



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 126

[Docket No. USCG-2011-0966]

RIN 1625-AB82

Alternate Tonnage Threshold for Oil Spill Response Vessels

AGENCY: Coast Guard, DHS.

ACTION: Final rule; Interpretation.

SUMMARY: The Coast Guard is establishing an alternate size threshold based on the measurement system established under the International Convention on Tonnage Measurement of Ships, 1969, for oil spill response vessels, which are properly certificated under 46 CFR chapter I, subchapter L. The present size threshold of 500 gross register tons is based on the U.S. regulatory measurement system. This final rule provides an alternative for owners and operators of offshore supply vessels that may result in an increase in oil spill response capacity and capability. This final rule adopts, without change, the interim rule amending 46 CFR part 126 published in the Federal Register on Monday, December 12, 2011.

DATES: This final rule is effective [INSERT DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-0966 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2011-0966 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or e-mail Mr. Brian T. Ellis, Coast Guard Marine Safety Center; telephone 202-475-5636, e-mail Brian.T.Ellis@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

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I. Abbreviations

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
GT ITC	Gross Tonnage International Tonnage Convention, 1969
OSV	Offshore Supply Vessel
OSRV	Oil Spill Response Vessel
U.S.C.	United States Code

II. Regulatory History

On Monday, December 12, 2011, the Coast Guard published an interim rule with request for comments entitled Alternate Tonnage Threshold for Oil Spill Response Vessels in the Federal Register (76 FR 77128). We received no comments on the interim rule. No public meeting was requested and none was held. This rule is considered to be an interpretive rule under the Administrative Procedure Act (5 U.S.C. 551 et seq.) and, therefore, the 30-day delay of the effective date is not required under 5 U.S.C. 553(d)(2).

III. Basis and Purpose

The interim final rule published in the Federal Register on Monday, December 12, 2011 (76 FR 77128) provides a discussion of the basis and purpose of this rulemaking, but a summary of that discussion follows.

This final rule establishes an alternate tonnage threshold at 6000 Gross Tonnage International Tonnage Convention (GT ITC) for oil spill response vessels (OSRVs) that are also certificated as offshore supply vessels (OSVs). The selected alternate tonnage threshold is consistent with a 6000 GT ITC alternate threshold established for OSVs in 1996.¹ This final rule will allow owners of OSVs regulated under the alternate tonnage framework to also have their vessels certificated as OSRVs, without the need to meet significantly higher standards applicable to tank vessels.

Because this final rule provides for optional use of an alternative approach to meet an existing requirement, there is no mandatory cost to the public. The authority for this final rule is the 1996 Coast Guard Authorization Act (the Act) (Pub. L. 104-324), as codified in 46 U.S.C. 3702(f)(2)(A) and 14104(b).

¹See Offshore Supply Vessels: Alternate Tonnage, 61 FR 66613 (Dec. 18, 1996), amending 46 CFR 125.160.

IV. Background

The interim final rule, published in the Federal Register on Monday, December 12, 2011 (76 FR 77128), provides a discussion of the background of this rulemaking. No comments were received on the interim final rule and, therefore, this final rule adopts, without change, that interim rule amending 46 CFR part 126.

V. Regulatory Analyses

We developed this final rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has reviewed it under that Order.

This final rule establishes a tonnage threshold of 6000 GT ITC for OSRVs under the alternate tonnage framework, which offers a mechanism for the Coast Guard to regulate vessels under tonnages assigned using the convention measurement system, instead of the regulatory measurement system. Therefore, this final rule provides an option to owners of vessels certificated as OSVs (under 46 CFR subchapter L) to seek OSRV certification based on this alternate tonnage threshold. We believe that a vessel owner will opt to use the alternate tonnage framework described in this final rule only if it will be beneficial to the owner's business.

We expect this final rule to be beneficial to the public and to the maritime industry because it provides the opportunity to increase oil spill response capacity and capability.

This final rule provides for optional and voluntary use of an alternative approach to meet an existing

requirement. Accordingly, there is no mandatory cost to the public.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), this rule is considered an interpretive rule and is not subject to the requirement under 5 U.S.C. 553(b) for publication of a general notice of proposed rulemaking. Therefore, under 5 U.S.C. 601, it is not a rule that is subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Coast Guard issued this rule as an interpretive rule on December 12, 2011, as authorized by section 702 of the Act (Pub. L. 104-324; October 19, 1996). The Conference Report on the Act (H. Rept. 104-854) states that, because this rule is considered to be an interpretive rule under the Administrative Procedure Act (5 U.S.C. 551 et seq.), the notice of proposed rulemaking and comment requirements and the 30-day delay of effective date under 5 U.S.C. 553 would not be required in order to expedite this rulemaking.

This final rule provides for optional and voluntary use of an alternative approach to owners of vessels certificated as OSVs to seek an OSRV certification based on an alternate tonnage threshold. We believe that a vessel

owner will opt to use the alternate tonnage framework described in this final rule only if it will be beneficial to the owner's business. We expect this final rule to be beneficial to the public and to the maritime industry because it provides the opportunity to increase the availability and capacity of OSRVs.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Brian T. Ellis, U. S. Coast Guard Marine Safety Center, Tonnage Division, 202-475-5636, Brian.T.Ellis@uscg.mil. 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the

Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. It is well settled that States may not establish alternate tonnages for oil spill response vessels pursuant to 46 U.S.C. 3702(f)(2)(A). Therefore, preemption is not an issue under Executive Order 13132.

F. 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately

affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

M. Environment

We have analyzed this final rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This final rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(d) of the Instruction. Exclusion under paragraph (34)(d) applies because this final rule pertains to regulations concerning documentation and admeasurement of vessels. An

environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 126

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

PART 126-INSPECTION AND CERTIFICATION

Accordingly, the interim rule amending 46 CFR part 126, which was published at 76 FR 77128 on December 12, 2011, is adopted as a final rule without change.

Dated: May 24, 2012

F. J. Sturm

Acting Director of Commercial Regulations and Standards,

U. S. Coast Guard

[FR Doc. 2012-15976 Filed 06/28/2012 at 8:45 am;

Publication Date: 06/29/2012]