

minority shareholders was “solely for voting stock,” the liquidation of Y, as part of the same plan, resulted in X acquiring 80 percent of the Z stock in exchange for Y stock surrendered back to Y on the liquidation of Y and not solely in exchange for X voting stock.

The commentator’s suggestion is beyond the scope of this regulations project, which relates to “C” reorganizations. In light of these regulations, however, the IRS and Treasury Department may reconsider Rev. Rul. 69–294.

Effect on Other Documents

The following publication is obsolete as of January 1, 2000: Rev. Rul. 54–396 (1954–2 C.B. 147).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Marnie Rapaport of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.368–2 is amended by adding paragraph (d)(4) to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(d) * * *

(4)(i) For purposes of paragraphs (d)(1) and (2)(ii) of this section, prior ownership of stock of the target corporation by an acquiring corporation will not by itself prevent the solely for voting stock requirement of such paragraphs from being satisfied. In a transaction in which the acquiring corporation has prior ownership of stock of the target corporation, the requirement of paragraph (d)(2)(ii) of this section is satisfied only if the sum of the money or other property that is distributed in pursuance of the plan of reorganization to the shareholders of the target corporation other than the acquiring corporation and to the creditors of the target corporation pursuant to section 361(b)(3), and all of the liabilities of the target corporation assumed by the acquiring corporation (including liabilities to which the properties of the target corporation are subject), does not exceed 20 percent of the value of all of the properties of the target corporation. If, in connection with a potential acquisition by an acquiring corporation of substantially all of a target corporation’s properties, the acquiring corporation acquires the target corporation’s stock for consideration other than the acquiring corporation’s own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation’s properties), whether from a shareholder of the target corporation or the target corporation itself, such consideration is treated, for purposes of paragraphs (d)(1) and (2) of this section, as money or other property exchanged by the acquiring corporation for the target corporation’s properties. Accordingly, the transaction will not qualify under section 368(a)(1)(C) unless, treating such consideration as money or other property, the requirements of section 368(a)(2)(B) and paragraph (d)(2)(ii) of this section are met. The determination of whether there has been an acquisition in connection with a potential reorganization under section 368(a)(1)(C) of a target corporation’s stock for consideration other than an acquiring corporation’s own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation’s properties) will be made on the basis of all of the facts and circumstances.

(ii) The following examples illustrate the principles of this paragraph (d)(4):

Example 1. Corporation P (P) holds 60 percent of the Corporation T (T) stock that P purchased several years ago in an unrelated transaction. T has 100 shares of stock outstanding. The other 40 percent of the T stock is owned by Corporation X (X), an unrelated corporation. T has properties with a fair market value of \$110 and liabilities of \$10. T transfers all of its properties to P. In exchange, P assumes the \$10 of liabilities, and transfers to T \$30 of P voting stock and \$10 of cash. T distributes the P voting stock and \$10 of cash to X and liquidates. The transaction satisfies the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because the sum of \$10 of cash paid to X and the assumption by P of \$10 of liabilities does not exceed 20% of the value of the properties of T.

Example 2. The facts are the same as in *Example 1* except that P purchased the 60 shares of T for \$60 in cash in connection with the acquisition of T’s assets. The transaction does not satisfy the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because P is treated as having acquired all of the T assets for consideration consisting of \$70 of cash, \$10 of liability assumption and \$30 of P voting stock, and the sum of \$70 of cash and the assumption by P of \$10 of liabilities exceeds 20% of the value of the properties of T.

(iii) This paragraph (d)(4) applies to transactions occurring after December 31, 1999, unless the transaction occurs pursuant to a written agreement that is (subject to customary conditions) binding on that date and at all times thereafter.

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: May 9, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–12406 Filed 5–18–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

46 CFR Part 32

[USCG 1998–4443]

RIN 2115–AF65

Emergency Control Measures for Tank Barges

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule implements measures for maintaining or regaining control of a tank barge that will reduce the likelihood of a tank barge’s

grounding and spilling its cargo. These measures are necessary because without them a tug that loses its tow lacks ready means for regaining control of it. They should increase the safety of marine transport and protect the environment.

DATES: This final rule is effective June 19, 2000 except for 33 CFR 155.230(b)(1) and 46 CFR 32.15–15(e), which are effective on December 11, 2000.

ADDRESSES: The Docket Management Facility maintains the public docket for this rulemaking. Unless otherwise indicated, documents mentioned in this preamble will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, call Mr. Robert Spears, Project Manager, Office of Standards Evaluation and Development, telephone 202–267–1099; or Mr. Allen Penn, Technical Advisor, Office of Design and Engineering Standards, telephone 202–267–2997. For questions on viewing the docket, call Ms. Dorothy Walker, Chief, Documents, Department of Transportation, telephone 202–366–9329.

