has incorporated into its asbestos inspection and management program, an asbestos accreditation program at least as stringent as the EPA's Asbestos Model Accreditation Plan (MAP), interim final rule is approved by this notice.

Accordingly, EPA grants the Commonwealth of Massachusetts a waiver from the requirements of 40 CFR part 763, subpart E, effective October 24, 1998. Federal jurisdiction shall be in effect in the period between the date of publication of this document and that date. This will assure that the State has sufficient time to prepare to assume its new responsibilities. It will also assure the public that no gap in authority occurs, and gives the public sufficient notice of the transfer of duties from EPA to the State of Massachusetts. This waiver is applicable to all schools covered by AHERA in the State. This waiver is subject to rescission under 40 CFR 763.98(j) based on periodic EPA oversight evaluation and conference with the State in accordance with 40 CFR 763.98(h) and (i).

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This action does not impose any requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*),

B. Paperwork Reduction Act

The reporting and record keeping provisions relating to State waivers from the requirements of the Asbestos-Containing Materials in Schools Rule (40 CFR part 763) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and have been assigned OMB control number 2070–0091.

C. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create an unfunded Federal mandate on State, local, or tribal governments. The action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

D. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined by 5 U.S.C. 804(3).

List of Subjects in 40 CFR Part 763

Environmental protection, Administrative practice and procedure, Asbestos, Confidential business information, Hazardous substances, Imports, Intergovernmental relations, Labeling, Occupational safety and health, Reporting and recordkeeping requirements, Schools.

Dated: October 15, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–28726 Filed 10–26–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[USCG–1998–3323; CGD 97–073]

RIN 2115–AF57

Federal Pilotage for Vessels in Foreign Trade

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard is issuing a final rule requiring that vessels in foreign trade, under way on the Cape Fear River and the Northeast Cape Fear River in North Carolina, be under the direction and control of Federal pilots when not under the direction and control of State pilots. This measure is necessary to ensure that vessels are navigated by competent, qualified persons, who are familiar with the local area and accountable to either the State or the Coast Guard. This measure will promote navigational safety by increasing the level of accountability and reducing risk of both accident and

the discharge of oil or other hazardous substances into these waters.

DATES: The final rule is effective on November 27, 1998.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the Docket Management Facility (DMF) [USCG–1998–3323], U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, located on the Plaza Level of the Nassif Building, between 10:00 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Mr. Anthony Murray, Licensing and Evaluation Branch, U. S. Coast Guard, National Maritime Center (NMC–4C), 4200 Wilson Blvd., Suite 510, Arlington, VA 22203–1804, telephone 703–235–1729. For questions on viewing material in the docket, call Dorothy Walker, Chief, Documents, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 20, 1998, the Coast Guard published in the **Federal Register** [63 FR 2939] a notice of proposed rulemaking (NPRM) entitled ''Federal Pilotage for Vessels in Foreign Trade''. This NPRM proposed areas in waters of the Cape Fear River and the Northeast Cape Fear River in North Carolina, where it would require a vessel engaged in foreign trade to use a Federally-licensed, first-class pilot. The Coast Guard received eight letters in response to the NPRM.

Background and Purpose

Under sub-section 8503(a) of title 46, United States Code, the Secretary of Transportation may require a Federally-licensed pilot on a self-propelled vessel engaged in foreign trade and operating on the navigable waters of the United States, when State law does not require a State pilot. Sub-section 8503(b) provides that Federal authority to require Federally-licensed pilots on vessels in foreign trade terminates when the State having jurisdiction establishes a superseding requirement for a State pilot and notifies the Secretary of that fact.

