

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[USCG-1999-6164]

RIN 2115-AF86

Oil Pollution Act of 1990 Phase-out Requirements for Single Hull Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard clarifies the regulations for determining phase-out dates for single hull tank vessels under the Oil Pollution Act of 1990 (OPA 90). This rule codifies our policy published on April 21, 1999, that states that conversion of a single hull tank vessel to add only double sides or only a double bottom after August 18, 1990, will not change the vessel's scheduled phase-out date under OPA 90.

DATES: This final rule is effective July 24, 2000.

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-1999-6164 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 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 rule, please contact Mr. Bob Gauvin, Project Manager, Office of Operating and Environmental Standards, Commandant (G-MSO-2), U.S. Coast Guard, telephone 202-267-1053. For questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:**Background and Purpose**

Section 4115 of the Oil Pollution Act of 1990 (OPA 90), (Pub. L. 101-380, August 18, 1990) amended Title 46, United States Code (U.S.C.), by adding a new section 3703a. This section contains the double hull requirements and phase-out schedule for single hull tank vessels operating in U.S. waters. It requires an owner to remove a single hull tank vessel from bulk oil service on a specific date, depending on the vessel's gross tonnage, build date, and

hull configuration. The phase-out schedule allows more years of service for single hull tank vessels that have been configured to include double sides or a double bottom than for ones without these hull configurations.

The OPA 90 timetable for double hull requirements for single hull tank vessels is set out in 33 CFR part 157, Appendix G. Neither OPA 90 nor our regulations address if, or when, a vessel owner can convert a single hull tank vessel to include only double sides or only a double bottom to change its phase-out date. As a result, some vessel owners asked the Coast Guard to clarify the types of vessel conversions permitted and their associated effect on phase-out dates.

The Coast Guard published a request for comments on this issue in the **Federal Register** (63 FR 63768) on November 16, 1998. The notice encouraged interested persons to provide written comments, information, opinions and arguments on whether single hull tank vessels that were converted to add double sides or a double bottom should use the newer hull configuration for determining their OPA 90 phase-out date. The comment period ended on January 15, 1999, and there were 32 submissions to the docket.

After reviewing the comments received, the Coast Guard published a notice of policy in the **Federal Register** (64 FR 19575) on April 21, 1999. The notice stated that changing the hull configuration of a single hull tank vessel to a single hull tank vessel with only double sides or only a double bottom after August 18, 1990, would not result in a change to the tank vessel's original phase-out date required by 46 U.S.C. 3703a. The notice also stated that a rulemaking would be initiated to make appropriate changes to the double hull regulations in 33 CFR part 157 and that we would revise Navigation and Vessel Inspection Circular No. 10-94, consistent with this policy.

On October 9, 1999, the Department of Transportation and Related Agencies Appropriation Act of 2000 (Pub. L. 106-69 (113 Stat. 986)) was enacted. Section 344 of the Act prohibits the Coast Guard from obligating or expending funds to grant extensions of existing single hull tank vessels' phase-out dates under 46 U.S.C. 3703a. This legislation is consistent with our April 21, 1999, policy statement and requires no change to that policy.

Regulatory History

On January 18, 2000, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (65 FR 2812) and requested

comments during the 90-day comment period. We received five comments and all supported the Coast Guard's efforts.

Discussion of Rule

The Coast Guard revises two notes to the regulations presently in 33 CFR part 157. The first note follows § 157.10d(a)(4). The second note is at the end of the phase-out schedule in 33 CFR part 157, Appendix G. Both notes state that an existing single hull tank vessel's configuration (i.e., single hull; single hull with double sides; or single hull with a double bottom) on August 18, 1990, is the configuration to be used to determine the vessel's phase-out date under the statute. Conversion of a single hull vessel with no double hull attributes, by adding only double sides or only a double bottom after that date, cannot be used to calculate a different single hull tank vessel phase-out date.

If a single hull tank vessel was originally constructed with only double sides or only a double bottom and you convert that tank vessel by adding a full double hull that meets the requirements of 33 CFR 157.10d, the converted vessel will then be considered a double hull tank vessel. The new double hull tank vessel will no longer be subject to the phase-out requirements of 33 CFR part 157, Appendix G. A conversion to a double hull tank vessel which meets the requirements of § 157.10d, is not considered an exemption, exception, or waiver of the phase-out requirements of OPA 90 for single hull tank vessels.

