. The Coast Guard is committed to utilizing its existing authorities to carry out programs that conserve and protect endangered species. These regulations will beneficially effect endangered species and their critical habitats by promoting safe, environmentally sound vessel operations in marine environment in general, including protected species and their habitat. This final rule does require voyage planning within the First District to include review of the Coast Pilot for the area to be transited. The Coast Pilots covering those areas with concentrations of whales have been updated with information concerning the Northern Right Whales. Although the Great South Channel is beyond the scope of this rulemaking, EWS and Coast Pilot information available for that area will be available to commercial vessels. The EWS is an important protective measure for endangered

whales. Currently, the EWS includes the use of information from private and Coast Guard aircraft that conduct aerial surveys over areas of high use by endangered whales. The position of whales detected by the aircraft is reported to a shore-based unit for further dissemination via notice to mariners or NAVTEX. Coast Guard vessels routinely report whales sightings to operational commanders for further rebroadcast. As currently configured, however, the EWS does not involve the use of private vessels for reporting sightings because of concerns including the lack of resources to process and validate such information. Validation was considered a key issue because commercial vessels do not typically have observers trained in marine mammal identification and are required to keep their distance (at least 500 yards) from the whales. This comment will be provided to the New England Right Whale Recovery Implementation Team, which provides guidance to the EWS, for their consideration.

Information gathered by the EWS is available to commercial vessels and they will be advised how to access that information as part of the upcoming Mandatory Ship Reporting System (MSR). The Coast Guard Authorization Act of 1998 contains new legislative authority to implement and enforce two MSRs, consistent with international law, for Cape Cod Bay, Massachusetts Bay and Great South Channel. The MSR is an important protective measure to conserve endangered species such as the Northern Right Whale and is designed to involve large commercial vessels. The MSR system, in part, will pass important information to the ships operating at sea before those ships enter critical habitat or other areas of reported high concentrations of whales. The new MSR authority will be implemented by separate regulations being developed by the Coast Guard, with assistance from the National Marine Fisheries Service which has primary responsibility for administration of the Endangered Species Act for endangered whales. For these reasons, no change has been made to the final rule due to these comments.

One comment objected to the reference in the NPRM that, upon promulgation of this final rule certain state laws enacted under the Rhode Island Tank Vessel Safety Act, 46 Rhode Island General Laws (R.I.G.L.) § 12.6 (Act) would become null and void, as they would be preempted by the new federal regulations. The comment stated that the Act adopted, nearly verbatim, the language of the RRAT regulatory recommendations. The comment stated

that until all the RRAT recommendations are adopted, the supersession provision (46 R.I.G.L. § 12.6-12) is inoperative, and that subsection by subsection supersession is not encompassed within the Act. We disagree.

In an analogous circumstance, Courts interpreting the doctrine of Federal preemption consider, as a matter of course, specific subsections of state legislative and regulatory action for preemption, while allowing other subsections to stand. See *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1979); *International Association of Independent Tanker Owners (Intertanko) v. Locke*, 148 F.3d 1053 (9th Cir. 1998). More importantly, the operation of the Rhode Island supersession statute, while reflective of the Rhode Island Legislature's desire for, and willingness to accede to Federal regulation, is not determinative in a Federal preemption analysis. Therefore, the analysis of the preemptive effects of this final rule remain largely unaltered from those described in the Notice of Proposed Rulemaking.

Positive Control for Barges

One comment supported the requirement for twin-screw towing vessels to accompany single-hull petroleum-laden barges, and also noted that tank barges meeting the definition of double-hull vessels in 33 CFR 157.03 are not subject to the twin-screw requirement. However, the comment noted that the proposed rule did not discuss double-bottom barges or its applicability to them. The comment mentioned that the RRAT discussed double-hull and double-bottom barges and concluded that both offered enhanced environmental protection. It suggested that both types of barges be exempt from the twin-screw requirement. We disagree. While the RRAT did provide the possibility for the continued use of double-bottom barges, such barges do not provide the same level of environmental protection as double-hull tank barges. This final rule does not preclude the continued use of double-bottom tank barges; it does require them to be towed by tugs with twin-screws and two engines or, alternatively, that they be accompanied by an escort or assist tug.

