

DEPARTMENT OF HOMELAND SECURITY
Coast Guard
33 CFR Part 164
46 CFR Parts 25 and 27
[USCG–2000–6931]
RIN 1625–AA60 [Formerly RIN 2115–AF53]
Fire-Suppression Systems and Voyage Planning for Towing Vessels
AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts, with changes, the interim rule published on April 29, 2003, that required the installation of fire-suppression systems in the engine rooms of towing vessels and voyage planning. This rule aims at reducing the number of uncontrolled engine-room fires and other mishaps on towing vessels. It should save lives, reduce property damage, and reduce the associated threats to maritime commerce and the environment.

DATES: This final rule is effective July 19, 2004. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of July 19, 2004.

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 this docket and are 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: If you have questions on this rule, call Randall Eberly, P. E., Project Manager, at 202–267–1861. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:
Background and Purpose

In 1996, as a result of the tugboat SCANDIA's catching fire and causing the spillage of about 850,000 gallons of oil from the barge NORTH CAPE, which it was towing, Congress amended (in Public Law 104–324) section 902 of the Coast Guard Authorization Act [codified as 46 U.S.C. 3719] to direct the Secretary of Transportation to prescribe rules for fire-suppression equipment on

towing vessels (See *Statutory Mandate* for a statement of current authority). Subsequently, on October 6, 1997, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** titled “Towing Vessel Safety” [62 FR 52057]. The NPRM proposed fire-suppression measures on towing vessels, but did not make the installation of fixed fire-suppression systems mandatory on existing vessels, because their engine rooms were typically not designed as enclosed spaces. Instead, it proposed a combination of fire-detection systems, semi-portable fire extinguishers, training of crews, and fixed or portable fire pumps. It also solicited public comments on principles of voyage planning for the development of a future Navigation and Vessel Inspection Circular (NVIC).

A number of comments submitted in response to the NPRM criticized the proposed fire-safety measures, saying they failed to meet the intent of the Authorization Act because they did not entail total-flooding fixed fire-suppression systems on all vessels, or, at least, not on all towing vessels used to transport oil and other hazardous substances. Many of the comments also held our logic of proposing alternative measures on existing vessels flawed, because there are specially designed fixed fire-suppression systems available for engine rooms that are not enclosed. Some of them also maintained that the proposed measures were inadequate because they did not consider vessels' characteristics, their methods of operation, or their nature of service, nor did they differentiate between ocean-going tugboats and inland towboats. Yet another group of comments disputed entirely the need for supplemental fire-suppression equipment, citing the established safety record of the towing industry, and pointing out that the SCANDIA incident was an isolated occurrence.

While most of the comments disagreed with our proposals for fire-suppression equipment, most agreed with our proposals for added safety measures, such as communication systems and fire-detection systems. We therefore divided the fire-protection issues into two separate rulemakings. The less-controversial requirements we addressed in an interim rule titled: “Fire Protection Measures for Towing Vessels” [USCG–1998–4445], which was published on October 19, 1999 [64 FR 56257]. That rule implemented requirements for general-alarm systems, internal-communication systems, fire-detection systems, remote fuel-shut-off valves, and monthly drills on all non-

exempt towing vessels. Those requirements ultimately appeared in a final rule on August 28, 2000 [65 FR 52043]. That rule involved some minor changes based on comments received on the docket, but did not address requirements for fire-suppression systems, either manual or fixed.

We began a separate rulemaking to address the controversial requirements for fire-suppression systems. On November 8, 2000, we published a supplemental notice of proposed rulemaking (SNPRM) entitled: “Fire-Suppression Systems and Voyage Planning for Towing Vessels” [USCG–2000–6931][65 FR 66941]. The SNPRM included voyage planning in response to public comments made on the docket for the prior proposal. We received cogent comments doubting whether voyage planning was amenable to treatment in a NVIC. We therefore proposed rules that would require completion of a voyage-planning analysis before each trip.

As announced in a notice of meeting [65 FR 82030] on February 8, 2001, a public meeting occurred during the comment period in Washington, DC. At the meeting, the Chairman of the Towing Safety Advisory Committee (TSAC) advised us that the comment period was scheduled to close before the regularly scheduled meeting of the TSAC on March 14–15, 2001, and that, consequently, we would not have the benefit of the members' input. So we published a notice [66 FR 11241] extending the comment period until May 8, 2001, to allow the members more time for comments. During the extended comment period, we received requests from several operators of towing vessels on the Western Rivers to hold another public meeting, at a place convenient to the inland waterways. We honored this request by, again, publishing a notice [66 FR 36224] extending the comment period, and announcing that we would hold a second meeting, in Huntington, West Virginia, on August 15, 2001.

The interim rule published on April 29, 2003 [68 FR 22604] changed the requirements proposed in the SNPRM in response to the comments received, both on the docket and at the two public meetings. The interim rule prescribed that non-exempted towing vessels must—

- Be fitted with fire-suppression equipment in their engine rooms; and
- Not proceed on a trip or voyage beyond the territorial sea baseline before completing a plan for the trip or voyage.

However, separate requirements were proposed for (1) vessels in inland service and (2) those in ocean or coastal service.

