



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 105

Docket No. USCG-2013-0195

RIN 1625-AC18

Commercial Fishing Vessels Dispensing Petroleum Products

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes revisions to its regulations for commercial fishing vessels carrying flammable or combustible liquid cargoes in bulk. The proposed revisions would reflect a 1984 statutory change that eliminated fishery-specific and geographical limitations on a statutory exemption that, effectively, permits certain commercial fishing vessels to carry and dispense flammable and combustible material including petroleum products; additionally, this proposed revision would simplify regulatory text. This notice of proposed rulemaking promotes the Coast Guard's maritime safety mission.

DATES: Comments and related material must be submitted on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments using *one* of the listed methods, and see

SUPPLEMENTAL INFORMATION for more information on public comments.

- *Online* – <http://www.regulations.gov> following website instructions.
- *Fax* – 202-493-2251.
- *Mail or hand deliver* – Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Hand delivery hours: 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202-366-9329).

Viewing incorporation by reference material. Make arrangements to view this material by calling the Coast Guard’s Office of Regulations and Administrative Law at 202-372-3870 or by e-mailing HQS-SMB-CoastGuardRegulationsLaw@uscg.mil.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Jack Kemerer, Fishing Vessel Safety Division (CG-CVC-3), Office of Commercial Vessel Compliance (CVC), U.S. Coast Guard; telephone 202-372-1249, e-mail Jack.A.Kemerer@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to submit comments (or related material) on this notice of proposed rulemaking (NPRM). We will consider all submissions and may adjust our final action based on your comments. Comments should be marked with docket number USCG-2013-0195 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the *Federal Register* Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008).

Mailed or hand-delivered comments should be in an unbound 8½ x 11 inch format suitable for reproduction. The Docket Management Facility will acknowledge receipt of mailed comments if you enclose a stamped, self-addressed postcard or envelope with your submission.

Documents mentioned in this notice and all public comments are in our online docket at <http://www.regulations.gov> and can be viewed by following the website's instructions. You can also view the docket at the Docket Management Facility (see

the mailing address under ADDRESSES) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We are not planning to hold a public meeting, but will consider doing so if public comments indicate a meeting would be helpful. We would issue a separate *Federal Register* notice to announce the date, time, and location of such a meeting.

II. Abbreviations

CFV	Commercial fishing vessel
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
MSM	Coast Guard's Marine Safety Manual
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
§	Section symbol
U.S.C.	United States Code

III. Basis and Purpose

The statutory basis of this proposed rule is provided by 33 U.S.C. 1321(j)(5), 46 U.S.C. 2103, 3306, 3703, and 4502. In 33 U.S.C. —

- Section 1321(j)(5) of 33 U.S.C. authorizes the Secretary of the department in which the Coast Guard is operating to issue regulations that require certain vessel and facility owners or operators to submit plans for responding to bulk noxious liquid substance spills from the vessel or facility.

In 46 U.S.C. —

- Section 2103 gives the Secretary general regulatory authority to implement Subtitle II (Chapters 21 through 147), including Chapter 37 (Carriage of Liquid Bulk Dangerous Cargoes);
- Section 3306 requires the Secretary to regulate in several areas relating to inspected vessels, to implement Subtitle II, Part B (Inspection of Vessels), and to secure the safety of individuals and property on board vessels subject to inspection;
- Section 3703 gives the Secretary both mandatory and discretionary regulatory authority for the specific implementation of Chapter 37; and
- Section 4502 requires the Secretary to regulate safety standards on uninspected commercial fishing vessels.

The Secretary's authority under 33 U.S.C. 1321 was delegated to the Coast Guard in DHS Delegation No. 0170.1, para. II (73). The Secretary's authority under 46 U.S.C. 2103, 3306, 3703, and 4502 was delegated to the Coast Guard in DHS Delegation No. 0170.1, para. II (92)(a) and (92)(b).

The purpose of this proposed rule is to align Coast Guard regulations with a 1984 statutory change that eliminated fishery-specific and geographical limitations on a statutory exemption that, effectively, permits certain commercial fishing vessels to carry and dispense flammable and combustible material including petroleum products. The proposed rule would also simplify the structure of 46 CFR part 105.

IV. Background

Until 1968, 46 U.S.C. 391a(1) (the predecessor to 46 U.S.C. 3703), provided that vessels carrying inflammable or combustible cargo, in bulk and in tanks, must be "considered steam vessels for the purposes of title 52 of the Revised Statutes [hereafter "title 52 vessels"] and shall be subject to the provisions thereof...".

In 1968, Congress enacted Public Law 90-397 (the "1968 Act," 82 Stat. 341). Section 4 of the 1968 Act amended 46 U.S.C. 391a(1) to permit all "cannery tenders, fishing tenders, or fishing vessels of not more than five hundred gross tons used in the salmon or crab fisheries" of Alaska, Oregon, and Washington (hereafter "1968 Act vessels") "to have on board inflammable or combustible cargo in bulk to the extent and upon conditions as may be required" by Coast Guard regulations (rather than as title 52 vessels). The relevant Coast Guard regulations for these Public Law 90-397 vessels were added in 1969, as 46 CFR part 105. Part 105 allowed the 1968 Act

vessels to carry and dispense liquid bulk dangerous cargoes, subject to the safety regulations and other conditions set forth in part 105.