Two comments stated that the RRAT had recommended an exemption for single-screw vessels towing single-hull barges on restricted routes and had not envisioned the elimination entirely of single-screw towing vessels. The comments recommended that the Captain of the Port (COTP) should have latitude to grant a waiver after

considering all safety aspects, and that the waiver be valid for the prolonged service of the barge. The two comments recommended that the language found in the RRAT report concerning waivers available to single-screw towing vessels be placed in this final rule. We disagree, and point out that single-screw towing vessels may continue to tow double-hull tank barges, and may also tow other tank barges subject to the escort or assist tug requirement. Further, this final rule allows the COTP to authorize an exemption from the escort or assist tug requirement for single-screw towing vessels towing tank barges with a capacity of less than 25,000 barrels in areas of limited depth or width. The rule does not limit COTP discretion in applying the exemption which may be available for the prolonged service of the barge.

One comment recommended that the requirements of this rule apply to all towing vessels, regardless of their tow, not just those towing tank barges carrying petroleum oil in bulk as cargo in the RNA. We disagree and find this comment beyond the scope of this rulemaking, which is aimed at reducing the risks associated with the waterborne transportation of petroleum products, and is authorized by section 311 of the Coast Guard Authorization Act of 1998. This rulemaking stemmed from recommendations made by the RRAT's view on the hazards associated with the transportation of petroleum oils by barges. The Coast Guard will consider the future application of this rule to tank barges carrying other oils or chemicals and may initiate a rulemaking to address that situation.

One comment noted that when a tank ship is being operated in pilotage waters there must be two licensed officers in the wheelhouse. The comment further noted that this requirement is not practicable on a 24-hour basis for most tugs; however, it recommended that in certain areas of the RNA this might be a good practice. The comment recommended an additional licensed officer be required in the wheelhouse when the vessel is towing in the operating areas of VTS New York, the Race, the Cape Cod Canal, and entrances of harbors where traffic is more concentrated. We agree with the comment that increased manning in the wheelhouse may be a good operating procedure, and we point out that it remains the watch officer's prerogative to summon an additional watchstander or lookout for assistance in areas of dense traffic. However, we disagree with a requirement for two licensed officers based on a comparison between a tank ship and a towing vessel, noting the

differences in equipment, manning requirements, and vessel dynamics. Because 46 U.S.C. 8104(h) limits the amount of time that a licensed towing vessel operator can work, not to exceed 12 hours in a consecutive 24-hour period, a towing vessel on a voyage of less than 12 hours may operate with only a single licensed watch officer. Although many towing vessels have two watch officers, the alternate licensed officer may be resting before relief. Manning regulations are not within the limited authority of the First District Commander and are beyond the scope of this rulemaking.

One comment recommended changing 33 CFR 165.100(d)(1)(i) to read "* * * primary towing vessel with twin-screw propulsion and/or single screw with a separate system of providing power * * *". It reasoned that an articulated tug and barge (ATB) is usually equipped with twin engines and a single screw. The comment noted that this type of arrangement is capable of switching from one engine to the other to maintain propulsion, while maneuverability and handling are heightened through the use of a single screw, which is capable of turning 360° within a kort nozzle (a propeller shroud designed to enhance thrust). The comment noted that to convert ATBs from single-screw to twin-screw would be cost-prohibitive. It also noted that our Background and Purpose mentioned 12 reported incidents involving engine failures aboard towing vessels. It stated that these casualties avoided serious harm because the tugs involved switched to the second engine. The comment noted that the statistics did not reflect whether a twin-screw configuration was a mitigating factor in these incidents. We note this comment. Of the 12 casualties, 2 were mitigated by the use of the towing vessel's alternate steering system. Additionally, the NPRM contained a summary of a potential major pollution incident on August 25, 1998, that was mitigated by the towing vessel's alternate steering system when one of two screws became fouled in the towing hawser. However, we disagree with the acceptance of a single-screw towing vessel except when towing double-hull tank barges, or when exempted by the COTP while operating in areas of limited depth or width. The use of twin-screw and two-engine towing vessels ensures that the tug is capable of maintaining the navigational control of the tank barge in the event of a loss of the primary component. Although the single-screw ATB may have enhanced maneuverability, it does not provide a backup means of steering