Commercial vessels transit the Cape Fear River and Northeast Cape Fear River carrying various types of freight, oil, hazardous substances, and hazardous materials, as well as large quantities of bunkers. Under the law of North Carolina [General Statutes of North Carolina, 76A–16], every foreign vessel and every domestic vessel sailing under register ''shall employ and take a State-licensed pilot,'' except that the vessel need not use a State-licensed pilot if a docking master is aboard and the vessel is assisted by a tug for certain movements on the Cape Fear River. These movements include berthing and unberthing, passing through bridges, and shifting within a port or terminal. North Carolina neither licenses nor otherwise regulates the competence of docking masters. Although all docking masters currently operating upon the Cape Fear River and Northeast Cape Fear River do hold valid Federal pilots' licenses (or pilotage endorsements on Federal licenses), holding either is voluntary and is neither a State nor a Federal requirement. Anyone may serve as docking master, and no one need demonstrate additional proficiency as a ''docking master.'' The docking master of a vessel assisted by a tug may be subject to Federal accountability in that the Coast Guard may proceed against his or her license as operator of an uninspected towing vessel.

As recently as 1994, a foreign-flag bulk carrier under the control of a docking master was caught by the wind and current when leaving a pier above the Cape Fear Memorial Bridge. The vessel was set downriver, perpendicular to the channel, while the docking master tried to rotate its bow downstream. Its stern struck and destroyed about 30 meters of the pier that it had just left. The docking master was not operating under the authority of either a Federal or a State pilot's license. North Carolina did not investigate this incident; and, in such a case, unless the person is operating under the authority of a Federal license (or pilotage endorsement), or the Coast Guard has some other basis for jurisdiction, the Coast Guard cannot suspend or revoke his or her Federal license (or endorsement) for violation of statute or rule intended either to promote marine safety or to protect the navigable waters, or for misconduct or for negligence [46 U.S.C. Chapter 77]. Even if the Coast Guard considered him or her professionally or medically incompetent, its ability to deny him or her the opportunity to serve as a docking master on foreign-trade vessels would be severely restricted.

The Coast Guard has determined that it is unsafe for vessels to undertake intra-port transits or otherwise navigate in the waters of the Cape Fear River or Northeast Cape Fear River except when under the direction and control of pilots accountable to either North Carolina or the Coast Guard. It also has determined that requiring persons to serve under the authority of Federal first-class pilots' licenses (or pilotage endorsements), if not of State licenses, and so to be accountable for their acts and competence, would increase maritime safety.

To obtain a Federal pilot's license (or pilotage endorsement), a person must pass a comprehensive examination, which includes demonstrating mastery of, among others, such subjects as maneuvering and handling ships; navigational aids; winds, tides, and currents; and a chart sketch. Further, a person must complete a specific number of round trips and demonstrate specialized local knowledge of the waters for which the license (or endorsement) authorizes service as a pilot. Therefore, the Coast Guard instates a Federal pilots' requirement for foreign-trade vessels operating in the designated waters of the Cape Fear River and Northeast Cape Fear River, unless the vessels are under the direction and control of State-licensed pilots operating under the authority of valid State pilots' licenses.

This final rule adds a new section to 46 CFR part 15, subpart I, requiring that every foreign-trade vessel operating on the Cape Fear River and Northeast Cape Fear River be under the direction and control of a Federally-licensed pilot, unless under the direction and control of a State-licensed pilot. This rule applies only to the specified areas of the Cape Fear River and the Northeast Cape Fear River, because North Carolina allows docking masters to take control of foreign-trade vessels only in these waters.

Discussion of Comments and Changes

Summary

On January 20, 1998, the Coast Guard published in the **Federal Register** [63 FR 2939] an NPRM entitled ''Federal Pilotage Requirement for Foreign Trade Vessels.'' It asked that comments reach the Docket Management Facility on or before February 19, 1998. Eight arrived in response to the NPRM.

Two comments expressed support for the proposed rule to require Federal pilots onboard vessels on the Cape Fear River and the Northeast Cape Fear River where North Carolina does not require a pilot.

One comment suggested that the comment period as announced in the NPRM be extended, to afford officials of North Carolina and affected persons in the area covered by this rule enough time to assess the impact of the rule and develop further comments. In addition,

this comment recommended an interim rule until North Carolina could close the gap caused by the present exemption from its requirement of compulsory pilotage. The Coast Guard has determined that the comment period provided was appropriate in duration and that an interim rule would serve no purpose, because even a final rule leaves North Carolina free to preempt it by the State's own legislative act.