These changes were made in the interim rule because the public response to the SNPRM was overwhelmingly negative. Most of the comments opposed the requirement for fixed fire-suppression systems on towing vessels in inland service, and suggested we allow manual fire-fighting measures on those vessels. Most of the comments on voyage planning opposed its application to towing vessels on inland waters. After considering all of the comments to the SNPRM along with the fire-related casualty statistics available for towing vessels, we decided to accept manual fire-fighting equipment and measures as an alternative to fixed fire-suppression systems on all towing vessels operating exclusively on inland waters. However, we still required the installation of fixed fire-suppression systems in the engine rooms of new ocean or coastal service towing vessels whose construction was contracted for on or after August 27, 2003. And the applicability of the voyage-planning requirement was narrowed, so that it does not apply to towing vessels operating exclusively on inland waters.

The public response to the interim rule showed that the changes we made were generally acceptable to the towing industry. Several limited comments were submitted in response to the interim rule, and they are summarized under *Discussion of Comments and Changes*.

Statutory Mandate

Section 902 of the Authorization Act of 1996 directs that the Coast Guard consider requiring the installation, maintenance, and use of fire-suppression systems or other such measures on towing vessels. It further directs that the Coast Guard develop rules for the installation "of a fire-suppression system or other measures to provide adequate assurance that a fire on board a towing vessel, that is towing a non-self-propelled tank vessel, can be suppressed under reasonably foreseeable circumstances."

On March 1, 2003, by authority of subsection 103(c) of the Homeland-Security Act of 2002 [Pub. L. 107-296], the Coast Guard shifted from the Department of Transportation to the Department of Homeland Security. The Secretary of Homeland Security supports this rulemaking as an important initiative.

Discussion of Comments and Changes

The docket received a total of 9 letters containing 17 comments on the interim rule. Of the comments, 15 dealt with fire suppression while 2 dealt with voyage planning. The following paragraphs

contain summaries of the comments (and explanations of any changes made by this rule to the interim rule) under the category-headings that follow:

Requirement for a Fixed Fire-Extinguishing System

One comment indicated support for changing the rule to require fixed fire-extinguishing systems for the protection of all towing vessels' engine rooms. This comment was not adopted for the reasons explained in the interim rule (68 FR 22606).

Design of Fixed Suppression Systems

One comment recommended that we add criteria to § 27.305(b) to require that engine-intake air must come from outside the engine room. The commenter felt that this would allow the vessel's engine or engines to continue to operate if the extinguishing system was discharged. We do not agree with this comment. If there were a fire in the engine room, the engine could be affected by fire-related damage despite the source of intake air. We expect that the fixed-fire suppression system will limit this damage.

Requirements for Semi-Portable Fire Extinguishers

One comment expressed concern that the requirement for a size B-V semi-portable fire extinguisher on all towing vessels was excessive. The comment proposed that a size B-III portable extinguisher would be satisfactory for the protection of towing vessels under 79 feet (24 m) in length. We do not agree with this proposal. The severity of an engine-room fire is not related to the length of the vessel, but to the fire hazard present in the engine room. The use of marine diesel fuel oil poses a sufficient hazard to warrant the higher fire-suppression capability of a size B-V extinguisher.

Editorial

Another comment recommended revising the wording of § 27.209 to prescribe the use of video training materials instead of videotapes, since DVD format is now routinely used. We agree with this and have changed the section accordingly.

Applicability

One comment questioned the clarity of the exemptions listed in § 27.100—specifically, the use of the word "solely" in each sub-paragraph of § 27.100, (b)(1) through (4). The comment noted that the use of the word "solely" within each sub-paragraph would appear to exclude vessels that perform more than one of the exempted

services from being granted an exemption. We agree with the comment. It was not our intent to prevent towing vessels that may perform multiple services not involving the towing of barges from receiving an exemption. We have revised the text of the rule to further clarify which vessels may receive an exemption.

A related comment criticized the wording in the exemption listed in § 27.100(b)(7) that permits vessels that operate within 20 miles of shore and in fair weather, a general exemption from the rule. The comment pointed out that, as it currently stands, this exemption would permit a wide range of towing vessels to move tank barges for significant distances within the permitted 20-mile limit from shore. If an engine-room fire were to occur on one of these vessels that caused the loss of propulsion or steering, a significant polluting accident could occur. We agree with this observation. It was our intent that the exemption only apply to certain towing vessels—those pushing a barge ahead or hauling a barge alongside—that normally operate in inland service and occasionally travel, in fair weather only, beyond the territorial sea baseline of the U.S. for very short distances on pre-determined routes. The proposed wording and the location of the exemption within the rule were in error. To correct this, we have moved the exemption to § 27.305 and narrowed the acceptable operating distance to within 12 miles of shore.

Another comment requested that we reconsider the exemption for harbor-assist tugs stated in § 27.100(b). The comment suggested that fixed fire-suppression systems should be required on such vessels because local fire departments in that State did not have the resources to fight vessel fires. We do not agree with this comment and have not changed the rule because of it. In our NPRM and SNPRM, we considered the extent of the fire hazard attributable to harbor-assist tugs nationwide, and determined that, because they do not routinely move tank barges, they present an acceptable level of risk.