Background and Purpose

On January 19, 1996, the tugboat SCANDIA, towing the oil barge NORTH CAPE, caught fire five miles off the coast of Rhode Island. The crew could not control the fire, and without power they were unable to prevent the barge, carrying 4 million gallons of oil, from grounding and spilling about a quarter of its contents into the coastal waters. The NORTH CAPE spill led Congress to add, in section 901 of the 1996 Coast Guard Authorization Act (Pub. L. 104–324), a new statute, 46 U.S.C. 3719. It directs the Secretary of Transportation to issue rules necessary to reduce oil spills from single-hull non-self-propelled tank vessels. On October 6, 1997, we published a notice of proposed rulemaking (NPRM) on safety of towing vessels and tank barges (62 FR 52057). With the interim rule we published on December 30, 1998 (63 FR 71754), we adjusted safety measures proposed in the NPRM. With this final rule, instead of requiring just one emergency control measure, we are requiring an anchoring system (on single-hull tank barges) plus one other (backup) measure.

Statutory Mandate

46 U.S.C. 3719 directs us to issue rules requiring a single-hull, non-self-propelled tank vessel (or the vessel towing it), operating in the open ocean or coastal waters, to have at least one of the three safety measures listed in the law. Under reasonably foreseeable sea conditions, without assistance, either the tank barge or the vessel towing it must have—

(1) A crewmember and an operable anchor on board the tank barge that together can stop the barge from drifting; and either

(2) An emergency system that will allow the retrieval of the barge by the towing vessel if the towline parts; or

(3) Another measure or combination of measures that the Coast Guard determines will provide protection against grounding of the tank vessel equivalent to that provided by the measure described in paragraph (1) or (2).

Another statute to reduce oil spills from single-hull tank barges, 46 U.S.C. 4102(f)(2), directs the Coast Guard to require the use of fire suppression systems and other measures for towing vessels. On October 19, 1999, we published an interim rule, Fire Protection Measures for Towing Vessels (USCG 1998–4445) that implements some of the fire protection measures we had proposed in the NPRM of October 6, 1997. A supplemental notice of proposed rulemaking will propose further measures in response to comments we received. Both statutes mandating new rules direct the Coast Guard to consult with the Towing Safety Advisory Committee (TSAC) in developing them. As we noted in the NPRM, we considered the recommendations of the TSAC and incorporated them as we deemed appropriate.

Regulatory Approach

In response to these statutory mandates, the Coast Guard proposed rules for fire protection and fire-fighting on towing vessels operating anywhere in U.S. waters, and rules for arresting and retrieving tank barges. This final rule applies to single-hull tank barges, as specified in 46 U.S.C. 3719. Rules in 33 CFR 155.230 before this rulemaking required emergency towing capability for both single-hull and double-hull barges operating outside the boundary line. So double-hull tank barges already satisfy 33 CFR 155.230 as amended by this rule. The rules for barge control require any single-hull tank barge or the vessel towing it on certain waters to have two of three emergency control

systems, where one serves for anchoring the barge while one of the other two serves for arresting or retrieving it.

Discussion of Comments and Changes

The Coast Guard received a total of 23 documents containing 38 comments to the public docket of the interim rule on emergency control measures for tank barges. Of these comments, 11 concerned anchoring systems, 5 concerned the rule as applied, or not applied, to barges being pushed or towed alongside on limited routes, 12 concerned specific sections of 33 CFR Part 155, and the rest concerned general features of the proposed rule. We held a public meeting on May 12, 1999, at the Department of Transportation in Washington, D.C. This final rule addresses the comments from the meeting and all other comments noted above. The following paragraphs contain summaries of the comments and explanations of any changes made by this rule to the interim rule.

Anchoring Systems

Eleven comments received from companies, organizations, or individuals on the West Coast opposed the use of anchoring systems there. They offered many reasons to support some alternative means of maintaining control of barges along the West Coast; many cited the unsuitability of anchors as a means to control barges due to the lack of anchorage areas. The comments also cited the high costs to retrofit their barges, arguing that water depths on the West Coast drop off into significantly deeper water closer to shore than along the East Coast. Some comments reported that the heavy surge gear and bridle legs used in towing on the West Coast act as anchors in shallow water when they lie on the bottom; it is not uncommon for operators to use this equipment to “anchor” barges in sheltered areas until storms or dangerous seas subside. The Coast Guard acknowledges these comments and has changed the interim rule to give those operating barges on the West Coast the option of using the heavy surge gear and bridle legs in place of the anchoring systems otherwise required by this final rule. We do not extend this option to barges operating on the East Coast and the Gulf Coast, since the anchoring system required by the final rule is both feasible and effective in the shallower waters of those Coasts. Further, the heavy surge gear and bridle legs have not been shown to be an effective means of anchoring barges in those waters.

