

The rule also adds a provision under which the Coast Guard will consider waivers, on a case by case basis, when an actual conflict with a foreign law or policy is brought to our attention.

Under 5 U.S.C.(d), the Coast Guard finds good cause why this rule should be made effective in fewer than 30 days after date of publication. Although the effective date of the rule is January 2, 1997, the Coast Guard recognizes that there may be a need for an implementation period. Therefore, employees will have until July 1, 1997 to implement the final rule on U.S. vessels in waters subject to the jurisdiction of a foreign country.

Although the changes in this rule are responsive to and fully supported by the comments received, the Coast Guard is offering a period for submission of additional comments. This rule is being published as an interim rule with a 60-day comment period. This action will implement the testing requirements without further temporary delays as in past years, but will allow the regulated employers to review and comment on the rule before it is adopted as final. Comments should be mailed to the Executive Secretary, Marine Safety Council, at the address under **ADDRESSES**.

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 11034 (February 26, 1979)). The Coast Guard acknowledges that there are companies whose current policy is not to conduct chemical testing in waters subject to a foreign government. To implement such testing now would increase their operating expenses. This "increase", however, was part of the costs evaluated in the original rulemaking and deferred to this time because of the numerous delays in implementing testing in foreign waters. The economic impact of these changes is so minimal that further evaluation is not necessary. This final rule implements the effective date for compliance with Coast Guard regulations governing chemical testing, insofar as those regulations would require testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000. 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. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

This rule contains no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, 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 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 16 as follows:

PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. Section 16.207 is revised to need as follows:

§ 16.207 Conflict with foreign laws.

(a) This part applies to the testing of all U.S. crewmembers onboard U.S. vessels operating in waters that are subject to the jurisdiction of a foreign government on and after January 2, 1997; however, implementation may be delayed until July 1, 1997.

(b) Employers for whom compliance with this part would violate the domestic laws or policies of another country may request an exemption from the drug testing requirements of this part by submitting a written request to Commandant (G-MOA), at the address listed in § 16.500(a).

Dated: December 9, 1996.

J.C. Card,

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

[FR Doc. 96-32028 Filed 12-17-96; 8:45 am]

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46 CFR Part 125

[CGD 96-058]

RIN 2115-AF35

Offshore Supply Vessels; Alternate Tonnage

AGENCY: Coast Guard, DOT.

ACTION: Final rule; interpretation.

SUMMARY: The Coast Guard is establishing an alternate maximum size limit for offshore supply vessels that is based on the measurement system established under the International Convention on Tonnage Measurement of Ships, 1966. The present maximum size limit of 500 gross tons is based on the U.S. regulatory measurement system. This action provides an alternative for owners and operators of offshore supply vessels that may result in the building of safer, more efficient vessels and may enable the U.S. designers and operators of these vessels to be competitive in the international market.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Eareckson, Marine Safety Center, (202) 366-6441.

SUPPLEMENTARY INFORMATION:

Regulatory Information

This rule is issued as an interpretative rule as authorized by section 702 of the Coast Guard Authorization Act of 1996 (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. Therefore, this rule is being made effective on the date of publication in the Federal Register.

Scope of This Rulemaking

It is the intent of the Coast Guard, in this interpretive rule, to implement sections 702 and 709(3) of the Act which authorize the Secretary of Transportation (Coast Guard) to prescribe an alternate tonnage for offshore supply vessels. Section 702 of the Act amends 46 U.S.C. 14104 to provide the Coast Guard with discretionary authority to prescribe an alternate tonnage for a statute if that statute specifically states that an alternate tonnage may be prescribed under section 14104. Section 709(3) of the Act amends 46 U.S.C. 2101(19) to define an offshore supply vessel as a motor vessel of more than 15 gross tons but less than 500 gross tons as measured under 46 U.S.C. 14502 (regulatory measurement), or an alternate tonnage under 46 U.S.C. 14302 (convention measurement) as prescribed by the Secretary (Coast Guard) under section 14104, that regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources. The scope of this rulemaking is limited to prescribing an alternate tonnage threshold based on convention measurement to the maximum size limit of 500 gross tons (regulatory measurement) specified in the definition of "offshore supply vessel" in 46 U.S.C. 2101(19). To establish this alternate tonnage, this rule amends the definition of "offshore supply vessel" or "OSV" in 46 CFR chapter I, subchapter L, entitled "Offshore Supply Vessels."