should the primary screw become fouled or damaged. Further, the single-screw ATB described in the comment is not prohibited from towing tank barges in the First Coast Guard District. The final rule does not prohibit the use of single-screw vessels to tow tank barges; it does, however, require that they be escorted by a second towing vessel. Single-screw towing vessels may also tow double-hull tank barges which are exempt from the twin-screw, two-engine requirement, or upon COTP exemption may tow a single hull tank barge with a capacity of less than 25,000 barrels in areas of limited depth and width.

One comment noted that emergency steering and fendering systems are addressed in 33 CFR 157.460; it mentioned that the vessels towing single-hull tank barges must have twin-screw propulsion with separate control systems to each propeller. It wanted to know whether this rule applied to ATBs operating in the pushing mode. The comment asked whether this type of vessel would get special consideration for its unique twin engine, single-screw configuration and be declared exempt from this rule. We note the comment, but find it beyond the scope of this rulemaking. Though the ATBs may provide a propulsion redundancy, without a secondary steering system, these single-screw ATBs would not qualify for any special consideration other than is available for single-screw towing vessels.

One comment stated that the Coast Guard has granted exemptions for specialized towing configurations such as integrated tug-and-barge (ITB) units. It noted that Coast Guard Navigation and Vessel Inspection Circular (NVIC) 2-81 classifies ITBs into two categories, including one that accepts them as a single vessel (tug and barge together). The comment asked whether we could categorize ATBs in a like manner and grant them a similar exemption as it applies to requirements for escort tugs in the First District. The comment stated that if the ATBs were recognized by the Coast Guard and placed in a special class, and if they did not require escort tugs, then this outcome may affect companies' decisions to operate this type of tugboat in the Northeast. We find this comment beyond the scope of this rulemaking. While the referenced NVIC described a national policy determination by Commandant (G-M), no such policy exists for ATBs. Such a request is more appropriately addressed by Commandant (G-M).

One comment recommended that the word "immediately" be removed from proposed section 165.100(d)(1)(iv). It noted that the use of the term implies

that the watch officer should ignore potentially more important duties such as crewmember safety or vessel control to make the required call for assistance. It suggested that we adopt language comparable to that under 46 CFR 4.05-1. We disagree that the notification requirement implies that the watch officer should ignore more urgent crewmember or vessel safety concerns to call for an escort or assist vessel. Further, the requirement of 46 CFR 4.05-1 is to ensure Coast Guard notification following a marine casualty, while the intent of § 165.100(d)(1)(iv) is to provide an escort or assist vessel for assistance.

One comment expressed concern with the proposal to require the use of twin-screw and two engine towing vessels when towing single-hull tank barges. The comment noted that because twin-screw and two engine towing vessels are designed for enhanced maneuverability, the screws are placed as far as possible off the centerline on each side of the vessel. With the loss of one screw, the thrust from the remaining screw would result in an imbalance that would prevent steady navigation. We disagree. While the loss of the primary screw on a towing vessel may cause navigational difficulties due to the thrust of the secondary screw, the vessel would still have the capability to maneuver using the rudders. The purpose of having the redundant propulsion and steering system is to provide the capability to avoid a collision or grounding in the event the primary system fails.

One comment noted that instead of prohibiting the use of single engine towing vessels when towing single-hull tank barges, the Coast Guard should consider a requirement for the barge to be towed by two towing vessels. We point out that single engine towing vessels are not prohibited from towing single-hull tank barges by this rulemaking. Instead, single engine towing vessels may continue in operation provided they are: escorted by a second towing vessel, towing double-hull tank barges, or receive an exemption from the COTP for transiting in areas of limited depth or width as provided in § 165.100(d)(1)(iii).