Application to Barges Pushed or Towed Alongside on Limited Routes

Five comments opposed applying this rule to barges not towed astern or barges towed on limited routes. The Coast Guard agrees with these comments and has changed the rule to exempt these specific kinds of towing.

Comments Relating to Specific Sections of the CFR

1. *33 CFR 155.230(b)(1)(i)(C)*. One comment suggests letting the operator of the system consult either the master or mate regarding appropriate length of line, cable, or chain. The Coast Guard agrees with the comment and has changed this section of the rule by adding the mate as an alternative to the operator of the system.

2. *33 CFR 155.230(b)(1)(i)(D)*. Three comments opposed requiring the operator of the system to wear a safety belt or harness secured by lanyard to a lifeline, a drop line, or a fixed structure. The Coast Guard partially agrees with these comments and has changed this section of the rule to recommend that the operator of the system wear a safety belt or harness only during rough seas or foul weather.

3. *33 CFR 155.230(b)(1)(iii)*. One comment opposed requiring training all crewmembers on manned barges in the operation of the anchoring system. The Coast Guard disagrees. To avoid having to place a person on a barge for a genuinely emergent anchoring or retrieval, it is essential that every crewmember already on the barge know how to operate the anchoring system. Another comment suggests that the Coast Guard require exam questions or training to improve safety of anchoring. The Coast Guard partially agrees, yet has not changed the rule, since this section already requires crew training in anchoring.

4. *33 CFR 155.230(b)(2)(iv)*. Seven comments opposed requiring drills that involve actually retrieving a drifting barge. They state that requiring such drills will place one or more crewmembers in danger and impose high costs of re-rigging the system. A related comment suggested a one-time training "exercise" for each master, and quarterly "tabletop" retrieval drills and gear inspection. The Coast Guard agrees with these comments and has changed the rule to require an annual barge-retrieval drill, and a drill not more than one month after the employment of the master or mate responsible for supervising retrieval. This requirement allows for methods other than actually retrieving a drifting barge to demonstrate each participant's ability to

perform his or her part in regaining control of a barge.

General Comments

1. One comment opposed the applicability of this rule to the Strait of Juan de Fuca and parts of Puget Sound. It states that the open-ocean type swells that can cause towline failures are not common in the Strait, and that there are ample sheltered areas for vessels to wait for changes in unfavorable winds or tides. The Coast Guard does not agree with this comment; towline failures may occur in these waters, and this rule's measures may reduce the likelihood of tank barges grounding and spilling cargo there. We have not changed the applicability of this rule.

2. Two comments support the use of escort tugs in certain areas, such as "sensitive" waters. This issue is beyond the scope of this rulemaking.

3. Three comments opposed remote-control anchoring systems. This is outside the scope of this rule because it does not require such anchoring systems. However, one could propose the use of such a system, and seek Coast Guard approval for it.

4. Two comments suggest grandfathering existing anchoring systems on tank barges. This would allow existing systems to meet less stringent standards (ones other than those from the American Bureau of Shipping (ABS)). The Coast Guard partially agrees, and has changed the wording to require "general conformity" rather than "substantial agreement" with ABS (or another recognized class society's) standards. If a Coast Guard representative inspects your anchoring system you should indicate which standards you are using as guidance. The Coast Guard may decide to establish whether or not your anchoring system is in general conformity with that standard or another acceptable standard. We will inform you of any corrective action needed. We will review this practice after getting some experience with it and will modify it as necessary.

5. One comment requested the use of synthetic line, instead of chain or wire, as approved equipment for the anchoring system. The wording in this final rule calls for anchor systems to generally conform with standards from ABS (or another recognized class society). It does not prohibit the use of new system components that are found (by ABS or another recognized class society) to be comparable to accepted or approved equipment in widespread use. However, wire cable may substitute for chain under current applicable rules of ABS; there is no mention in those rules

of line (natural or synthetic) as a suitable substitute for anchor chain. Since it is not addressed in ABS rules, synthetic line is not yet acceptable.

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. However, it is significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]; because of public interest generated by the NPRM, it has been reviewed by the Office of the Secretary.

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; unless otherwise indicated, the Assessment expresses costs and benefits in end-of-1998 values:

Summary of Benefits

Measures published in this rule should yield a net cost of \$307 per barrel of oil not spilled. This preventive cost compares favorably, for example, with costs of property damage and actual restoration and cleanup (excluding intangibles and transfer costs such as fines, judgments resulting from litigation, and insurance benefits paid) incurred thus far as a result of the 20,000-barrel spill from the barge NORTH CAPE in January of 1996. The costs of that spill thus far total about \$50.2 million, which averages about \$2,550 per barrel spilled. This per-barrel cost for only one spill is nearly seven times the per-barrel costs of this rule to avert similar events industry-wide.