The Coast Guard recognizes that future rulemaking will be required to address other tonnage thresholds that apply to an OSV, such as the 200 gross ton threshold established under 46 U.S.C. 8301 that sets the standard for when an OSV is required to have a licensed engineer. In establishing alternate tonnage thresholds for this and other parameters, the Coast Guard intends to solicit comments from the public through notices in the Federal Register. Also, the Coast Guard intends to use this approach in establishing alternate tonnage thresholds applicable to other vessel-types as well. However,

it is important to note that the Coast Guard has the authority to establish alternate tonnage thresholds only for those statutory provisions authorized by the Congress. At the present time, authorization has been granted only for those statutes listed in sections 702 through 744 of the Act.

Background

Tonnage is the principal parameter used in the shipping statutes to authorize Coast Guard regulations of a vessel according to its size. Also, tonnage has been used for a variety of other purposes including the assessment of taxes and fees. The traditional system used in the United States for measuring a vessel to determine its tonnage is called the regulatory measurement system and is authorized under 46 U.S.C. chapter 145. It consists of the standard, dual, and simplified measurement systems and is implemented under 46 CFR part 69, subparts C, D, and E, respectively. The regulatory measurement system, with the exception of the simplified system used primarily for smaller vessels, provides for a complex series of internal measurements and exemptions to arrive at gross tonnage. Over time, this system has become increasingly susceptible to manipulation because the system allows vessel designers to use features, such as excessive framing and tonnage openings, solely to reduce the gross tonnage of the vessel artificially. In this manner, increasingly larger vessels can be designed to fall within the tonnage bounds of their class. In most cases, these design features have a negative impact on the cost, efficiency, and international competitiveness of vessels. These features can also adversely affect safety performance.

In response to this problem, the United States ratified the International Convention on Tonnage Measurement of Ships, 1969, which establishes a worldwide system of measurement that provides a genuine representation of a vessel's size. Convention measurement is authorized under 46 U.S.C. chapter 143 and is implemented in 46 CFR part 69, subpart B. Under the convention measurement system, gross tonnage is based on a logarithmic function of the total enclosed volume of the vessel and is not subject to manipulation by the use of tonnage reduction techniques. Because of the differences between regulatory measurement and convention measurement, the tonnage for a single vessel could differ substantially (e.g., by thousands of tons for a 200 foot vessel). Because convention measurement does not allow for artificial tonnage reduction techniques, vessels measured using this

system often are greater in tonnage than vessels measured using regulatory measurement.

The Act authorizes the Coast Guard to establish tonnages based on the convention measurement system as an alternative to tonnages based on the regulatory measurement system when a particular statute specifically provides that authority. With oil and gas production moving farther offshore and the average age of the present OSV fleet approaching 20 years, a market for technologically advanced vessels has evolved. With this in mind and to discourage the continued use of tonnage reduction techniques on these vessels, the Coast Guard has decided to make the alternate tonnage threshold for offshore supply vessels a priority. In the interest of expediency and recognizing that new construction in many cases can not effectively begin until an alternate tonnage is established for the maximum size of an OSV, the Coast Guard is establishing only the maximum size parameter in the definition of an OSV in 46 U.S.C. 2101(19) in this rule.

Major Factors Considered in Determining Alternate Tonnage

In determining an alternate tonnage parameter for the maximum size of an OSV under the convention measurement system, the Coast Guard took into consideration the following:

(1) The largest U.S.-flag offshore supply vessels in service today measure approximately 2,000 gross tons under the convention measurement system. However, there is no theoretical upper limit to the physical size that an OSV could be if tonnage reduction techniques are employed to keep its regulatory tonnage below the statutory maximum of 500 gross tons for an OSV.

(2) Technological advances in recent years have enabled the recovery of oil resources in increasingly deeper water. As a result of increased deep water operations, there has become a greater need for vessels with more capabilities and cargo-carrying capacities than those in service today. Selection of an alternate tonnage in excess of 2,000 gross tons gives industry the flexibility to build these new vessels without having to employ tonnage reduction techniques and to meet the needs of the offshore oil and gas exploration and production industries.