Enhanced Communications

One comment supported the requirement for additional security calls. It also noted that the VTS further enhances the information-sharing network in a port, and that the required security calls would encourage communications that would enhance safety in the marine environment.

Included in the final rulemaking are three minor clerical changes, reordering

of the security calls by proximity, and the addition of two security call locations which were recommended by the RRAT report but were omitted from the NPRM. The clerical changes include the correct spelling for Execution Rocks Light, Cable and Anchor Reef Buoy, Falkner Island Light, and Cape Cod Canal. Neither the clerical changes, nor the modifications to the security calls, are significant. These changes do not affect the Regulatory Assessment estimates or cost benefit analysis.

Voyage Planning

One comment stated that the RRAT had recognized that the elements of a voyage plan could be identified to develop a template, but added that the specifics of a plan would need to be adapted to the geographic area traversed and to the specific equipment used. The comment maintained that a requirement to consider company-specific guidelines for under-keel clearance in ports and berths is feasible and required by 33 CFR 157.455. It further noted that local regulatory requirements might not be feasible because they may be non-existent. It recommended that the rule incorporate language to the effect that, where services, information, and standards are available, they be considered in the development of voyage plans. We agree that if information is available, then it should be considered when developing the voyage plan. However, because it is not possible to regulate consideration, we have not amended the final rule. Instead, we support the prudent mariner's use of whatever information is available to assist in creation of a voyage plan.

Two comments noted that the proposed rule also refers to several requirements that are part of existing rules, such as to record forward and after drafts of the vessel, to report to VTS, and to consult specific publications that must be aboard the vessel. The comments could not understand how existing requirements interface with this rule, and they recommended that, to avoid redundancy, the RNA cross-reference existing regulatory requirements and that they be considered in the development of voyage plans. We note the comments but find them beyond the scope of this rulemaking.

Two comments clarified that the RRAT had noted both that the "watch officer" is the appropriate individual to modify a voyage plan and that this person could be the master or mate. The comments stated that the RRAT had never envisioned that the master be the only person authorized to modify a

voyage plan. The comments recommended that the rule allow the master, mate, or other person intricately involved in the development of the plan be authorized to modify and execute the plan. We agree and point out that while 33 CFR 165.13(a) places the responsibility for the vessel's operation on the master, the watch officer should be able to modify the voyage plan in accordance with the need for safe navigation. As such, we have modified the final rule to reflect that change.

One comment noted that under the proposed rule a modified voyage plan for transits in a limited geographical area would have to include weather, sea state, and tidal conditions. The comment also noted that these factors may not be significantly different from one part of the area to another, and weather forecasts may not be available for a particular area, either. The comment concluded that the specifics of a voyage plan for a port complex need not be as detailed as those for a coastal transit of significant duration. The comment suggested that current weather has only to be noted in the vessel's log at time of transit. We agree. Although in some instances the towing vessel is not required to carry a log, it remains common practice for the industry. As long as the weather is accounted for in the voyage plan or the vessel's log book, an entry in either will satisfy the requirement. The final rule has been changed accordingly.

One comment noted that an owner or operator of a tank barge may prepare a modified voyage plan for an intra-port transit of not more than four hours. It further noted that, because of constraints on berthing availability, an operator loads cargo early and then the vessel proceeds at reduced speed to take advantage of favorable tide conditions at its final destination. This operating method may result in an intra-port transit of greater than four hours, even though distance traveled is minimal. The comment recommended that the modified voyage plan be acceptable for all intra-port transits and that the four-hour limitation be deleted. We disagree. The abbreviated voyage plan came about in the first place as an alternative to reduce the amount of required information, taking into account the short intra-port transit of a tug and barge. Although intra-port transits may not require the same planning, the intention of the four-hour time limit was to avoid the inherent risks present in a longer voyage where risk is heightened, especially in ports of high-density traffic.