Table 1 illustrates the calculation of net cost-effectiveness from total quantifiable costs and benefits resulting from implementation of this rule. It normalizes the benefits into cost-effectiveness ratios to reflect the cost per unit of oil not spilled. Here's how: The total estimated dollar cost of this rule appears on Line (1); the total property damage averted, an avoided cost expressed in dollars, appears on Line (2) and is subtracted from total dollar costs to yield a net cost, which appears on Line (3); pollution averted, the principal benefit, which is expressed in barrels of oil not spilled, appears on Line (4); and the net cost from Line (3), divided by the pollution-averted benefit from Line (4) to yield an expression of cost-

effectiveness shown in units of net discounted dollars per discounted barrels of oil not spilled, appears on the

bottom line. This procedure permits us to treat benefits from avoidance of

pollution and property damage together in terms of net cost-effectiveness.

TABLE 1.—CONTROL MEASURES FOR TANK BARGES (BARGE ANCHORING AND RETRIEVAL): COST EFFECTIVENESS EXPRESSED IN DOLLARS PER BARREL OF OIL NOT SPILLED

Type of benefits & costs	Quantity	Units
(1) Cost of this rule	8,803,031	Dollars (PV).
(2) <i>Property damage-averted</i> ¹	5,667,792	<i>Dollars (PV).</i>
(3) (1) minus (2) Net cost	3,135,239	Dollars (PV).
(4) <i>Pollution averted</i> ²	10,205	<i>Barrels of oil unspilled (PV).</i>
(3)÷(4) Net cost effectiveness	307	Dollars per barrel unspilled.

Note: benefits, shown on lines (2) and (4), are italicized. Net cost effectiveness is shown in bold.

¹ Damage to vessels and equipment.

² Oil not spilled overboard into bodies of water.

The principal benefit of this rule is protection against oil spillage and property damage that may result when a tow line to a tank barge parts or the towing vessel otherwise loses control over the tank barge, permitting it to run aground. Quantifiable benefits accrue from averted pollution measured in barrels of oil not spilled and in averted damage to property such as vessels and machinery, measured in dollars. The latter is an avoided cost. During 1999–2014 inclusive, this rule will avert 10,205 barrels of oil spillage and \$5.7 million of property damage.

To construct the benefits analysis, the Coast Guard used data from its Marine Safety Information System (MSIS) and underlying reports to provide a reasonable approximation for modeling marine casualties and pollution incidents. The model postulates that, if requirements in this rule were not enacted, the normalized frequency and severity of pollution and damage due to towline ruptures would continue at about the same magnitude as during a representative five-year base period, which the Coast Guard identifies as 1992–1996. This period captures the maritime environment after the Oil Pollution Act (OPA 90); the Coast Guard considers the period long enough to capture a representative history, while short enough to be reasonably current. Reports for 1992–96 are largely complete. (We considered using 1992–1997, but rejected it because report histories for 1997 remain open and we consider them too preliminary to present a fair sample.)

The analysis recognized that a range of variables extant in the marine interface of people, vessels, machines, and the sea may result in the occurrence of some of the casualties targeted by this rule after it is in force. Accordingly, the Coast Guard assembled an analytical team comprised of marine inspectors,

program analysts, and economists, who reviewed data and individual case files and who obtained consultations from a range of subject-matter experts. This team proceeded through a multi-step risk assessment that considered the combined and interactive effects of this rule and several related rules that are in effect or mandated by law for completion in the near future. The analysis yielded a probability of 32 percent that installed and working powered anchoring-systems and emergency-retrieval devices on the affected tank barges, both single-hull and double-hull vessels, would have prevented or mitigated pollution and property damage resulting from that particular casualty.

The benefits analysis uses the phase-out of tank-barge capacity due under OPA 90 as a proxy for the reduction of exposure and spill potential, an innovation that helped to guard against the overstatement of benefits, since, during 1998–2014 and before the final phase-out of all single-hull tank barges, single-hull tank barge capacity, which represents the segment of industry primarily affected by this rule, will likely decrease at a much sharper rate than will the actual count of available in-service single-hull tank barges. This is because the phase-out favors longevity for the smallest single-hull tank barges.

We used the phase-out schedule and probabilities of effectiveness to weigh capacity, and used this in turn to calculate the benefits and avoided costs. In addition, we reflat the avoided costs—averted dollar damages to property such as vessels and machinery—from base-period calculations to end-of-1998 values, by relying on an adjustment factor based on a Consumer Price Index.