(3) Under Resolution A.469(XII), the International Maritime Organization (IMO) adopted guidelines entitled, "Guidelines for the Design and Construction of Offshore Supply Vessels." These TWO guidelines apply to vessels that are less than 100 meters in length, corresponding to a size of

approximately 6,000 gross tons, as measured under the convention measurement system, for an OSV of modern design. A number of offshore supply vessels approaching this size have been built under foreign flag or are on order in foreign shipyards. In authorizing the establishment of alternate tonnages for vessels under the convention measurement system, Congress indicated in the Conference Committee report that alternate tonnages enable U.S. vessel designers and operators to be more competitive in the international market.

(4) The safety record for the U.S. OSV fleet has been satisfactory. Further, there is no evidence to suggest that an increase of size would decrease the safety performance of these vessels. Under the convention measurement system these factors support the selection of an alternate tonnage threshold in excess of the highest tonnage assigned to the largest U.S.-flag OSV in service today.

Conclusion

Based on the factors considered and a comprehensive review of existing design and operating standards applicable to an OSV, the Coast Guard concluded that it is acceptable and appropriate to apply existing OSV regulations to vessels as large as 6,000 gross tons as measured under the convention measurement system. This figure corresponds to the 100-meter maximum length for vessels constructed to the latest international standards. An upper size limit of 6,000 gross tons will provide the OSV industry with the flexibility to build and operate vessels that are competitive with foreign-flag vessels built and operated under international standards. Therefore, the Coast Guard has determined that the appropriate alternate tonnage for the maximum size limit for an OSV is 6,000 gross tons for vessels measured under the convention measurement system. This rule amends the definition of OSV in 46 CFR 125.160, which contains definitions applicable to the Coast Guard's general OSV regulations in 46 CFR chapter I, subchapter L.

With the promulgation of this regulation and the need for the OSV fleet to accommodate operations in deeper waters, the Coast Guard will monitor closely all aspects of the design, construction, and operating performance of vessels built after promulgation of this rule. Under 46 U.S.C. 3306, the Coast Guard may consider additional standards for these vessels if deemed necessary due to the promulgation of this regulation. Any rulemaking to establish additional

standards will provide an opportunity for public comment.

Effect on Alternate Tonnage on International Agreements

The establishment of a 6,000 gross ton alternate threshold in the definition of an OSV will not affect international requirements applicable to these vessels. For example, any U.S.-flag OSV with a keel laid after July 18, 1994, that engage on a foreign voyage must comply with international convention requirements based on the vessel's gross tonnage as assigned under the convention measurement system. These conventions include the International Convention for the Safety of Life at Sea (SOLAS), International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), and the International Convention for the Prevention of Pollution from Ships (MARPOL).

Licensing Considerations

Under the 1995 amendments to STCW, tonnage thresholds were adjusted upwards to reflect the higher gross tonnages that have been assigned to many vessels measured under the convention measurement system. A rulemaking to implement the new STCW requirements is currently being developed (Coast Guard docket CGD 95-062). The Coast Guard will address, in CGD 95-062, licensing requirements for personal serving threshold as measured under the convention measurement system.

Regulatory Evaluation

This 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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The objective of this rulemaking is to provide a definition of an OSV using an alternate tonnage threshold for vessels measured under the convention measurement system. This rule imposes no new regulatory burdens and may provide benefits for owners of an OSV built in the future. By designing a vessel under the convention measurement system, a vessel can be built with reduced cost and steelweight, with

greater cargo-carrying capacity, and with improved structural safety.