This comment went on to suggest that the rule should affect three specific zones. But the three zones suggested by the commenter would not encompass the development of new terminals along the river located within the resulting gaps among the three zones. The two zones set out in this final rule comprise an area larger than these three, and the area described in paragraph (a) of the rule now extends about one mile further than that in the proposed rule. By covering these areas, the rule will close any present or future gaps in the areas not covered by the State.

Four comments asserted that the proposed rule would create a conflict between State and Federal pilotage requirements and recommended alternative wording to the rule. They held that, unless changed from the proposed rule, the final rule could be misinterpreted to mean that Federal pilotage is all that would be necessary for someone operating a vessel on covered waters. The Coast Guard agrees and amends subsection (b) for clarification. The Coast Guard leaves the opportunity to North Carolina to adopt superseding legislation and preempt Federal authority.

One comment observed that the NPRM identifies all docking masters currently operating on the Cape Fear River and Northeast Cape Fear River as already holding valid Federal pilots' licenses (or pilotage endorsements). It went on to suggest that docking masters are therefore already accountable by virtue of holding Federal pilots' license or endorsements to Federally-issued licenses for Operators of Uninspected Towing Vessels. The NPRM, however, stresses ''that holding [these licenses or endorsements] is voluntary and is neither a State nor a Federal requirement.'' The Coast Guard deems this final rule necessary as long as North Carolina permits a docking master, not licensed by the State, to serve as pilot on certain waters of the State.

One comment voiced concern that this regulatory initiative was the result of a single incident where accountability could not be established. The incident described in the preamble to the NPRM was illustrative of a longstanding concern of the Coast Guard of a dangerous situation that could quickly develop if the status quo that all current docking masters have Federal pilots' licenses, were to change. The Coast Guard is acting now to prevent such a situation.

This comment also implied that accountability does not guarantee competency and suggested that the Coast Guard review qualifications for maintaining a Federal pilot's license. By Federal regulation [46 CFR 10.709 and 10.713], the Coast Guard requires every person holding a license or endorsement as first-class pilot to maintain current knowledge of the waters he or she would navigate as well as to have a thorough physical examination each year. In addition, the comment recommended that the State organizations responsible for issuance of State pilots' licenses assure minimum levels of competence regardless of transit area. Although the Coast Guard holds an interest in the competence of licensed State pilots, the standards are for the State to set.

One comment suggested adding the words in paragraph (a), ''with tug assistance''; otherwise, the final rule would allow Federally-licensed pilots to maneuver vessels without such assistance on the Cape Fear River and the Northeast Cape Fear River. Yet North Carolina allows State-licensed pilots to maneuver vessels without tug assistance on those waters; it requires docking masters alone to employ such assistance. The Coast Guard considered this request, and determined that a requirement for ''tug assistance'' would go beyond the scope of this rulemaking. The Coast Guard will defer to North Carolina if the State requires tug assistance, but will not require it itself.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)].

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Foreign-trade vessels are normally under the direction and control of docking masters or State pilots when making intra-port transits or transits in congested waters. Those persons currently serving as docking masters do hold Federal pilots' licenses, although not required to do so by State or Federal law. Therefore, this final rule will not impose any added costs on the persons now acting as docking masters. However, those persons entering this profession in the future will now have to hold Federal pilots' licenses. Historically, persons filling these vacancies have already obtained Federal pilots' licenses and necessary endorsements in the normal course of advancement in this profession. Nevertheless, this rule will require an initial expense to obtain the license, in addition to a yearly physical exam and the five-year renewal fees. These costs should be insignificant as those persons now acting as docking masters do already have, and those likely to enter this profession will already have, the required license. This rule will promote responsibility, advocate safety, and establish accountability by requiring a Federal pilot, where the State requires no pilot, for foreign-trade vessels transiting or making intra-port transits within the waters of the Cape Fear River or Northeast Cape Fear River. The Coast Guard believes that the benefits of requiring licensed, qualified persons aboard these vessels significantly outweigh the small costs associated with implementing this rule.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], the Coast Guard considered whether this final rule would have a significant economic impact on a substantial number of small entities. These include independently owned and operated small businesses that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects that this final rule will have minimal economic impact on small entities. The Coast Guard doubts whether vessels affected by this rule are owned or operated by small entities. While State pilots' associations may qualify as small entities, the Coast Guard's action will not have a significant economic impact on these entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with sub-section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to help small entities understand this final