In 1972, Congress enacted Public Law 92-340 (the “1972 Act,” 86 Stat. 424). It significantly rewrote and expanded 46 U.S.C. 391a. Former subsection (1) was redesignated as subsection (2). As redesignated, subsection (2) contained the following proviso: “nothing contained herein shall be deemed to amend or modify the provisions of section 4 of Public Law 90-397 with respect to certain vessels of not more than five hundred gross tons.”¹ This proviso ratified and preserved the 1968 Act’s exemption for all cannery tenders, fishing tenders, or fishing vessels of not more than five hundred gross tons used in the salmon or crab fisheries of Alaska, Oregon, and Washington.

In 1974, Congress enacted Public Law 93-430 (the “1974 Act,” 88 Stat. 1180). It amended 46 U.S.C. 391a(2) in two pertinent respects. First, it repeated the 1972 Act’s language and added it as new subsection (2)(ii): “nothing contained herein shall be deemed to amend or modify the provisions of section 4 of Public Law 93 [sic]-397 with respect to certain vessels of not more than five hundred gross tons.”² Second, it added new subsection (2)(iii): “this section shall not apply to vessels of not more than five thousand gross tons used in the processing and assembling of fishery products [in Alaska, Oregon, and Washington] and such vessels shall be allowed to have onboard

¹ Pub. L. 92-340, 86 Stat. 424 at 428.

² 88 Stat. 1180 at 1183; the reference to “Public Law 93-397” was presumably intended to cite Public Law 90-397.

inflammable or combustible cargo in bulk to the extent and upon conditions” as specified by the Coast Guard.³

Thus, the 1974 Act left in place the exemption, first added by the 1968 Act, for all salmon and crab fish tenders and fishing vessels of not more than 500 gross tons in Alaska, Oregon, and Washington, and added a new exemption for all fish processing vessels of not more than 5,000 gross tons in those three States.

In 1976, the Coast Guard revised 46 CFR part 105 to incorporate the changes made by the 1972 and 1974 Acts.

In 1983, Congress enacted Public Law 98-89 (the “1983 revision,” 97 Stat. 501), to revise and consolidate laws pertaining to vessels and seamen, placing the revised statutes in 46 CFR subtitle II. The House Report accompanying the 1983 revision stated: “the bill as reported does in fact make a great many substantive changes to the present law. Those changes are all either minor changes, adjustments, or modifications, or they are more significant changes to which the committee received no objection [from the maritime community] and which the committee believed would enhance the clarity and effectiveness of the law and generally accepted by the industry. Thus, if a comparison of the language of this bill with the existing law shows that a substantive change has resulted, it should be understood that that change was intended by the committee.”⁴

The 1983 revision redesignated the former provisions of 46 U.S.C. 391a(2)(ii) and (iii) as new 46 U.S.C. 3702(c) and (d), in new Chapter 37 (Carriage of Liquid Bulk Dangerous Cargoes). The new provisions removed Pacific Northwest fish

³ Id.

⁴ H.R. Rep. 98-338 at 120.

tenders and fishing vessels of not more than 500 gross tons and engaged only in the salmon or crab fishing industry from the scope of Chapter 37. They preserved the existing exemption for Pacific Northwest fish processing vessels of not more than 5,000 gross tons, engaged in the salmon or crab fishing industry, when they are carrying flammable or combustible liquid cargo in bulk. In light of the House Report that accompanied the 1983 revision, the Coast Guard understands that the removal of 1968 Act vessels was intentional, and viewed by Congress as non-controversial.

In 1984, Congress enacted Public Law 98-364 (the “1984 Act,” 98 Stat. 446). It amended 46 U.S.C. 3702(c) and (d). This amendment removed the salmon/crab fishery and geographical specifications from subsections (c) and (d). There appears to have been no practical effect to the subsection (c) amendment, because neither by statute nor by regulation had commercial fishing vessels outside the Pacific Northwest ever been authorized to carry flammable or combustible liquid cargoes in bulk. The effect of the subsection (d) amendment was to permit fish processors under 5,000 gross tons to carry flammable or combustible liquid cargo in bulk anywhere in the country and in any fishery, not just in the Pacific Northwest salmon and crab fisheries. There is no legislative history to explain Congress’s intent.

The Coast Guard has not amended 46 CFR part 105 since 1976. The part needs to be revised to align with the 1984 Act’s removal of elimination of the salmon/crab fishery and geographical specifications. The opportunity to revise part 105 also allows us to consolidate, simplify, and reorganize the part. We discuss these changes more fully in Section V., Discussion of Proposed Rule.

V. Discussion of Proposed Rule

We propose revising 46 CFR part 105 to reflect the 1984 legislative changes. Also, we propose several non-substantive changes in regulatory text to better align the regulations with current Coast Guard practice. Finally, we propose simplifying the structure of part 105, eliminating its current subparts, and combining related subject matter, as shown in Table 1.