Small Entities

Under the Act, 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.*). Nevertheless, this rule will effect primarily OSV owners, which, because of the high cost of the vessels, tend to be larger corporations. Smaller entities associated with the design and construction of these vessels may benefit from the potential increase in construction orders for new vessels. This increase is anticipated due to the improved competitiveness of these vessels in the international market provided by the establishment of an alternate tonnage threshold under the convention measurement system.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (14 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e(34)(a) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule establishes a maximum tonnage threshold for offshore supply vessels measured under the convention measurement system. This rule is editorial or procedural in nature and interprets existing law. It has no effect on the environment. A "Categorical Exclusion Determination" is available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

List of Subjects in 46 CFR Part 125

Administrative practice and procedures, Authority delegation, Hazardous materials transportation, Marine Safety, Offshore supply vessels, Oil and gas exploration, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 125 as follows:

PART 125—GENERAL

1. The authority citation for part 125 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307, 14104; 49 U.S.C. App. 1804; 49 CFR 1.46.

2. In § 125.160, in the definition of *Offshore supply vessel* or *OSV*, the introductory text is republished and paragraph (3) is revised to read as follows:

§ 125.160 Definition.

* * * * *

Offshore supply vessel or *OSV* means a vessel that—

* * * * *

(3) Is more than 15 but less than 500 gross tons (as measured under the Standard, Dual, or Simplified Measurement System under part 69, subpart C, D, or E of this chapter) or less than 6,000 gross tons (as measured under the Convention Measurement System under part 69, subpart B of this chapter); and

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Dated: November 15, 1996

J. C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.
[FR Doc. 96-31991 Filed 12-17-96; 8:45 am]

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FEDERAL MARITIME COMMISSION**46 CFR Parts 501, 502, 504, 514, 552, and 560**

[Docket No. 96-23]

Regulations Affecting Maritime Carriers and Related Activities in Domestic Commerce

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") is removing its rules governing the financial reporting and agreement activity of, and rate proceedings involving, vessel-operating common carriers by water in the domestic offshore trades. Jurisdiction over the port to port operations of those carriers has been transferred to the Surface

Transportation Board. The Commission is also amending various other parts of its regulations to delete references to the removed parts.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, DC 20573-0001, 202-523-5787.

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Public Law No. 104-88, 109 Stat. 803 ("ICC Termination Act"), transferred jurisdiction over port to port operations in the noncontiguous domestic trade, which formerly had been regulated by the FMC under the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843-848 ("1933 Act") and the Shipping Act, 1916, 46 U.S.C. app. 801-842 ("1916 Act"), to the Surface Transportation Board ("Board"). Accordingly, the Commission is removing its major regulations governing domestic offshore carriers, namely Part 552—Financial Reports of Vessel Operating Common Carriers by Water in the Domestic Offshore Trades, Part 560—Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916, and 46 CFR 502.67—Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933. Only these major regulations governing domestic carriers and references thereto are being deleted at this time. All remaining references to the domestic offshore trades in 46 CFR and any technical conforming amendments necessary will be made at a later date.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations.

The removal of Parts 552, 560 and § 502.67, and references thereto, is housekeeping in nature and will not impact a substantial number of small entities.

This final rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, OMB review is not required.

Notice and opportunity for public comment are not necessary prior to issuance of these amendments because they reduce existing requirements by deleting rules to reflect statutory changes to the Commission's jurisdiction. For the same reason, the

amendments are effective upon publication in the Federal Register, rather than being delayed for 30 days. 5 U.S.C. 553.

List of Subjects**46 CFR Part 501**

Organization and functions, Delegation of authority, Seals and insignia.

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Reporting and recordkeeping requirements.

46 CFR Part 504

Environmental impact statements, Reporting and recordkeeping requirements.

46 CFR Part 514

Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 552

Maritime Carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

46 CFR Part 560

Administrative practice and procedure, Antitrust, Freight, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; and Pub. L. 104-88, 109 Stat. 803, chapter IV of title 46 of the Code of Federal Regulations is amended as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. The authority citation for Part 501 continues to read as follows:

Authority: 5 U.S.C. 551-557, 701-706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501-520 and 3501-3520; 46 U.S.C. app. 801-848, 876, 1111, and 1701-1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub.L. 89-56, 79 Stat. 195; 5 CFR Part 2638.

2. In § 501.5, paragraph (e) is amended by removing the words "Shipping Act, 1916" and the comma immediately thereafter; and paragraph (g) is revised; and the second sentence of paragraph (h) is revised to read as follows:

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(g) Under the direction and management of the Bureau Director, the