The Coast Guard considered several non-quantifiable benefits. No injuries,

deaths, or missing persons turned up in casualty reports for the base period. However, the types of casualties addressed in this rule, particularly ones that occur in inclement weather, are inherently dangerous; a future casualty of the kind that this rule will mitigate could otherwise result in some deaths and injuries. Further, while the pool of oil-pollution benefit analyzed in the assessment of this rule totaled slightly less than 39,000 barrels of oil during the base period, the upper bound of oil at risk in those casualties—the total cargo of oil aboard affected tank barges when accidents occurred—exceeded 180,000 barrels. Future casualties of the kind that this rule will mitigate could otherwise result in far more serious spills than this regulatory assessment indicates.

Summary of Costs

Firms running tank barges, along with a few State and local governments, will incur costs primarily to purchase, install, and maintain powered anchoring systems and owners' and operators' choices among retrieval systems on certain tank barges, and in some instances, on towing vessels. The Coast Guard will incur modest incremental inspection costs. Costs of this rule will total \$8.8 million. We subtracted avoided costs from total costs to yield a \$3.1 million net cost.

Where we adjusted benefit calculations to reflect phase-out of tank-barge capacity due under OPA 90 to approximate both declining exposure and declining potential for volume of spills, we also adjusted cost calculations to accommodate the phase-out of hulls instead of volume. We did this because we quantify the purchase, installation, and maintenance of equipment required by this rule hull by hull.

Purchase and installation costs accrue to owners and operators of tank barges

and their towboats between 90 days and two years after the publication of the interim rule [63 FR 71754 (December 30, 1998)]. They should total between \$7.93 million and \$7.98 million. Fleet-wide, costs for purchase and installation of powered anchoring systems will total \$7.82 million, 98 percent of the total; and, fleet-wide, costs for retrieval systems will range between \$112,000 and \$157,000, depending on how individual owners and operators weigh the lower initial investment required for powered anchoring systems against the lower maintenance costs for retrieval systems using hooks. A sensitivity analysis contained in the regulatory assessment showed that a typical decision, if made on an economic basis, will depend on the particular deal that the owner or operator can drive and the remaining life of the barge. Beyond all those, qualitative decision factors include not only availability of up-front capital but personal or corporate preferences.

Recurring costs to industry comprise maintenance, repair, and, in some cases, replacement of components. The present value of these costs total about \$751,000 for powered anchoring systems, and range between \$49,000 for retrieval systems using hooks and \$117,000 powered anchoring systems. Recurring incremental costs borne by the Coast Guard for inspections and law enforcement should total about \$4,500 at present value.

Double-hull tank barges are already in compliance with this rule as a result of their satisfying 33 CFR 155.230 before this rulemaking. This rule should affect up to 180 single-hull tank barges operating on open oceans or in coastal waters. We believe that many of these barges are already in compliance. The costs that we report account for our estimates that, of the 180 barges, 97 will need to install powered anchoring systems and 24 barges or towing vessels will need to install retrieval systems. The Coast Guard does not expect economic abandonment of any barges on account of this rule. The per-barge costs are relatively low, and the first phase-out among the affected tank barges does not occur until January 1, 2004. The two-year phase-in for the more costly powered anchoring systems obviates the need for an extra, out-of-cycle dry-dock period for the installation. Most tank barges incurring new costs as a result of this rule are eligible to remain in service until 2015.

Unfunded Mandates Reform Act and Enhancing the Intergovernmental Partnership

The Unfunded Mandates Reform Act of 1995 (UMRA) [2 U.S.C. 1531–1538] and E.O. 12875, Enhancing the Intergovernmental Partnership [58 FR 58093, (October 28, 1993)], govern the issuance of Federal rules that require unfunded mandates. An unfunded mandate is a requirement that a State, local, or tribal government or the private sector incur direct costs without the Federal Government's having first provided the funds to pay those costs. If any Federal mandate causes those entities to spend, in the aggregate, \$100 million or more in any one year, an analysis under the UMRA is necessary.

While several State and local governments operate some tank barges, entities in the private sector own and operate most of the affected barges. This final rule will not directly affect tribal governments. The total burden of Federal mandates imposed by this rule is about \$8.8 million and will not result in annual expenditures of \$100 million or more. Therefore, this rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We analyzed this final rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard considers the economic impact on small entities of each rule for which a general notice of proposed rulemaking is required. "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.

An analysis of impacts on small entities for this final rule appears in the regulatory assessment; it is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Double-hull tank barges are already in compliance with this rule's requirements for equipment by virtue of their compliance with 33 CFR 155.230 before the interim rule on emergency control measures became effective. That section required an emergency towline, the most common form of barge-retrieval system, on any oil barge operating offshore. The requirements of this rule for anchoring systems apply only to single-hull barges. Further, most towing vessels are now in voluntary compliance with requirements, or their owners may choose an option that shifts requirements to a few barges that are not now in voluntary compliance. As a result, most towing vessels should not incur compliance costs.