Other comments argued that we should require qualified fire-fighting training and personal protective gear for crewmembers. The comments disagreed with our view in the SNPRM that the costs associated with maintaining the correct gear in the sizes needed for each crewmember would be prohibitive, arguing instead that most crewmembers could wear a size large. They also argued that the lack of personal protective gear and fire-fighting training would shift the burden for the safety of towing vessels from the operators of the

vessels to the local fire departments. We do not agree with these opinions, and maintain the position taken in the SNPRM that our analysis of casualties indicates that all fires put out by crewmembers were put out by crewmembers without benefit of extensive training or protective clothing. We therefore have decided not to amend the final rule.

Requirements for Inspection

We received two comments that recommended that we subject towing vessels to inspection by the Coast Guard. This suggestion is outside the scope of this rulemaking and has not been considered in the final rule.

Fire Pump Controls

Several comments requested that we reconsider the requirement in § 27.301(a)(2) that a crewmember be able to energize the fixed fire pump from the operating station. The commenters suggested that this was too restrictive a requirement and that locating the fire-pump control at any safe place outside the engine room would be suitable. We agree and have changed the wording of this section.

A related comment pointed out that the fire-main valves need to be included in the requirements for remote operation, because they may not be normally kept in the open position. We acknowledge that this could be a problem if the fire main has valves. However, we have not issued any rules that require valves to be installed. Acting on this suggestion, we have

added criteria for being able to remotely operate any valves in the fire main.

Incorporation by Reference

We received comments from the National Fire Protection Association, whose standards we incorporate by reference in § 27.102, informing us that the references we cited have been updated. The Association recommends that the reference to NFPA 302—Pleasure and Commercial Motorcraft—be changed from the 1989 edition to the 1998 edition. The other reference in need of updating is NFPA 750—Standard on Water Mist Fire Protection Systems. In the interim rule we cited the 2000 edition. The current edition is 2003. We have decided to make the recommended changes. The Association also recommended that we cite NFPA standard 301—Safety to Life From Fire on Merchant Vessels—for informational purposes, since chapter 18 of this standard addresses towing vessels. We have not done so, because we do not incorporate the standard by reference in the rule.

Voyage Planning

One comment suggested that we require every towing vessel to be equipped with an electronic chart-plotter and that mariners be trained in its use. This requirement is outside the scope of this rulemaking and has not been considered.

A second comment recommended that we reconsider our position to exempt inland towing vessels from performing voyage or trip planning. The comment did not supply any new

information on this topic. We have made no changes to the rule in response to this request.

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 Homeland Security (DHS). The Regulatory Evaluation in the docket for the interim rule is unchanged for the final rule.

A summary of the Evaluation follows:

We expect measures published in this rule to yield a benefit-to-cost ratio of about 1.6-to-1. Estimated benefits, in the form of avoided injuries and avoided damage to vessels and property, are around \$29.5 million. In addition, the measures are estimated to prevent 14,139 barrels of oil pollution. The estimated total present-value cost of this rulemaking is \$18.6 million. The table following this paragraph illustrates the calculation of total benefits and costs and also breaks out the benefits and costs of the fire-suppression and voyage-planning components. The period of analysis is from 2003 until 2015. Most of the costs are incurred in the first two years of the analysis period, as this is when industry will incur the capital costs of installing manual fire-fighting equipment.

TOTAL COSTS, BENEFITS, AND BENEFIT/COST RATIOS OF REQUIREMENTS FOR FIRE-SUPPRESSION AND VOYAGE PLANNING [2003–2015]

Present-Value Total Cost of Fire-Suppression	\$16,975,875
Present-Value Total Benefit of Fire-Suppression	\$24,325,311
Barrels of Pollution Avoided	9,032
Benefit/Cost Ratio	1.43:1
Present-Value Total Cost of Voyage Planning	\$1,633,346
Present-Value Total Benefit of Voyage Planning	\$5,104,360
Barrels of Pollution Avoided	5,107
Benefit/Cost Ratio	3.13:1
Present-Value Total Cost of Rule	\$18,609,221
Present-Value Total Benefit of Rule	\$29,429,671
Barrels of Pollution Avoided by Rule	14,139
Benefit/Cost Ratio of Rule	1.58:1

Note: Benefit/Cost ratio is present-value total benefit divided by the present-value total cost.

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.

The requirements contained in this rule will have much less of an impact on small entities than those contained in the SNPRM published November 8, 2000. There, we indicated that the requirements contained in the SNPRM might constitute a significant impact on

a substantial number of small entities. The total present-value cost of the requirements contained in the SNPRM was around \$116 million.

The SNPRM initially required the installation of a fixed fire-suppression system in the engine room of a towing vessel as an alternative to manual fire-suppression systems. The IR, however, prescribed the installation of manual fire-suppression equipment in place of a more costly fixed fire-suppression system for all new and existing inland and coastal towing vessels. A fixed fire-suppression system would be required for new coastal towing vessels only. Since the estimated number of new coastal towing vessels is small, this greatly reduced the costs for the fire-suppression requirement.