One comment noted that § 165.100(d)(3)(ii)(A) is very similar to

46 CFR 35.05–15(b)(1)(iv). It is recommended that we modify 46 CFR part 35 so as to include cargo quantities and to cover all barges, not just unmanned ones, and that we then cross-refer to it in 33 CFR 165.100(d)(3). The comment further stated that any effort by the Coast Guard to consolidate its rules would be greatly appreciated by the regulated community. We note the comment but find it beyond the scope of this rulemaking because 46 CFR part 35 is a national rule.

Navigation Restricted Areas

A comment supported the designation of Fisher's Island and the eastern part of Cape Cod as Navigation Restricted Areas.

One comment noted that the proposed rule would preclude mariners from seeking and hiding underneath the hook of Cape Cod while waiting for bad weather to subside. We disagree. The rule simply requires any tank barge desiring to operate in the designated area to obtain authorization from the COTP. Thus, a towing vessel may request such authorization in the event of an emergency to avoid endangering the vessel.

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 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.

The assessment indicated that, until the phase-out of single-hull tank vessels (Sec. 4115(a) of OPA 90), the requirements of this RNA would bring total benefits of \$454,365 in averted damage to vessels and property (1998 dollars); \$155,107 in averted deaths (1998 dollars); and 384.85 barrels of oil in averted pollution. These numbers are different from those in the Preliminary Regulatory Assessment due to a refinement of the phase-out 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 Barges:* Data from the U.S. Army Corps of Engineers indicated that there are approximately 12,892 transits occurring within the District each year. Of these transits, we estimate 1.95%, or 251, 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. Discounting to 1998 dollars, and factoring in the phase-out of single-hull tank barges, we calculate the costs of these tugs at \$12,796,834.

(2) *Enhanced Communications:* This rule would require the operator of a towing vessel to make approximately eight security calls during the average transit in the First District. Each security call would take about 30 seconds or 4 minutes each transit. The security calls will be placed by the person on watch and it is assumed that the master and the mate each make half of the security calls. The average daily billing rate for a towing vessel's master is \$400, while the average daily billing rate for a towing vessel's mate is \$270. Based on an eight-hour day, the opportunity cost of the security call rule for each transit is \$2.79. We estimated that 55% of the 12,892 annual transits, 7,091 transits, involve oil-laden tank barges. With 7,091 transits within the First District each year affected by the enhanced communications rule, discounting to 1998 dollars, we calculate the opportunity cost of enhanced communications at \$186,892. However, these enhanced communications requirements do not truly represent a cost upon the towing vessel operator. The security calls will become a routine task of the person on watch, and will neither cause this person to spend additional time performing watch duties, nor detract from the time available for performing existing duties. Therefore, the total cost of enhanced communications is \$0.

(3) *Voyage Planning:* For each transit, as a representative of the owner or operator, the master of the towing vessel spends approximately 30 minutes preparing the voyage plan. Again, the average daily billing rate for a towing vessel's master is \$400. We estimated that 55% of the annual transits involve oil-laden tank barges. Further, using data from the American Waterway Operators, we assumed that 90% of the transits are already in compliance with this rule. For the 12,892 transits within the First District each year, voyage planning will affect 709 transits. The cost of voyage planning, discounted to 1998 dollars, would be \$167,461.

(4) *Navigation Restriction Areas:* Currently all towing vessels and tank barges operating within the geographic boundaries of the First District, avoid operating in the areas of Fishers Island

Sound and the eastern portion of Cape Cod Bay addressed in this rule. The cost of navigation restriction area is \$0.

SUMMARY: The total present value of the costs of this rule (1998 dollars) would be \$12,964,345 [\$12,796,834 for positive control of barges + \$0 for enhanced communications + \$167,461 for voyage planning + \$0 for navigation restriction areas]. In terms of cost-effectiveness, this rule would prevent future pollution in the First District at a cost of \$32,103 per barrel of oil not spilled.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered 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 requires that all transits involving towing vessels that are not equipped with twin-screw and twin-engine propulsion and are engaged in towing petroleum-laden tank barges in the navigable waters of the First Coast Guard District, employ escorts or assist tugs.