The impact of this rule will fall primarily on single-hull tank barges and, perhaps, several towing vessels. The rule will require: (1) Owners and operators of single-hull tank barges that do not already have emergency anchoring systems to purchase and install them; (2) owners and operators of vessels towing tank barges, regardless of size, to purchase and carry emergency retrieval systems if they do not already have them; and (3) masters of towing vessels to learn, and train crews, to deploy anchors and operate retrieval systems. Owners and operators of tank barges and towing vessels are responsible for both inspecting their systems and maintaining them in good working order. The purpose is to decrease the probability of barge breakaways and of the oil spillage, pollution, and property damage that could result.

The Coast Guard established a two-year phase-in period for the requirements of anchoring systems. Although the Coast Guard received no comments concerning small entities, we recognize that some of the single-hull tank barges are likely owned and operated by small firms not dominant in the industry. Barges affected by this rule must undergo two drydock inspections in five years, no more than three years apart. The two-year phase-in permits barges to undergo the installation of a powered anchoring system during normal yard availability. So they may both avoid incurring the extra cost of a third drydocking during a five-year period and avoid incurring the opportunity costs of lost revenue during a third drydocking. The long phase-in will thus permit most small entities to explore the market, plan, and schedule

installations during normal yard availability. It reduces the pressure for small entities to compete with major operators for this availability.

Small owners and operators of single-hull tank barges do incur costs from the phase-out mandated by OPA 90.

However, we believe that smaller barges affected by this rule are the very ones likeliest to be owned by small owners and operators, many of whom will have the opportunity to amortize purchase and installation costs associated with this rule through the end of the year 2014. The 146 relatively small barges among the 180 barges directly affected by this rule may remain in service until January 1, 2015, the end of the phase-out period: the last vessels to be phased out under OPA 90.

The equipment required by this rule is in common use in the industry and does not represent novel or untried technology. Some small entities, no doubt, are among the majority of owners and operators who already meet some or all of the requirements. Others will incur a financial burden under this rule, those who must purchase and install equipment. But the costs are fairly low in comparison with the replacement cost of a tank barge, very low in comparison with the replacement cost of a towing vessel, and extremely low in comparison with the damage that could be caused by, and the liability that could result from, an accident and resultant spill.

The crafting of this rule so that many affected vessels are already in compliance, and the two-year phase-in period for installation of retrievable anchoring systems, together provide important accommodations to, and significant flexibility for, small entities and others affected by this rule.

Accordingly, we certify under section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so they can better evaluate its effects on them and participate in the rulemaking. If this rule affects your small business or organization and you have questions concerning its provisions or options for compliance, please call Mr. Robert Spears, telephone 202–267–1099.

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 this 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 does not provide for a collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

Impact on Federalism

This final rule revises the regulations at 33 CFR 155.230 addressing equipment, equipment operation, maintenance, manning, and training (personnel qualification) for tank barges and the vessels towing them. It also revises those regulations at 46 CFR 32.15–15 that address equipment for tank barges. We have analyzed this final rule in accordance with the principles and criteria contained in Executive Order (E.O.) 13132. It is well settled that States are preempted from establishing any requirements for tank vessels and the vessels that tow them in the categories of design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning. See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke* _____ U.S. _____, 2000 U.S. LEXIS 1895 (March 6, 2000). Thus, this entire rule falls within preempted categories. Because States may not promulgate regulations within the categories discussed above, preemption is not an issue under E.O. 13132.

The NPRM and an effective interim rule for this rulemaking were issued before the E.O. went into effect. However, we are aware that this is a national rule of great interest to coastal States. As a result, we provided States and the public ample opportunity to consult and comment during the comment periods and public meetings first for the NPRM and also following the publication of the interim rule that was in place before promulgation of this final rule. We have considered their comments on this rulemaking—whether received through consultation, letters to the docket, or public meetings—and believe that we have accommodated their concerns.

Barges Carrying Non-Petroleum Oil

The Edible Oil Regulatory Reform Act [Pub. L. 104–55, 109 Stat. 546–547 (1995)] requires federal agencies to differentiate between classes of oils and

consider different treatment of these classes, if appropriate. The Coast Guard has determined that bulk spills of animal fat, vegetable oil, and other non-petroleum oil can be damaging to the environment; therefore, tank barges carrying these products must comply with this final rule.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraphs (34)(c) and (d) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 155 and 46 CFR part 32, as follows:

33 CFR PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 and the note following it continue to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703, 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46, 1.46(iii).

Sections 155.110–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials appear in 46 CFR parts 30 through 36, 150, 151, and 153.

2. Revise § 155.230 to read as follows:

§ 155.230 Emergency control systems for tank barges.