Additionally, the interim rule required voyage planning for new and existing coastal towing vessels only, not inland towing vessels, which further reduced costs of the voyage planning requirement, and, subsequently, the total cost of the rule.

We estimate that this final rule will cost industry \$18.6 million. About 1,200 companies are affected by this rule; of these, about 1,000 count as small entities. The average small business, in our analysis, owns two affected towing vessels and has average annual revenues of \$1.1 million. Consequently, an average small business will spend around \$12,000 over the 13 years covered by our analysis to have the manual fire-fighting equipment on board and to conduct voyage planning. Therefore, we certify that this rule does not have a significant 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 offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking.

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).

If your small business or organization is affected by this rule, and you have questions concerning its provisions or

options for compliance, please call Mr. Randall Eberly, P. E., Project Manager, at 202-267-1861.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S. Ct. 1135 (March 6, 2000).) This final rule involves equipping and operation of vessels. Because the States may not regulate within these categories, preemption under Executive Order 13132 is not an issue.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531-1538] requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this final rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Reform of Civil Justice

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

Protection of Children

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

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial, direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant, adverse effect on the supply, distribution, or use of energy. It has not been designated, by the Administrator of the Office of Information and Regulatory Affairs, a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(d), of the Instruction, from further environmental documentation. This rule concerns the equipping of towing vessels. A final "Environmental Analysis Check List" and a final "Categorical Exclusion

Determination” are available in the docket where indicated under ADDRESSES.

List of Subjects

33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 27

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 164 and 46 CFR parts 25 and 27 as follows:

PART 164—NAVIGATION SAFETY REGULATIONS

■ 1. Revise the citation of authority for part 164 to read as follows:

Authority: 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; Department of Homeland Security Delegation No. 0170.1 (75). Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

■ 2. In § 164.78, revise paragraphs (a)(6), (7), and (8) to read as follows:

§ 164.78 Navigation under way: Towing vessels.

(a) * * *
(6) Knows the speed and direction of the current, and the set, drift, and tidal state for the area to be transited;

(7) Proceeds at a safe speed taking into account the weather, visibility, density of traffic, draft of tow, possibility of wake damage, speed and direction of the current, and local speed-limits; and

(8) Monitors the voyage plan required by § 164.80.

* * * * *

■ 3. In § 164.80, revise paragraph (c) to read as follows:

§ 164.80 Tests, inspections, and voyage planning.

* * * * *

(c)(1) The voyage-planning requirements outlined in this section do

not apply to you if your towing vessel is—

(i) Used solely for any of the following services or any combination of these services—

(A) Within a limited geographic area, such as a fleeting-area for barges or a commercial facility, and used for restricted service, such as making up or breaking up larger tows;

(B) For harbor-assist;

(C) For assistance towing as defined by 46 CFR 10.103;

(D) For response to emergency or pollution;

(ii) A public vessel that is both owned, or demise chartered, and operated by the United States Government or by a government of a foreign country; and that is not engaged in commercial service;

(iii) A foreign vessel engaged in innocent passage; or

(iv) Exempted by the Captain of the Port (COTP).

(2) If you think your towing vessel should be exempt from these voyage planning requirements for a specified route, you should submit a written request to the appropriate COTP. The COTP will provide you with a written response granting or denying your request.

(3) If any part of a towing vessel's intended voyage is seaward of the baseline (i.e., the shoreward boundary) of the territorial sea of the U.S., then the owner, master, or operator of the vessel, employed to tow a barge or barges, must ensure that the voyage with the barge or barges is planned, taking into account all pertinent information before the vessel embarks on the voyage. The master must check the planned route for proximity to hazards before the voyage begins. During a voyage, if a decision is made to deviate substantially from the planned route, then the master or mate must plan the new route before deviating from the planned route. The voyage plan must follow company policy and consider the following (related requirements noted in parentheses):

(i) Applicable information from nautical charts and publications (also see paragraph (b) of section 164.72), including Coast Pilot, Coast Guard Light List, and Coast Guard Local Notice to

Mariners for the port of departure, all ports of call, and the destination;

(ii) Current and forecast weather, including visibility, wind, and sea state for the port of departure, all ports of call, and the destination (also see paragraphs (a)(7) of section 164.78 and (b) of section 164.82);

(iii) Data on tides and currents for the port of departure, all ports of call, and the destination, and the river stages and forecast, if appropriate;

(iv) Forward and after drafts of the barge or barges and under-keel and vertical clearances (air-gaps) for all bridges, ports, and berthing areas;

(v) Pre-departure checklists;

(vi) Calculated speed and estimated time of arrival at proposed waypoints;

(vii) Communication contacts at any Vessel Traffic Services, bridges, and facilities, and any port-specific requirements for VHF radio;

(viii) Any master's or operator's standing orders detailing closest points of approach, special conditions, and critical maneuvers; and

(ix) Whether the towing vessel has sufficient power to control the tow under all foreseeable circumstances.

PART 25—REQUIREMENTS

■ 4. Revise the citation of authority for part 25 to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4102, 4302; Department of Homeland Security Delegation No. 0170.1 (75).