It is primarily the businesses that 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-vessel companies, most of which are small entities, may be indirectly affected by this rule if they can no longer provide tug service at a competitive price because of the requirement that they employ escorts or assist tugs.

These companies do have alternatives available, under which they may use their towing vessels without twin-screws or twin engines for, say, pushing barges in narrow rivers or pushing freight barges. Additionally, with only 5% of all towing vessels not having the necessary propulsion equipment, nearly all the towing companies are already in compliance. Further, information from towing vessel operators indicate that they already select against the use of their towing vessels without twin screws or twin engines for the practice of towing petroleum-laden tank barges. Finally, the cost of escorts or assist tugs is low in comparison with the cost of replacing or retro-fitting all their vessels without twin screws or twin engines with a compliant propulsion system.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic

impact on a substantial number of small entities.

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

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. No collection of information-specific comments were submitted to the docket in response to the NPRM. OMB has approved the collection. The section number is § 165.100(d)(3), and the corresponding approval number from OMB is OMB Control Number 2115-0637, which expires on November 30, 2001.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

Federalism

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that there will be some preemptive impacts on the Rhode Island Tank Vessel Safety Act, 46 R.I.G.L. § 12.6. Specifically, the rules on positive control for barges [33 CFR § 165.100(d)(1)] will preempt 46 R. I. G. L. § 12.6-8(a)(3) on the same subject. The rules on enhanced communications [33 CFR § 165.100(d)(2)] will preempt 46 R. I. G. L. § 12.6-8(b) on the same subject. The rules on voyage planning [33 CFR § 165.100(d)(3)] will preempt 46 R. I. G. L. § 12.6-8(c) on the same subject. However, the Rhode Island Tank Vessel Safety Act, at 46 R.I.G.L.

§ 12.6-12 presaged preemption of this sort. The other provisions of 46 R.I.G.L. § 12.6, although still subject to a separate preemption analysis, remain unaffected by this final rule. No other states within the regulated navigation area have enacted a similar regime. Therefore, it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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 final 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 "Categorical Exclusion Determination" 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—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; Sec. 311, Pub. L. 105-383; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. Add § 165.100 to read as follows:

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

(a) *Regulated navigation area.* All navigable waters of the United States, as

that term is used in 33 CFR 2.05–25(a), within the geographic boundaries of the First Coast Guard District, as defined in 33 CFR 3.05–1(b).

(b) *Definitions.* Terms used in this section have the same meaning as those found in 33 CFR 157.03. Single-hull identifies any tank barge that is not a double-hull tank barge.

(c) *Applicability.* This section applies to primary towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo in the regulated navigation area, or as authorized by the District Commander.

(d) *Regulations—(1) Positive control for barges.* (i) Except as provided in paragraph (d)(1)(iii) 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 or assist 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 towing 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.

(ii) Double-hull tank barges are exempt from paragraph (d)(1)(i) of this section.

(iii) The cognizant Captain of the Port (COTP) may authorize an exemption from the requirements of paragraph (d)(1)(i) of this section for any tank barge with a capacity of less than 25,000 barrels, to operate in an area with limited depth or width such as a creek or small river. Each request for an exemption under this section must be submitted in writing to the cognizant COTP.

(iv) The operator of a towing vessel engaged in towing any tank barge must immediately call for an escort or assist tug to render assistance in the event of any of the occurrences identified in paragraph (d)(1)(i) of this section.

(2) *Enhanced communications.* Each vessel engaged in towing a tank barge must communicate by radio on marine band or Very High Frequency (VHF) channel 13 or 16, and issue security calls on marine band or VHF channel 13 or 16, upon approach to the following places:

- (i) Execution Rocks Light (USCG Light List No. [LLNR] 21440).
- (ii) Matinecock Point Shoal Buoy (LLNR 21420).
- (iii) 32A Buoy (LLNR 21380).

(iv) Cable and Anchor Reef Buoy (LLNR 21330).

(v) Stratford Middle Ground Light (LLNR 21260).

(vi) Old Field Point Light (LLNR 21275).

(vii) Approach to Stratford Point from the south (NOAA Chart 12370).