Table 1: Proposed restructuring of 46 CFR part 105

Current 46 CFR §	Proposed new §
105.01-1	105-1
105.01-3	105-3
105.01-5	Transfer substance to proposed § 105-1 and remove to help simplify part 105 structure.
105.05-1	105-1, 105-11
105.05-2	105-11
105.05-3	Transfer substance to proposed § 105-5 and remove to help simplify part 105 structure.
105.05-5	Section 105.05-5 specifies in positive terms how petroleum products must be stored on vessels. This may be unduly restrictive. Therefore, we propose replacing it with § 105-11, which instead would specify only those types of storage that are prohibited.
105.05-10	Transfer substance to proposed §§ 105-1 and 105-11, and remove to help simplify part 105 structure.
105.10-5	105-5
105.10-10	105-5
105.10-15	105-5
105.10-20	105-5
105.10-25	Remove definition of “commercial fishing vessel” as obsolete in light of the 1984 Act. Proposed § 105-5 includes a definition of “commercial fish-processing vessel,” the only type of vessel to which part 105 is still applicable.

105.15-1	105-10
105.15-5	105-10
105.15-10	105-10
105.15-15	105-10
105.15-20	105-10
105.20-1	105-10
105.20-3	105-12
105.20-5	105-12
105.20-10	105-12
105.20-15	105-12
105.25-1	105-12
105.25-5	105-12
105.25-7	105-12
105.25-10	105-12
105.25-15	105-12
105.25-20	105-12
105.30-1	105-13
105.30-5	105-13
105.35-1	105-14
105.35-5	105-14
105.35-10	105-14
105.35-15	105-14
105.45-1(a)(1), (a)(2)	105-10
105.45-1(b)	New specific requirements for cargo transfer operations appear in proposed § 105-15. We propose removing § 105.45-1(b) because its merchant-mariner credentialing provisions duplicates of existing requirements in 46 CFR Subchapter B (Merchant Marine Officers and Seamen).
105.45-5	105-15
105.45-10	105-15
105.45-15	105-15
105.45-20	105-15
105.90-1	105-12(i), 105-13(d)

The changes we propose within each section of part 105 and the reasons for each proposed change are listed in Table 2.

Table 2: Substantive changes proposed for 46 CFR part 105

46 CFR – Proposed § & subject	Proposed change
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105-1 Purpose and applicability	Revise to align with 1984 Act and implement 46 U.S.C. 3702(d). Part 105 would apply to section 3702(d) commercial fish processors built since 1976 and not greater than 5,000 gross tons, but would no longer apply to commercial fishing industry vessels of 500 gross tons or less.
105-3 Incorporation by reference	<p>Revise section to reference UL 19 and an updated version of ASTM 323. Existing regulations for fire hoses (46 CFR 105.35-15(c)(1)) tie regulatory compliance to UL 19 but do not officially incorporate it by reference. In order to enforce compliance with UL 19, the Coast Guard must incorporate the standard into regulation (per requirements of the Office of the Federal Register). ASTM 323 is incorporated not to impose any regulatory obligation on the public, but merely to provide a currently available industry standard that usefully defines “Reid vapor pressure” (which is a term used in the proposed revision of part 105).</p> <p>The Coast Guard specifically requests public comment on these proposed incorporations and on whether other standards should be incorporated in place of or in addition to UL 19 and ASTM 323.</p>
105-5 Definitions	Add definitions for “bulk,” “cargo,” “certificate of compliance,” “commercial fish-processing vessel,” “dispensing,” “dispensing tank,” “examination,” “fuel tank,” “limited quantities,” and “new vessel,” all of which are terms used in the proposed part 105 revision. These definitions are derived either from existing Coast Guard regulations or from our Marine Safety Manual (MSM). The definition of “limited quantities” uses a “20% of deadweight tonnage” standard; this represents no change from the current standard for CFVs and other “miscellaneous vessels,” as stated in MSM volume II, chapter 2. The definition of “new vessel” reflects the impact of the 1974 act, which added the fish processing vessel provision, and the 1984 act, which removed the salmon/crab fishery and geographical limitations.
105-10 Vessel examinations	Replace the term “vessel inspections” with “vessel examinations.” In the context of part 105, the former term was never proper. Examinations, not inspections, are and have always been the customary Coast Guard enforcement mechanism for CFVs.
105-11 Prohibitions	The only substantive change is to replace § 105.05-5’s