■ 5. In § 25.30–10, revise the heading, and paragraph (c) and Table 25.30–10(C), to read as follows:

§ 25.30–10 Hand-portable fire extinguishers and semi-portable fire-extinguishing systems.

* * * * *

(c) The number designations for size run from “I” for the smallest to “V” for the largest. Sizes I and II are hand-portable fire extinguishers; sizes III, IV, and V are semi-portable fire-extinguishing systems, which must be fitted with hose and nozzle or other practical means to cover all portions of the space involved. Examples of the sizes for some of the typical hand-portable fire extinguishers and semi-portable fire-extinguishing systems appear in Table 25.30–10(C):

TABLE 25.30–10(C)

Classification	Foam, liters (gal-lons)	Carbon dioxide, kilograms (pounds)	Dry chemical, kilograms (pounds)
B-I	6.5 (1¾)	2 (4)	1 (2)
B-II	9.5 (2½)	7 (15)	4.5 (10)

TABLE 25.30-10(C)—Continued

Classification	Foam, liters (gallons)	Carbon dioxide, kilograms (pounds)	Dry chemical, kilograms (pounds)
B-III	45 (12)	16 (35)	9 (20)
B-IV	75 (20)	23 (50)	13.5 (30)
B-V	150 (40)	45 (100)	23 (50)

■ 6. Revise § 25.30-15 to read as follows:

§ 25.30-15 Fixed fire-extinguishing systems.

(a) When a fixed fire-extinguishing system is installed, it must be a type approved or accepted by the Commandant (G-MSE) or the Commanding Officer, U.S. Coast Guard Marine Safety Center.

(b) If the system is a carbon-dioxide type, then it must be designed and installed in accordance with subpart 76.15 of part 76 of subchapter H (Passenger Vessels) of this chapter.

PART 27—TOWING VESSELS

■ 7. Revise part 27 to read as follows:

Subpart A—General Provisions for Fire-Protection Measures and Fire-Suppression Equipment on Towing Vessels

Sec.

27.100 What towing vessels does this part affect?

27.101 Definitions.

27.102 Incorporation by reference.

Subpart B—Fire-Protection Measures for Towing Vessels

27.201 What are the requirements for general alarms on towing vessels?

27.203 What are the requirements for fire detection on towing vessels?

27.205 What are the requirements for internal communication systems on towing vessels?

27.207 What are the requirements for fuel shut-offs on towing vessels?

27.209 What are the requirements for training crews to respond to fires?

27.211 What are the specifications for fuel systems on towing vessels whose construction was contracted for on or after January 18, 2000?

Subpart C—Fire-Suppression Equipment for Towing Vessels

27.301 What are the requirements for fire pumps, fire mains, and fire hoses on towing vessels?

27.303 What are the requirements for fire-extinguishing equipment on towing vessels in inland service, and on towing vessels in ocean or coastal service whose construction was contracted for before August 27, 2003?

27.305 What are the requirements for fire-extinguishing equipment on towing vessels in ocean or coastal service whose construction was contracted for on or after August 27, 2003?

Authority: 46 U.S.C. 3306, 4102 (as amended by Pub. L. 104-324, 110 Stat. 3901); Department of Homeland Security Delegation No. 0170.1(75).

PART 27—TOWING VESSELS

Subpart A—General Provisions for Fire-Protection Measures and Fire-Suppression Equipment on Towing Vessels

§ 27.100 What towing vessels does this part affect?

(a) You must comply with this part if your towing vessel operates on the navigable waters of the United States, unless your vessel is one exempt under paragraph (b) of this section.

(b) This part does not apply to you if your towing vessel is—

(1) Used solely for any of the following services or any combination of these services—

(i) Within a limited geographic area, such as a fleeting-area for barges or a commercial facility, and used for restricted service, such as making up or breaking up larger tows;

(ii) For harbor-assist;

(iii) For assistance towing as defined by 46 CFR 10.103;

(iv) For response to emergency or pollution;

(2) A public vessel that is both owned, or demise chartered, and operated by the United States Government or by a government of a foreign country; and that is not engaged in commercial service;

(3) A foreign vessel engaged in innocent passage; or

(4) Exempted by the Captain of the Port (COTP).

(c) If you think your towing vessel should be exempt from these requirements for a specified route, you should submit a written request to the appropriate COTP. The COTP will provide you with a written response granting or denying your request. The COTP will consider the extent to which unsafe conditions would result if your vessel lost propulsion because of a fire in the engine room.

(d) You must test and maintain all of the equipment required by this part in accordance with the attached nameplate or manufacturer's approved design manual.

§ 27.101 Definitions.

As used in this part—

Accommodation includes any:

- (1) Messroom.
- (2) Lounge.
- (3) Sitting area.
- (4) Recreation room.
- (5) Quarters.
- (6) Toilet space.
- (7) Shower room.
- (8) Galley.
- (9) Berthing facility.
- (10) Clothing-changing room.

Engine room means the enclosed area where any main-propulsion engine is located. It comprises all deck levels within that area.