(viii) Falkner Island Light (LLNR 21170).

(ix) TE Buoy (LLNR 21160).

(x) CF Buoy (LLNR 21140).

(xi) PI Buoy (LLNR 21080).

(xii) Race Rock Light (LLNR 19815).

(xiii) Valiant Rock Buoy (LLNR 19825).

(xiv) Approach to Point Judith in vicinity of Block Island ferry route.

(xv) Buzzards Bay Entrance Light (LLNR 630).

(xvi) Buzzards Bay Midchannel Lighted Buoy (LLNR 16055)

(xvii) Cleveland East Ledge Light (LLNR 16085).

(xviii) Hog Island buoys 1 (LLNR 16130) and 2 (LLNR 16135).

(xix) Approach to the Bourne Bridge.

(xx) Approach to the Sagamore Bridge.

(xxi) Approach to the eastern entrance of Cape Cod Canal.

(3) *Voyage planning.* (i) Each owner or operator of a towing vessel employed to tow a tank barge shall prepare a written voyage plan for each transit of the tank barge.

(ii) The watch officer is authorized to make modifications to the plan and validate it as necessary.

(iii) Except as provided in paragraph (d)(3)(iv) of this section, each voyage plan must contain:

(A) A description of the type, volume, and grade of cargo.

(B) Applicable information from nautical charts and publications, including Coast Pilot, Coast Guard Light List, and Coast Guard Local Notice to Mariners, for the destination(s).

(C) Current and forecasted weather, including visibility, wind, and sea state for the destination(s).

(D) Data on tides and tidal currents for the destination(s).

(E) Forward and after drafts of the tank barge, and under-keel and vertical clearances for each port and berthing area.

(F) Pre-departure checklists.

(G) Calculated speed and estimated times of arrival at proposed waypoints.

(H) Communication contacts at Vessel Traffic Service (VTS) (if applicable), bridges, and facilities, and port-specific requirements for VHF radio.

(I) The master's standing orders detailing closest points of approach, special conditions, and critical maneuvers.

(iv) Each owner or operator of a tank barge on an intra-port transit of not more than four hours may prepare a voyage plan that contains:

(A) The information described in paragraphs (d)(3)(iii)(D) and (E) of this section.

(B) Current weather conditions including visibility, wind, and sea state. This information may be entered in either the voyage plan or towing vessel's log book.

(C) The channels of VHF radio to monitor.

(D) Other considerations such as availability of pilot, assist tug, berth, and line-handlers, depth of berth at mean low water, danger areas, and security calls.

(4) *Navigation restriction areas.*

Unless authorized by the cognizant COTP, no tank barge may operate in—

(i) The waters of Cape Cod Bay south of latitude 42° 5' North and east of longitude 70° 25' West; or

(ii) The waters of Fishers Island Sound east of longitude 72° 2' West, and west of longitude 71° 55' West.

Dated: December 18, 1998.

[FR Doc. 98–34414 Filed 12–24–98; 8:54 am]

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PRESIDIO TRUST

36 CFR Parts 1007, 1008 and 1009

RIN 3212-AA01

Management of the Presidio: Freedom of Information Act, Privacy Act, and Federal Tort Claims Act

AGENCY: The Presidio Trust.

ACTION: Final rule.

SUMMARY: The Presidio Trust (Trust) published proposed regulations in the **Federal Register** on September 18, 1998 (63 FR 50024–50055) concerning management of the area under the administrative jurisdiction of the Trust as well as various administrative matters. The public comment period on portions of these proposed regulations (proposed 36 CFR Parts 1007, 1008, and 1009) closed on November 17, 1998, while the public comment period on the remaining portions (proposed 36 CFR Parts 1001, 1002, 1003, 1004, 1005, and 1006) was extended until January 8, 1999. See 63 FR 64023 (November 18, 1998). In today's action, the Trust is promulgating final regulations concerning the Freedom of Information Act (Part 1007), the Privacy Act (Part 1008), and the Federal Tort Claims Act (Part 1009).

DATES: These regulations will be effective on January 29, 1999.