rule so they can better evaluate its effects on them and participate in the rulemaking. If your small business is affected by this rule and you have questions concerning its provisions or options for compliance, please call Mr. Anthony Murray, Licensing and Evaluation Branch, U.S. Coast Guard, National Maritime Center, 703–235–1729.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1–888–REG–FAIR (1–888–7734–3247).

Collection of Information

This final rule contains no collection-of-information requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Congress specifically, under 46 U.S.C. 8503(a), authorized the Federal Government to require a Federally-licensed pilot where State law requires no pilot. North Carolina permits a docking master, not licensed by the State, to serve as pilot on certain waters of the State. Therefore, the Federal Government may require Federally-licensed pilots on those waters. The Federal authority to require that pilots hold Federal licenses is effective only until the State establishes a superseding requirement that pilots hold State licenses and notifies the Coast Guard of that fact according to 46 U.S.C. 8503(b).

Since this final rule aims primarily at requiring Federal pilots to supplement State pilots, the Coast Guard does not believe that the preparation of a Federalism Assessment is warranted. This rule will not impinge upon existing State laws. If North Carolina adopts superseding legislation requiring foreign vessels, and domestic vessels sailing on registry, to be under the direction and control of State-licensed pilots and notifies the Secretary of Transportation of that requirement, this rule will lose all its force. Thus, in step with the Federal statute, this rule itself lets the State preempt Federal authority.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(a) of Commandant Instruction Ml6475.1C, 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.**

The Coast Guard has determined that most people now providing pilotage to foreign-trade vessels calling within the Cape Fear River and Northeast Cape Fear River will continue to provide it because most already hold Federal first-class pilots' licenses for those waters. Therefore, this rule will let affected vessels continue to operate according to current practices in the industry.

The Coast Guard also recognizes that this rule may have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions, allisions and grounding of vessels. Nevertheless, this impact is not significant enough to warrant further documentation.

List of Subjects in 46 CFR Part 15

Crewmembers, Marine safety, Navigation (water), Seamen, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 15 as follows:

PART 15—MANNING REQUIREMENTS

1. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; 49 CFR 1.45 and 1.46.

2. Add § 15.1050 to read as follows:

§ 15.1050 North Carolina.

(a) The following navigable waters of the United States within the State of North Carolina when the vessel is maneuvering while berthing or unberthing, is approaching or passing through a bridge, or is making any intra-port transit, which transit may include but is not limited to movement from a dock to a dock, from a dock to an anchorage, from an anchorage to a dock, or from an anchorage to an anchorage, within either of the following areas:

(1) The waters of the Cape Fear River from the boundary line established by 46 CFR 7.60 to Latitude 34° 16.5′N.

(2) The waters of the Northeast Cape Fear River from its confluence with the Cape Fear River at Point Peter to Latitude 34°17′N.

(b) This subpart does not apply to any vessel on the waters specified in paragraph (a) of this section if the laws of the State of North Carolina require a State-licensed pilot on the vessel.

Dated: October 13, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–28755 Filed 10–26–98; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 102098E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Western Regulatory Area in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod in the Western Regulatory Area of the Gulf of Alaska (GOA) for processing by both the inshore and offshore components. This action is necessary to fully utilize the total allowable catch (TAC) of Pacific cod in that area.

DATES: Dates Effective 1200 hrs, Alaska local time (A.l.t.), October 21, 1998.

FOR FURTHER INFORMATION CONTACT: Nick Hindman, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(6)(iii), the allowance of the Pacific cod TAC apportioned for vessels catching Pacific cod for processing by the inshore and offshore components in the Western Regulatory Area of the GOA was established as: 20,853 metric tons (mt) inshore, and 2,317 mt offshore, by the