Fixed fire-extinguishing system means:

(1) A carbon-dioxide system that satisfies 46 CFR subpart 76.15 and is approved by the Commandant;

(2) A manually-operated clean-agent system that satisfies the National Fire Protection Association (NFPA) Standard 2001 (incorporated by reference in § 27.102) and is approved by the Commandant; or

(3) A manually-operated water-mist system that satisfies NFPA Standard 750 (incorporated by reference in § 27.102) and is approved by the Commandant.

Fleeting-area means a separate location where individual barges are moored or assembled to make a tow. The barges are not in transport, but are temporarily marshaled, waiting for pickup by different vessels that will transport them to various destinations. A fleeting-area is a limited geographic area.

Harbor-assist means docking and undocking ships.

Limited geographic area means a local area of operation, usually within a single harbor or port. The local Captain of the Port (COTP) determines the definition of local geographic area for each zone.

Operating station means the principal steering station on the vessel, from which the vessel is normally navigated.

Towing vessel means a commercial vessel engaged in, or intending to engage in, pulling, pushing, or hauling alongside, or any combination of pulling, pushing, or hauling alongside.

Towing vessel in inland service means a towing vessel that is not in ocean or coastal service.

Towing vessel in ocean or coastal service means a towing vessel that operates beyond the baseline of the U.S. territorial sea.

We means the United States Coast Guard.

Work space means any area on the vessel where the crew could be present while on duty and performing their assigned tasks.

You means the owner of a towing vessel, unless otherwise specified.

§ 27.102 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register—in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and make the material available for inspection. All approved material is available at the U.S. Coast Guard, Office of Design and Engineering Standards (G-MSE), 2100 Second Street SW., Washington, DC 20593-0001, or from the sources indicated in paragraph (b) of this section, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Boat and Yacht Council (ABYC), 3069 Solomons Island Road, Edgewater, MD 21037-1416	
H-25-1986—Portable Fuel Systems for Flammable Liquids	27.211
H-33-1989—Diesel Fuel Systems	27.211
National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269-9101	
NFPA 302-1998—Fire Protection Standard for Pleasure, and Commercial Motorcraft	27.211
NFPA 750—Standard on Water Mist Fire Protection Systems, 2003 edition	27.101
NFPA 2001—Standard on Clean Agent Fire Extinguishing Systems, 2000 edition	27.101
Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096-0001	

SAE J1475-1984—Hydraulic Hose Fitting for Marine Applications	27.211
SAE J1942-1989—Hose and Hose Assemblies for Marine Applications	27.211

Subpart B—Fire-Protection Measures for Towing Vessels

§ 27.201 What are the requirements for general alarms on towing vessels?

(a) You must ensure that your vessel is fitted with a general alarm that:

- (1) Has a contact-maker at the operating station that can notify persons on board in the event of an emergency.
- (2) Is capable of notifying persons in any accommodation, work space, and the engine room.
- (3) Has installed, in the engine room and any other area where background noise makes a general alarm hard to hear, a supplemental flashing red light that is identified with a sign that reads:

Attention General Alarm—When Alarm Sounds or Flashes Go to Your Station.

- (4) Is tested at least once each week.
- (b) You or the operator may use a public-address (PA) system or other means of alerting all persons on your towing vessel instead of a general alarm, if the system—
 - (1) Is capable of notifying persons in any accommodation, work space, and the engine room;
 - (2) Is tested at least once each week;
 - (3) Can be activated from the operating station; and
 - (4) Complies with paragraph (a)(3) of this section.

§ 27.203 What are the requirements for fire detection on towing vessels?

You must have a fire-detection system installed on your vessel to detect engine-room fires. Any owner of a vessel whose construction was contracted for before January 18, 2000, may use an existing engine-room-monitoring system (with fire-detection capability) instead of a fire-detection system, if the monitoring system is operable and complies with this section. You must ensure that—

- (a) Each detector, each control panel, and each fire alarm are approved under 46 CFR subpart 161.002 or listed by an independent testing laboratory; except that, if you use an existing engine-room-monitoring system (with fire-detection capability), each detector must be listed by an independent testing laboratory;
- (b) The system is installed, tested, and maintained in line with the manufacturer's design manual;
- (c) The system is arranged and installed so a fire in the engine room automatically sets off alarms on a control panel at the operating station;

- (d) The control panel includes—
 - (1) A power-available light;
 - (2) Both an audible alarm to notify crew at the operating station of fire and visible alarms to identify the zone or zones of origin of the fire;

(3) A means to silence the audible alarm while maintaining indication by the visible alarms;

(4) A circuit-fault detector test-switch; and

(5) Labels for all switches and indicator lights, identifying their functions;

(e) The system draws power from two sources, switchover from the primary source to the secondary source being either manual or automatic;

(f) The system serves no other purpose, unless it is an engine-room-monitoring system (with fire-detection capability) installed on a vessel whose construction was contracted for before January 18, 2000; and

(g) The system is certified by a Registered Professional Engineer, or by a recognized classification society (under 46 CFR part 8), to comply with paragraphs (a) through (f) of this section.

§ 27.205 What are the requirements for internal communication systems on towing vessels?