	positive specifications as to how petroleum products must be stored on vessels with a specification of what storage arrangements are prohibited. Positive statement of what <i>is</i> allowed may be unduly restrictive, because it leaves no regulatory room for the future evolution of safe storage arrangements. Therefore, our proposed rule's focus is on prohibiting existing arrangements that we know to be unsafe.
105-12 Cargo tank and pumping system requirements	The proposed requirements are substantially similar to those now contained in subparts 105.20, 105.25, and 105.90 (requirements for plans and sketches would be transferred to new § 105-10), but they are presented in a shorter format that in some cases eliminates or simplifies details found in those subparts.
105-13 Electrical fittings and fixtures	The proposed requirements are substantively identical to those now contained in subparts 105.30 and 105.90, but they are presented in a shorter format that in some cases eliminates or simplifies details found in those subparts.
105-14 Fire extinguishing equipment	The proposed requirements are substantially similar to those now contained in subpart 105.35, but they are presented in a shorter format that in some cases eliminates or simplifies details found in those subparts.
105-15 Cargo transfer operations	The proposed requirements are substantially similar to those now contained in subpart 105.45, but they are presented in a shorter format that in some cases eliminates or simplifies details found in those subparts, and they eliminate documentation requirements that appear elsewhere in the proposed revised part or that duplicate provisions of 46 CFR Subchapter B (Merchant Marine Officers and Seamen).

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in proposed 46 CFR 105-3. See ADDRESSES for information on viewing this material. Copies of the material are available from the sources listed in proposed 46 CFR 105-3. Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

This NPRM proposes incorporating two standards: UL 19 and an updated version of ASTM 323. The Coast Guard specifically requests public comment on these proposed incorporations and on whether other standards should be incorporated in place of or in addition to UL 19 and ASTM 323.

VII. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes and E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866, Regulatory Planning and Review and 13563, Improving Regulation and Regulatory Review direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety effects, distributive impacts, and equity benefits). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has not been designated a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, the proposed rule has not been reviewed by the Office of Management and Budget (OMB).

The Coast Guard does not expect this proposed rule to result in any economic impact on industry. The proposed revisions would reflect 1984 statutory changes, simplify regulatory text, and clarify existing language in order to harmonize the existing regulations with current industry practices. We estimate that 14 commercial

fish processing vessels would be affected by this proposed rulemaking and we obtained this number by using the Coast Guard's Marine Information Safety and Law Enforcement System (MISLE) database. Additionally, Coast Guard subject matter experts working in the Office of Commercial Vessel Compliance (CVC – 3), have independently verified and confirmed the total affected population to be 14 vessels. Our analysis of this population shows that all the commercial fish processing vessels affected by this proposed rule are fitted with storage tanks that allow them to transport liquid cargoes in bulk.

It is the intent of this proposed rule to clarify and update existing CFR language to align with current industry practices. The updates in this proposed rulemaking do not require changes to industry practices because these updates simply reflect current industry practices; therefore, this proposed rule does not incur any cost on the affected population. Table 2 (earlier in this preamble) lists the proposed changes and we summarize the proposed changes and the economic impact of this proposed rule in the following paragraphs:

105-1 Purpose and applicability

This provision has been revised to align with the 1984 Act and to implement 46 U.S.C. 3702(d). Part 105 would apply to section 3702(d) regarding commercial fish processing vessels not greater than 5,000 gross tons and built after 1976. The Coast Guard and industry have been operating in accordance with the 1984 Act and 46 U.S.C. Additionally, the 1984 Act removed the geographical limitations which were restricted to the States of Washington, Alaska, and Oregon and this provision is

updating current CFR language to reflect these statutory changes. We do not expect this provision to change industry operations and believe it should have no economic impact on industry.

105-3 Incorporation by reference

We are revising this section to reference UL 19 and the updated version of ASTM 323. The revised section would comply with current Office of Federal Register requirements and this update would link existing regulatory compliance standards for fire hoses (46 CFR 105.35-15 (c) (1)) to UL 19. We have incorporated ASTM 323 simply to reference the current industry standards that define “Reid Vapor Pressure”. The language in this provision would not cause any economic impact.

105-5 Definitions

The proposed rule updates the definitions that are required to identify the population of commercial fish processing vessels transporting and dispensing limited quantities of flammable or combustible liquid cargo in bulk. This provision would not cause any economic burden to industry because it is simply clarifying, not changing, the criteria that are applicable to the affected population.

105-10 Vessel examinations

The change in language from “vessel inspection” to “vessel examination” is a technical change that is consistent with the Coast Guard’s terminology related to commercial fishing vessels. The term inspection is typically used to describe Coast

Guard activities related to vessels that require a Certificate of Inspection (COI). Similar activities on vessels not required to hold a COI, such as commercial fishing vessels, are typically referred to as examinations. The change is solely to provide consistency and would not produce any economic burden on industry.

105-11 Prohibition

There is one substantive change to this section, which is to replace § 105.5's specifications on how petroleum products must be stored on vessels with a specification of what storage arrangements are prohibited. Positive statements of what storage arrangements are allowed may be unduly restrictive, because these statements leave no room for the future evolution of safe storage arrangements. This provision would not cause an economic burden on industry since the provision is simply stating the Coast Guard's authority to review and address any safety concerns with the storage and transportation of petroleum products.

105-12 Cargo tanks and pumping system requirement

This provision would consolidate the requirements for plans and drawings which are now found in subparts 105.20, 105.25, and 105.90, in the new §105-10. These editorial changes will shorten the current format by simplifying details found within subparts 105.20, 105.25, and 105.90. These editorial changes would not cause an economic burden on the affected population.