(a) *Application.* This section does not apply to foreign vessels engaged in innocent passage (that is, neither entering nor leaving a U.S. port); it applies to tank barges and vessels towing them on the following waters:

(1) On the territorial sea of the U.S. [as defined in Presidential Proclamation 5928 of December 27, 1988, it is the belt of waters 12 nautical miles wide with its shoreward boundary the baseline of the territorial sea], unless—

(i) The barge is being pushed ahead of, or towed alongside, the towing vessel; and

(ii) The barge's coastwise route is restricted, on its certificate of inspection (COI), so the barge may operate "in fair weather only, within 20 miles of shore," or with words to that effect. The Officer in Charge, Marine Inspection, may define "fair weather" on the COI.

(2) In Great Lakes service unless—

(i) The barge is being pushed ahead of, or towed alongside, the towing vessel; and

(ii) The barge's route is restricted, on its certificate of inspection (COI), so the barge may operate "in fair weather only, within 5 miles of a harbor," or with words to that effect. The Officer in Charge, Marine Inspection, may define "fair weather" on the COI.

(3) On Long Island Sound. For the purposes of this section, Long Island Sound comprises the waters between the baseline of the territorial sea on the eastern end (from Watch Hill Point, Rhode Island, to Montauk Point, Long Island) and a line drawn north and south from Premium Point, New York (about 40°54.5'N, 73°45.5'W), to Hewlett Point, Long Island (about 40°50.5'N, 73°45.3'W), on the western end.

(4) In the Strait of Juan de Fuca.

(5) On the waters of Admiralty Inlet north of Marrowstone Point (approximately 48°06'N, 122°41'W).

(b) *Safety program.* If you are the owner or operator of a single-hull tank barge or of a vessel towing it, you must adequately man and equip either the barge or the vessel towing it so the crew can arrest the barge by employing *Measure 1*, described in paragraph (b)(1) of this section. Moreover, the crew must be able to arrest or retrieve the barge by employing either *Measure 2* or *Measure 3*, described in paragraphs (b)(2) and (3) of this section, respectively. If you are the owner or operator of a double-hull tank barge, you must adequately equip it and train its crew or, if it is unmanned, train the crew of the vessel towing it, so the crew can retrieve the barge by employing *Measure 2* described in paragraph (b)(2) of this section.

(1) *Measure 1.* Each single-hull tank barge, whether manned or unmanned, must be equipped with an operable anchoring system that conforms to 46 CFR 32.15–15; except that, for barges operating only on the West Coast of the U.S., a system comprising heavy surge

gear and bridle legs may serve instead of the anchoring system. Because these systems will also serve as emergency control systems, the owner or operator must ensure that they meet the following criteria:

(i) *Operation and performance.* When the barge is underway—

(A) The system is ready for immediate use;

(B) No more than two crewmembers are needed to operate the system and anchor the barge or arrest its movement;

(C) While preparing to anchor the barge or arrest its movement, the operator of the system should confer with the master or mate of the towing vessel regarding appropriate length of cable or chain to use; and

(D) Each operator of the system should wear a safety belt or harness secured by a lanyard to a lifeline, drop line, or fixed structure such as a welded padeye, if the sea or the weather warrants this precaution. Each safety belt, harness, lanyard, lifeline, and drop line must meet the specifications of ANSI A10.14.

(ii) *Maintenance and inspections.* The owner or operator of the system shall inspect it annually. The inspection must verify that the system is ready for immediate use, and must include a visual inspection of the equipment that comprises the system in accordance with the manufacturer's recommendations. The inspection must also verify that the system is being maintained in accordance with the manufacturer's recommendations. The inspection need not include actual demonstration of the operation of the equipment or system.

(iii) *Training.* On each manned barge, every crewmember must be thoroughly familiar with the operation of the system. On each vessel towing an unmanned barge, every deck crewmember must be thoroughly familiar with the operation of the system installed on the barge. If during the last 12 months the system was not used to anchor or arrest the movement of the barge, then a drill on the use of the system must be conducted within the next month. The drill need not involve actual deployment of the system. However, it must allow every participant to demonstrate the competencies (that is, the knowledge, skills, and abilities) needed to ensure that everyone assigned a duty in anchoring or arresting the movement of the barge is ready to do his or her duty.

(2) *Measure 2.* If you are the owner or operator of a tank barge or a vessel towing it and this section applies to you by virtue of paragraph (a) of this section, you must have installed an emergency

retrieval system or some other measure acceptable to the Coast Guard, as provided in paragraph (b)(3) of this section. Any such system must meet the following criteria:

(i) *Design.* The system must use an emergency towline with *at least* the same pulling strength as required of the primary towline. The emergency towline must be readily available on either the barge or the vessel towing it. The towing vessel must have on board equipment to regain control of the barge and continue towing (using the emergency towline), without having to place personnel on board the barge.