(a) You must ensure that your vessel is fitted with a communication system between the engine room and the operating station that—

- (1) Consists of either fixed or portable equipment, such as a sound-powered telephone, portable radios, or other reliable method of voice communication, with a main or reserve power supply that is independent of the electrical system on your towing vessel; and

(2) Provides two-way voice communication and calling between the operating station and either—

- (i) The engine room; or
- (ii) A location immediately adjacent to an exit from the engine room.

(b) Twin-screw vessels with operating-station control for both engines are not required to have internal communication systems.

(c) When the operating-station's engine controls and the access to the engine room are within 3 meters (10 feet) of each other and allow unobstructed visual contact between them, direct voice communication is acceptable instead of a communication system.

§ 27.207 What are the requirements for fuel shut-offs on towing vessels?

To stop the flow of fuel in the event of a break in the fuel line, you must have a positive, remote fuel-shut-off

valve fitted on any fuel line that supplies fuel directly to an engine or generator. The valve must be near the source of supply (for instance, at the day tank, storage tank, or fuel-distribution manifold). Furthermore, it must be operable from a safe place outside the space where the valve is installed. Each remote valve control should be marked in clearly legible letters, at least 25 millimeters (1 inch) high, indicating the purpose of the valve and the way to operate it.

§ 27.209 What are the requirements for training crews to respond to fires?

(a) *Drills and instruction.* The master or person in charge of a vessel must ensure that each crewmember participates in drills and receives instruction at least once each month. The instruction may coincide with the drills, but need not. You must ensure that all crewmembers are familiar with their fire-fighting duties, and, specifically, with the following contingencies:

(1) Fighting a fire in the engine room and elsewhere on board the vessel, including how to—

(i) Operate all of the fire-extinguishing equipment on board the vessel;

(ii) Stop any mechanical ventilation system for the engine room and effectively seal all natural openings to the space to prevent leakage of the extinguishing agent; and

(iii) Operate the fuel shut-off for the engine room.

(2) Activating the general alarm.

(3) Reporting inoperative alarm systems and fire-detection systems.

(4) Putting on a fireman's outfit and a self-contained breathing apparatus, if the vessel is so equipped.

(b) *Alternative form of instruction.* The master or person in charge of a vessel may substitute, for the instruction required in paragraph (a) of this section, the viewing of video training materials concerning at least the contingencies listed in paragraph (a), followed by a discussion led by someone familiar with these contingencies. This instruction may occur either on board or off the vessel.

(c) *Participation in drills.* Drills must take place on board the vessel, as if there were an actual emergency. They must include—

(1) Participation by all crewmembers;

(2) Breaking out and using, or simulating the use of, emergency equipment;

(3) Testing of all alarm and detection systems; and

(4) Putting on protective clothing (by at least one person), if the vessel is so equipped.

(d) *Safety Orientation.* The master or person in charge of a vessel must ensure that each crewmember who has not (i) participated in the drills required by paragraph (a) of this section, and (ii) received the instruction required by that paragraph, receives a safety orientation within 24 hours of reporting for duty.

(e) The safety orientation must cover the particular contingencies listed in paragraph (a) of this section.

§ 27.211 What are the specifications for fuel systems on towing vessels whose construction was contracted for on or after January 18, 2000?

(a) You must ensure that, except for the components of an outboard engine or of a portable bilge pump or fire pump, each fuel system installed on board the vessel complies with this section.

(b) *Portable fuel systems.* The vessel must not incorporate or carry portable fuel systems, including portable tanks and related fuel lines and accessories, except when used for outboard engines or when permanently attached to portable equipment such as portable bilge pumps or fire pumps. The design, construction, and stowage of portable tanks and related fuel lines and accessories must comply with ABYC H-25 (incorporated by reference in § 27.102).

(c) *Fuel restrictions.* Neither you nor the master or person in charge may use fuel other than bunker C or diesel, except for outboard engines, or where otherwise accepted by the Commandant (G-MSE). An installation that uses bunker C, heavy fuel oil (HFO), or any fuel that requires pre-heating, must comply with subchapter F of this chapter.

(d) *Vent pipes for integral fuel tanks.* Each integral fuel tank must meet the requirements of this paragraph as follows:

(1) Each tank must have a vent that connects to the highest point of the tank, discharges on a weather deck through a bend of 180 degrees (3.14 radians), and is fitted with a 30-by-30-mesh corrosion-resistant flame screen. Vents from two or more tanks may combine in a system that discharges on a weather deck.

(2) The net cross-sectional area of the vent pipe for the tank must be—

(i) Not less than 312.3 square millimeters (0.484 square inches) for any tank filled by gravity; or

(ii) Not less than that of the fill pipe for any tank filled under pressure.