105-13 Electrical fitting and fixtures

This provision is an editorial change that consolidates and simplifies existing subparts 105.30 and 105.90 to reflect the statutory changes by shorting the format and by simplifying specific details found within these subparts. The change proposed in this provision would not cause any economic burden on the affected population.

105-14 Fire extinguishing equipment

The proposed provision will shorten the format and simplify details found in subpart 105.35. This provision would not cause an economic burden on the affected population since the changes proposed in this provision are editorial.

105-15 Cargo transfer operations

The proposed changes in this subpart will shorten the format and simplify language of existing part 105.45. This provision will also eliminate documentation requirements that appear elsewhere in the subpart. These requirements are duplicates of the provisions found in 46 CFR subchapter B (Merchant Marine officers and Seaman). This provision does not cause an economic burden on the affected population since the changes proposed in this provision are editorial in nature.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether this proposed 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. This regulation does not impose any economic impact. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, contact the Coast Guard (see “FOR FURTHER INFORMATION CONTACT”). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

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

E. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements as described in Executive Order 13132. Our analysis is explained below.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard, including categories for inspected vessels. 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 proposed rule would amend the applicability of existing regulations in order to align with the statutory authority granted, through delegation, to the Coast Guard under 46 U.S.C. 3306, and further outlined under 46 U.S.C. 3702, to promulgate regulations for commercial fish-processing vessels when carrying flammable or combustible liquid cargoes in bulk. This authority was specifically defined by Congress and, hence, States and local governments do not have the

authority to determine the applicability of Coast Guard-issued regulations for commercial fish-processing vessels, nor do they have the authority to promulgate regulations within the category of commercial fish-processing vessels carrying flammable or combustible liquid cargoes in bulk. Therefore, the proposed rule would be consistent with the principles of federalism and preemption requirements in E.O. 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, E.O. 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule would have implications for federalism under E.O. 13132, please contact the person listed in the FOR FURTHER INFORMATION section of this preamble.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

This proposed 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.

I. Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under E.O. 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 E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule uses the following voluntary consensus standards: ASTM D 323-94 and UL 19. The proposed sections that reference these standards and the locations where these standards are available are listed in 46 CFR 105-3.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370f, and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. This

proposed rule is likely to be categorically excluded under section 2.B.2, figure 2-1, paragraph (34) (d) and (e) of the Instruction and 6(a) of Coast Guard Procedures for Categorical Exclusions published July 23, 2002 (67 FR 48243). This proposed rule involves regulations concerning vessel operation safety standards; regulations concerning equipment approval and carriage requirements; and regulations concerning the examination of and equipping of vessels. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 46 CFR Part 105

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to revise 46 CFR part 105 to read as follows:

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

Sec.

- 105-1 Purpose and applicability.
- 105-3 Incorporation by reference.
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Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703, 4502; Department of Homeland Security Delegation No. 0170.1, para. II (73), (93)(a) and (b).

§ 105-1 Purpose and applicability.

This part implements 46 U.S.C. 3702(d) and applies to each vessel of not more than 5,000 gross tons, the primary use of which is as a commercial fish-processing vessel, and that incidental to its primary use, carries and dispenses limited quantities of flammable or combustible liquid cargo in bulk. Certain provisions in 46 CFR 105-12 apply only to vessels the construction of which was contracted for before May 31, 1976.

§ 105-3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection 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.h](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html)

[tml](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Also, it is available for inspection at Coast Guard Headquarters. Contact Commandant (CG-CVC), Attn: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE. Washington, DC 20593-7501; telephone 202-372-1244. The material is also available from the sources listed in paragraphs (b) and (c) of this section.

(b) ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, telephone: 610-832-9500, fax: 610-832-9555, <http://www.astm.org>.

(1) ASTM D 323-08, “Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method),” incorporation by reference approved for § 105-5.

(2) [Reserved]

(c) UL (formerly Underwriters Laboratories, Inc.), 12 Laboratory Drive, Research Triangle Park, NC 27709–3995, 919-549-1400, <http://www.ul.com>.

(1) UL 19, “Standard for Safety- Lined Fire Hose and Hose Assemblies,” incorporation by reference approved for § 105-14.

(2) [Reserved]

§ 105-5 Definitions.

As used in this part, the italicized terms have the meanings indicated in this section.

Approved means approved by the Commandant, U.S. Coast Guard, unless otherwise stated.

Bulk means having a capacity of 250 barrels or more.

Cargo means any combustible liquid or flammable liquid that is transported and off-loaded at a destination by a commercial fish-processing vessel. It does not include combustible or flammable liquid carried in temporary tanks or permanently installed tanks for use only by machinery and boats carried aboard the vessel, or for use only by vessels that are directly supporting the vessel’s primary operations.

Certificate of compliance means the document issued and displayed in accordance with 46 CFR 105-10.