(ii) *Operation and performance.* The system must use a stowage arrangement that ensures the readiness of the emergency towline and the availability of all retrieval equipment for immediate use in an emergency whenever the barge is being towed astern.

(iii) *Maintenance and inspection.* The owner or operator of the system shall inspect it annually. The inspection must verify that the emergency retrieval system is ready for immediate use, and must include a visual inspection of the equipment that comprises the system in accordance with the manufacturer's recommendations. The inspection must also verify that the system is being maintained in accordance with the manufacturer's recommendations. The inspection need not include actual demonstration of the operation of the equipment or system. Details concerning maintenance of towlines appear in 33 CFR 164.74(a)(3) and Navigation and Vessel Inspection Circular (NVIC) No. 5–92. Our NVICs are available online at <http://www.uscg.mil/hq/g-m/nvic/index.htm>.

(iv) *Training.* Barge-retrieval drills must take place annually, and not more than one month after a master or mate responsible for supervising barge retrieval begins employment on a vessel that tows tank barges.

(A) Each drill must allow every participant to demonstrate the competencies (that is, the knowledge, skills, and abilities) needed to ensure that everyone assigned a duty in barge retrieval is ready to do his or her part to regain control of a drifting barge.

(B) If the drill includes actual operation of a retrieval system, it must be conducted under the supervision of the master or mate responsible for retrieval, and preferably in open waters free from navigational hazards so as to minimize risk to personnel and the environment.

(3) *Measure 3.* If you are the owner or operator of a tank barge or a vessel towing it and this section applies to you by virtue of paragraph (a) of this section,

you may use an alternative measure or system fit for retrieving a barge or arresting its movement as a substitute for Measure 2, described in paragraph (b)(2) of this section. Before you use such a measure or system, however, it must receive the approval of the Commandant (G-MSE). It will receive this approval if it provides protection against grounding of the tank vessel comparable to that provided by one of the other two measures described in this section.

46 CFR PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

3. The authority citation for part 32 continues 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 Sect. 4109, Pub. L. 101-380, 104 Stat. 515.

4. In § 32.15-15, revise paragraph (e) to read as follows:

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

* * * * *

(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 general conformity with the standards issued by a recognized classification society. A list of recognized classification societies, including information for ordering copies of approved standards, is available from Commandant (G-MSE), 2100 Second Street SW, Washington, DC 20593-0001; telephone (202) 267-6925 or fax (202) 267-4816. If the Coast Guard finds that your anchoring system is not in general conformity with an approved standard, it will advise you how to bring it into such conformity.

* * * * *

Dated: May 8, 2000.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 00-12570 Filed 5-18-00; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05-00-013]

RIN 2115-AA97

Safety Zone; Atlantic Ocean, Virginia Beach, VA.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Virginia Beach fireworks displays, north of the Virginia Beach Fishing Pier, in the Atlantic Ocean. This action will restrict vessel traffic on the Atlantic Ocean within a 2500-foot radius of a fireworks laden barge. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

DATES: This rule is effective from May 20, 2000 through July 4, 2000.

ADDRESSES: Comments must be received by June 15, 2000. You may mail comments and related material to USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia, or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441-3290.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-00-013), indicate the specific section of this document to which each comment applies, and give the reason

for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope.

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing an NPRM. We were not notified of these events until May 5, 2000. There was insufficient time to publish an NPRM, allow for comments, and publish a final rule in sufficient time to allow notice to the public for the fireworks displays taking place prior to July 4, 2000. In previous years, these and similar events have been held without incident and without comment from the public regarding the Coast Guard's establishment of limited safety zones around barges engaged in launching fireworks. An NPRM will be published for those Virginia Beach fireworks displays taking place after July 4, 2000 of which we have been notified.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Most of these events will take place within 30 days of the publication of this rule. Delaying the effective date of the regulation would be contrary to the public interest because immediate action is needed to protect the mariners and spectators from the hazards associated with the fireworks display.

Background and Purpose

The Coast Guard is establishing a temporary safety zone for the Virginia Beach fireworks displays north of the Virginia Beach Fishing Pier, in the Atlantic Ocean. The safety zone will restrict vessel traffic within a 2500-foot radius of a fireworks laden barge in approximate position 36°50.75' north and 076°58.40' west. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

The safety zone will be enforced from 9 p.m. until 11 p.m. on May 20, 2000; May 27, 2000—rain date May 28, 2000; June 4, 2000—rain date June 10, 2000; June 11, 2000—rain date June 17, 2000; June 18, 2000—rain date June 24, 2000; June 25, 2000—rain date July 1, 2000; and July 4, 2000.

Additional public notifications will be made prior to the event via marine information broadcasts.