(e) *Fuel piping.* Except as permitted in paragraphs (e)(1), (2), and (3) of this section, each fuel line must be seamless and made of steel, annealed copper,

nickel-copper, or copper-nickel. Each fuel line must have a wall thickness of not less than 0.9 millimeters (0.035 inch) except that—

(1) Aluminum piping is acceptable on an aluminum-hull vessel if it is installed outside the engine room and is at least Schedule 80 in thickness; and

(2) Nonmetallic flexible hose is acceptable if it—

(i) Is used in lengths of not more than 0.76 meters (30 inches);

(ii) Is visible and easily accessible;

(iii) Does not penetrate a watertight bulkhead;

(iv) Is fabricated with an inner tube and a cover of synthetic rubber or other suitable material reinforced with wire braid; and

(v) Either,—

(A) If it is designed for use with compression fittings, is fitted with suitable, corrosion-resistant, compression fittings, or fittings compliant with SAE J1475 (incorporated by reference in § 27.102); or,

(B) If it is designed for use with clamps, is installed with two clamps at each end of the hose. Clamps must not rely on spring tension and must be installed beyond the bead or flare or over the serrations of the mating spud, pipe, or hose fitting. Hose complying with SAE J1475 is also acceptable.

(3) Nonmetallic flexible hose complying with SAE J1942 (incorporated by reference in § 27.102) is also acceptable.

(f) A towing vessel of less than 24 meters (79 feet) in length may comply with any of the following standards for fuel systems rather than with those of paragraph (e) of this section:

(1) ABYC H-33 (incorporated by reference in § 27.102).

(2) Chapter 5 of NFPA 302 (incorporated by reference in § 27.102).

(3) 33 CFR chapter I, subchapter S (Boating Safety).

Subpart C—Fire-Suppression Equipment for Towing Vessels

§ 27.301 What are the requirements for fire pumps, fire mains, and fire hoses on towing vessels?

By April 29, 2005, you must provide for your towing vessel either a self-priming, power-driven, fixed fire-pump, a fire main, and hoses and nozzles in accordance with paragraphs (a) through (c) of this section; or a portable pump, and hoses and nozzles, in accordance with paragraphs (d) and (e) of this section.

(a) The fixed fire-pump must be capable of—

(1) Delivering water simultaneously from the two highest hydrants, or from

both branches of the fitting if the highest hydrant has a Siamese fitting, at a pitot-tube pressure of at least 344 kPa (50 psi) and a flow rate of at least 300 lpm (80 gpm); and

(2) Being energized remotely from a safe place outside the engine room and from the pump.

(b) All valves necessary for the operation of the fire main must be kept in the open position or must be capable of operation from the same place where the remote fire pump control is located.

(c) The fire main must have a sufficient number of fire hydrants with attached hose to reach any part of the machinery space using a single length of fire hose.

(d) The hose must be lined commercial fire-hose, at least 40mm (1.5 inches) in diameter, 15 meters (50 feet) in length, and fitted with a nozzle made of corrosion-resistant material capable of providing a solid stream and a spray pattern.

(e) The portable fire pump must be self-priming and power-driven, with—

(1) A minimum capacity of at least 300 lpm (80 gpm) at a discharge gauge pressure of not less than 414 kPa (60 psi), measured at the pump discharge;

(2) A sufficient amount of lined commercial fire hose at least 40mm (1.5 inches) in diameter and 15 meters (50 feet) in length, immediately available to attach to it so that a stream of water will reach any part of the vessel; and

(3) A nozzle made of corrosion-resistant material capable of providing a solid stream and a spray pattern.

(f) You must stow the pump with its hose and nozzle outside of the machinery space.

§ 27.303 What are the requirements for fire-extinguishing equipment on towing vessels in inland service, and on towing vessels in ocean or coastal service whose construction was contracted for before August 27, 2003?

You must carry on your towing vessel both—

(a) The minimum number of hand-portable fire extinguishers required by subpart 25.30 of this part; and

(b) By April 29, 2005, either—

(1) An approved B–V semi-portable fire-extinguishing system to protect the engine room; or

(2) A fixed fire-extinguishing system installed to protect the engine room of the vessel.

§ 27.305 What are the requirements for fire-extinguishing equipment on towing vessels in ocean or coastal service whose construction was contracted for on or after August 27, 2003?

(a) You must carry on your towing vessel both—

(1) The minimum number of hand-portable fire extinguishers required by subpart 25.30 of this part; and

(2) An approved B–V semi-portable fire-extinguishing system to protect the engine room.

(b) You must have a fixed fire-extinguishing system installed to protect the engine room of the vessel.

(c) This section does not apply to any towing vessel pushing a barge ahead, or hauling a barge alongside, when the barge's coastwise or Great Lakes route is restricted (as indicated on its certificate of inspection), so that the barge may operate "in fair weather only, within 12 miles of shore," or with words to that effect.

Dated: April 9, 2004.

T.H. Gilmour,

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

[FR Doc. 04–13600 Filed 6–17–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–023]

RIN 1625–AA00

Safety Zone; Port Huron, St. Clair River, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Southside Summer Festival fireworks display on June 27, 2004. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the St. Clair River.

DATES: This temporary final rule is effective from 10 p.m. until 10:25 p.m. on June 27, 2004.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–04–023] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave. Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Cynthia Lowry, U.S. Coast Guard Marine Safety Office Detroit, (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. 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**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazard of fireworks, the Captain of the Port Detroit has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters of the St. Clair River within a 500-foot radius of the fireworks launch platform in approximate position 42°57'05" N, 083°25'19" W (off of the River Rats Club). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-