Combustible liquid means any liquid having a flashpoint above 80 °F (as determined from an open cup tester, as used for testing of burning oils). A *Grade D* combustible liquid is one having a flashpoint above 80 °F and below 150 °F. A *Grade E* combustible liquid is one having a flashpoint of 150 °F or above.

Commercial fish-processing vessel means a self-propelled manned vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

Dispensing means the loading or unloading of limited quantities of flammable or combustible liquids in bulk.

Dispensing tank means any tank from which a limited quantity of a flammable or combustible liquid, in bulk, that is not used to supply fuel for vessel propulsion or auxiliary machinery is off-loaded by means of pumping, gravitation, or displacement.

Examination means a careful and critical assessment of the vessel and its appurtenances carried out by an authorized examiner or an organization designated by the Commandant, U.S. Coast Guard. This includes, where necessary, a visual assessment of the vessel's hull, structures, electrical systems, and machinery, supplemented by other means such as measurement and/or nondestructive testing.

Flammable liquid means any liquid that gives off flammable vapors (as determined by flashpoint from an open cup tester, as used for testing of burning oils) at or below 80 °F. Flammable liquids are referred to by grades as follows:

(1) *Grade A*. Any flammable liquid having a Reid vapor pressure of 14 pounds or more, as measured in accordance with ASTM D 323-08 (incorporated by reference, see § 105-3).

(2) *Grade B.* Any flammable liquid having a Reid vapor pressure of less than 14 pounds and more than 8½ pounds, as measured in accordance with ASTM D 323-08.

(3) *Grade C.* Any flammable liquid having a Reid vapor pressure of 8½ pounds or less and a flashpoint of 80 °F or below, as measured in accordance with ASTM D 323-08.

Fuel tank means a tank other than a dispensing tank used to transport flammable or combustible liquid for the purpose of supplying fuel for propulsion of the vessel to which it is attached.

Limited quantities means not more than 20 percent of a vessel's deadweight tonnage as applied to bulk liquid cargoes or carried in permanent or temporary tanks.

New vessel means a vessel whose construction is contracted for on or after May 31, 1976.

Pressure vacuum relief valve means any device or assembly of a mechanical, liquid, weight, or other type used for the automatic regulation of pressure or vacuum in enclosed places.

§ 105-10 Vessel examination.

(a) Each examination referred to in this section must be conducted by the Coast Guard, or an accepted or similarly qualified organization designated by the Commandant, to determine whether the examined vessel is in substantial compliance with this part. An examination may include any test or verification that the examiner deems necessary for determining the vessel's safety and seaworthiness.

(1) The owner or operator of each vessel subject to this part must apply, using Form CG-3752, available at http://www.uscg.mil/forms/cg/cg_3752.pdf, to the cognizant Officer in Charge, Marine Inspection, for the vessel to be examined in accordance with paragraph (b) of this section. In applying for a vessel's initial examination under this section, the application must be accompanied by a plan or sketch of each cargo tank and piping system for filling and dispensing bulk flammable or combustible cargoes, and a brief description of those systems, including their dimensions and materials used. If cargo tanks will be located in enclosed compartments or below decks, the plans or sketches must show the proposed ventilation system. Plans or sketches need not be submitted if the cargo tanks and piping systems have previously been accepted by the Coast Guard.

(2) Each vessel must be examined before its first use in loading, transporting, or dispensing combustible or flammable liquids in bulk, and at least annually thereafter if the vessel carries such liquids in temporarily installed cargo tanks or containers, or at least biennially thereafter if the vessel carries such liquids in permanently installed cargo tanks.

(3) A vessel that is laid up, dismantled, or out of commission is exempt from the requirements of this section.

(b) After examining a vessel and finding it to be in substantial compliance with this part, the examiner will issue, and the vessel's owner or operator must display onboard, a certificate of compliance that describes the amounts of bulk liquid flammable or combustible cargoes that the vessel may carry, the number of crewmembers required to hold merchant mariner credentials and tankerman

endorsements in accordance with 46 U.S.C. 8304 and 46 CFR part 13, and any conditions applicable to the carriage or dispensation of those cargoes. Each certificate of compliance is valid for not more than 2 years or until suspended or revoked.

§ 105-11 Prohibitions.

Each vessel to which this part applies is prohibited from transporting Grade A flammable liquids in bulk, or carrying bulk flammable or combustible liquids in portable or temporarily installed dispensing tanks or containers that are either below deck or in closed compartments on or above deck.

§ 105-12 Cargo tank and pumping system requirements.

(a) Cargo tanks for the carriage of bulk flammable or combustible liquids must be constructed of iron, steel, copper, nickel alloy, copper alloy, or aluminum. Tanks must be designed to withstand the maximum head to which they may be subjected, and tanks of more than 150 gallons capacity must have at least the thickness indicated in Table 105-12.

Table 105-12. Tank thickness.