The notes do not change the effect of the definition of *major conversion* in 33 CFR 157.03. The alteration of a single hull tank vessel with only double sides or only a double bottom is not a major conversion. Nor do these types of conversions affect the original phase-out date of a single hull tank vessel in 33 CFR part 157, Appendix G. The alteration of a single hull tank vessel to be completely double hulled is not a major conversion. After conversion to a double hull meeting the requirements of 33 CFR part 157, the tank vessel will no longer be subject to the single hull tank vessel phase-out schedule of 33 CFR part 157, Appendix G.

Discussion of Comments and Changes

We received 5 letters to the docket in response to our NPRM. No public meeting was requested and none was held.

All five comments support the Coast Guard's proposed rule. No changes were made to the proposed rule.

One comment urged the Coast Guard to revise Navigation and Vessel Inspection Circular (NVIC) No. 10-94 to reflect this rule and provide the public

an opportunity to comment on the NVIC. As stated in the NPRM, the Coast Guard will issue a change to NVIC 10–94.

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. The Office of Management and Budget has not reviewed it 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).

Since this action clarifies the Coast Guard’s existing regulatory requirements and does not alter our previous policy on OPA 90 phase-out requirements, we expect no economic impact from this rule and a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We received no comments regarding the costs and benefits of this rulemaking.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard reviewed the effects of this rule when publishing its notice of enforcement policy in the **Federal Register** (64 FR 19575) on April 21, 1999. It is expected that this rule, like the policy, will not alter the impact to small entities or any other entity affected by the original OPA 90 phase-out requirements in 33 CFR part 157, Appendix G. No single hull tank vessel owned by a small entity or any other entity has been given an extension of its phase-out period by the Coast Guard after August 18, 1990, due to adding a double bottom or double sides to an existing single hull configuration. We received no comments regarding the impact on small entities from this rulemaking.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this 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), 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 would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult with: Mr. Bob Gauvin, Project Manager, Office of Operating and Environmental Standards, Commandant (G–MSO–2), U.S. Coast Guard, at 202–267–1053, by facsimile 202–267–4570, or by email at rgauvin@comdt.uscg.mil.

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).

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).

Impact on Federalism

This final rule revises the regulations at 33 CFR 157.10d addressing the phase-out requirements for single hull tank vessels. 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 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. , 120 S. Ct. 1135 (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. We received no comments regarding the impact of Federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs

the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government’s having first provided the funds to pay those costs. This rule would 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 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 have analyzed this 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.

Environment

We considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. The regulatory clarifications proposed by this rule do not change the original assessment to the environment completed when the OPA 90 phase-out regulations in 33 CFR 157 were published. This rule is consistent with the Coast Guard’s actions of the OPA 90 phase-out schedule since its enactment on August 18, 1990. We are, therefore, relying upon that Environmental Assessment (EA) and a new Finding of No Significant Impact (FONSI). These documents are available in the docket where indicated under **ADDRESSES**. We received no comments on our EA and draft FONSI.

List of Subjects in 33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 157 as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

2. Revise the note following § 157.10d(a)(4) to read as follows:

§ 157.10d Double hulls on tank vessels.

- (a) * * *
- (4) * * *

Note: The double hull compliance dates of 46 U.S.C. 3703a(c) are set out in Appendix G to this part. To determine a tank vessel's double hull compliance date under OPA 90, use the vessel's hull configuration (*i.e.*, single hull; single hull with double sides; or single hull with double bottom) on August 18, 1990.

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3. Revise the note at the end of Appendix G to read as follows:

Appendix G—Timetables for Application of Double Hull Requirements

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Note: Double sides and double bottoms must meet the requirements in § 157.10d(c) or (d), as appropriate. A vessel will be considered to have a single hull if it does not have double sides and a double bottom that

meet the requirements in § 157.10d(c) and § 157.10d(d). To determine a tank vessel's double hull compliance date under OPA 90, use the vessel's hull configuration (*i.e.*, single hull; single hull with double sides; or single hull with double bottom) on August 18, 1990. The conversion of a single hull tank vessel to include only double sides or only a double bottom after August 18, 1990, will not result in a change of the vessel's originally scheduled phase-out date. The conversion of a single hull tank vessel to a double hull tank vessel meeting the requirements of § 157.10d complies with OPA 90.

Dated: June 19, 2000.

Joseph J. Angelo,
Acting Assistant Commandant for Marine Safety and Environmental Protection.
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