Material	ASTM specification (latest edition)	Thickness in inches and gauge number^{2 3}
Nickel copper	B127, hot rolled sheet or plate	0.107 (USSG 12).
Copper nickel ¹	B122, Alloy No. 5	0.128 (AWG 8).
Copper ¹	B152, Type ETP	0.182 (AWG 5).
Copper silicon ¹	B97, Alloys A, B, and C	0.144 (AWG 7).
Steel or iron		0.179 (MSG 7).
Aluminum ⁴	B209, Alloy	5086 0.250 (USSG 3). ⁵
¹ Tanks fabricated with these materials must not be utilized for the carriage of diesel oil.		
² The gauge numbers used in this table may be found in many standard engineering		

reference books. The letters “USSG” stand for “U.S. Standard Gauge” which was established by the act of March 3, 1892 (15 U.S.C. 206) for sheet and plate iron and steel. The letters “AWG” stand for “American Wire Gauge” (or Brown and Sharpe Gauge) for nonferrous sheet thicknesses. The letters “MSG” stand for “Manufacturers' Standard Gauge” for sheet steel thicknesses.

³Tanks more than 400 gallons must be designed with a factor of safety of four on the ultimate strength of the tank material used with a design head of not less than 4 feet of liquid above the top of the tank.

⁴Anodic to most common metals. Avoid dissimilar-metal contact with tank body unless galvanically compatible.

⁵And other alloys acceptable to the Commandant.

(1) All tank joints, connections, and fittings must be welded or brazed, and tanks may not have flanged-up top edges.

(2) A tank exceeding 30 inches in any horizontal dimension must be fitted with vertical baffle plates of the same material as the tank, unless the tank has a greater thickness than minimum requirements and is reinforced with stiffeners. Limber holes at the bottom and air holes at the top of all baffles must be provided.

(3) An opening fitted with a threaded pipe plug may be used on the bottom of the tank for cleaning purposes.

(b) *Supports.* Tanks must be adequately supported and braced to prevent movement. Supports and braces must be insulated from contact with the tank surface using a nonabrasive and nonabsorbent material.

(c) *Fittings.* (1) Filling lines must be at least 1½ inches standard pipe size and extend to within 1½ –inch pipe diameters of the bottom of the tank.

(2) Suction lines from diesel oil tanks may be taken from the bottom provided a shutoff valve is installed at the tank. Tanks for Grades B and C liquids must have top suctions only.

(3) Vent lines must be at least equal in size to the filling lines.

(4) When a cargo tank contains Grades B or C liquids, the vent lines must be terminated with an approved pressure vacuum relief valve not less than 3 feet above the weather deck. When a cargo tank contains Grades D or E liquids, the vent line may be terminated with a gooseneck fitted with a flame screen at a reasonable height above the weather deck.

(d) *Hydrostatic tests.* Tanks vented to the atmosphere must be hydrostatically tested to a pressure of 5 pounds per square inch or $1\frac{1}{2}$ times the maximum head to which they may be subjected in service. A standpipe of $11\frac{1}{2}$ feet in length attached to the tanks may be filled with water to accomplish the 5 pounds per square inch test.

(e) *Piping systems.* (1) Piping must be copper, nickel copper, or copper nickel, with a minimum wall thickness of 0.035 inches; except that seamless steel piping or tubing providing equivalent safety may be used for diesel cargo systems.

(2) Valves must be of a suitable nonferrous metallic Union Bonnet type with ground seats, except that steel or nodular iron may be used in cargo systems that use steel pipe or tubing.

(3) Aluminum or aluminum alloy valves and fittings may not be used in cargo lines.

(f) *Pumps.* (1) Pumps for cargo dispensing must be of a type satisfactory for the purpose.

(2) A relief valve must be provided on the discharge side of the pump if the pressure under shutoff conditions exceeds 60 pounds. When a relief valve is installed, it must discharge back to the suction of the pump.

(3) Where electric motors are installed with dispensing pumps, they must be explosion-proof and so labeled by UL or another recognized laboratory, as suitable for Class I, Group D atmospheres.

(g) *Grounding.* (1) All tanks and associated lines must be electrically grounded to the vessel's common ground.

(2) A grounded type hose and nozzle must be used for dispensing fuels.

(h) *Cargo tanks installed below decks – additional requirements.* (1) Compartments or areas containing tanks or pumping systems must be closed off from the remainder of the vessel by gastight bulkheads. Such gastight bulkheads may be pierced for a drive shaft and pump engine control rods if the openings are fitted with stuffing boxes or other acceptable gland arrangements.

(2) Each compartment must be provided with a mechanical exhaust system capable of ventilating the compartment with a complete change of air every 3 minutes. The intake duct or ducts must be of a sufficient size to permit the required air change. The exhaust duct or ducts must be located so as to remove vapors from the lower portion of the space or bilges.

(3) The ventilation outlets must terminate more than 10 feet from any opening to the interior of the vessel that normally contains sources of vapor ignition. The ventilation fan must be explosion-proof and unable to act as a source of ignition.

(4) Cargo pumps must not be installed in the cargo tank compartment unless the drive system is outside the compartment. Suction pipelines from cargo tanks must be run directly to the pump, but not through working or crew spaces of the vessel.

(5) Tanks must be located so as to provide at least 15 inches of space around the tank, including top and bottom, to permit external examination.

(6) Shutoff valves must be provided in the suction lines as close to the tanks as possible. Valves must be installed so as to shut off against the flow. Remote control of the shutoff valve must be provided where the examiner deems necessary.

(i) *Exemption for older vessels.* Tanks, containers, and associated piping systems in use prior to December 1, 1969, on a vessel whose construction was contracted for a date before May 31, 1976, are exempt from the requirements of this section provided they are maintained in a condition that the Officer in Charge, Marine Inspection, finds satisfactory, and provided that major repairs or replacement of exempted equipment and systems is in accordance with this part.

§ 105-13 Electrical fittings and fixtures.

(a) In compartments or areas containing tanks or pumps handling petroleum products other than Grade E products, no electrical fittings, fixtures, or equipment may

be installed or used unless approved for a Class I, Group D hazardous location and labeled as such by UL or another recognized laboratory.

(b) All electrical equipment, fixtures, and fittings located within 10 feet of a vent outlet or a dispensing outlet must be explosion-proof and labeled as such by UL or another recognized laboratory, as suitable for Class I, Group D atmospheres.

(c) All electrical equipment must be grounded to the vessel's common ground.

(d) Tanks, containers, and associated piping systems in use prior to December 1, 1969, on a vessel whose construction was contracted for a date before May 31, 1976, are exempt from the requirements of this section provided they are maintained in a condition that the Officer in Charge, Marine Inspection, finds satisfactory, and provided that major repairs or replacement of exempted equipment and systems is in accordance with this part.

§ 105-14 Fire extinguishing equipment.

(a) Each vessel must carry at least two B-II dry chemical or foam portable fire extinguishers that comply with 46 CFR 28.160 and bear the UL marine type label, and must be located at or near each dispensing area. This equipment must be examined prior to issuing a letter of compliance.

(b) Each vessel must be provided with a hand-operated portable fire pump having a capacity of at least 5 gallons per minute and equipped with a suction and discharge hose suitable for use in firefighting. The pump may also serve as a bilge pump.

(c) A self-priming power-driven fire pump must be installed on each vessel of more than 65 feet in length overall. The pump must be able to discharge an effective stream from a hose connected to the highest outlet, must be fitted with a pressure gauge, and must have a minimum capacity of 50 gallons per minute at a pressure of not less than 60 pounds per square inch at the pump outlet. The pump must be self-priming and connected to the fire main and may be driven off a propulsion engine or other source of power. The pump may also be connected to the bilge system so that it can serve as either a fire pump or a bilge pump.

(d) Each vessel that must have a power-driven fire pump must also have a fire main system that includes a fire main, hydrants, hoses, and nozzles.

(1) Fire hydrants must be of sufficient number and located such that any part of the vessel may be reached with an effective stream of water from a single length of hose.

(2) All piping, valves, and fittings must be in accordance with good marine practice and suitable for the purpose intended.

(3) One length of the fire hose must be attached to each fire hydrant at all times. The fire hose may be a commercial fire hose or equivalent of not more than a 1½-inch diameter, or a garden hose of not less than a 5⁄8-inch nominal inside diameter. The hose must be in one piece, not less than 25 feet, and not more than 50 feet in length. If a 1½-inch diameter fire hose is used after January 1, 1980, each length of hose must be lined as a commercial fire hose that conforms to UL 19 (incorporated by reference; see 46 CFR 105-3). A hose that bears a UL label as a lined fire hose is

accepted as conforming to this requirement. The hose must have a combination nozzle approved by the Commandant in accordance with 46 CFR 162.027-6. If a garden hose is used, it must be of a good commercial grade constructed of an inner rubber tube, plies of braided cotton reinforcement, and an outer rubber cover, or of equivalent material, and must be fitted with a commercial garden hose nozzle of good-grade bronze or equivalent metal. All fittings on fire hoses must be of brass, copper, or other suitable corrosion-resistant metal.

§105-15 Cargo transfer operations.

During a transfer operation involving bulk liquid flammable or combustible cargoes—

- (a) The operation must comply with any conditions listed in the vessel's certificate of compliance;
- (b) The person in charge of the operation must ensure that—
 - (1) Any galley fire is safely maintained during the operation or immediately extinguished if it cannot be so maintained; and
 - (2) No smoking takes place in the vicinity of the operation.
- (c) A red flag by day or a red electric lantern at night, visible on all sides, must be used to signal a dockside transfer operation. For non-dockside transfer operations, a red flag must be used to signal the operation; and

(d) During a dockside transfer operation, a placard must be displayed to warn persons approaching the gangway. The placard must use letters at least 2 inches high, bear the heading “Warning,” and prohibit open lights, smoking, or visitors.

Dated: August 8, 2014

J.C. BURTON
Captain, U. S. Coast Guard
Director of Prevention and Compliance

[FR Doc. 2014-19142 Filed 08/19/2014 at 8:45 am; Publication Date: 08/20/2014]