

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Parts 154 and 156**

[CGD 93-056]

RIN 2115-AE59

**Facilities Transferring Oil or Hazardous Materials in Bulk**

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is revising the regulations covering facilities transferring oil or hazardous materials in bulk. These revisions are intended to update and clarify the current regulations. The revisions should result in regulations that are more effective in providing a high level of safety and environmental protection.

**DATES:** This rule is effective on February 5, 1997. The Director of the Federal Register approves as of February 5, 1997 the incorporation by reference of certain publications listed in the regulations.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander, John W. Farthing, Office of Compliance, (202) 267-0505.

**SUPPLEMENTARY INFORMATION:**

## Regulatory History

On February 23, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Facilities Transferring Oil or Hazardous Materials in Bulk" in the Federal Register (60 FR 10044). The Coast Guard received 28 letters commenting on the proposal. One public meeting was requested; however, due to budgetary constraints and limitations imposed by organizational changes, none was held.

## Background and Purpose

Until 1990, the regulations covering the transfer of products between vessels and facilities capable of transferring oil or hazardous materials in bulk to or from a vessel with a capacity of 250 barrels or more were contained in two different parts of the Code of Federal Regulations (CFR). Facilities transferring oil in bulk were covered by 33 CFR part

154, while those transferring hazardous materials in bulk were covered by 33 CFR part 126 (Handling of Explosives or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities). The Coast Guard consolidated and revised the provisions in part 154 (Facilities Transferring Oil or Hazardous Materials in Bulk) in a final rule published on September 4, 1990 (55 FR 6252). Since that time, numerous comments have been received from industry and Coast Guard personnel about problems arising from implementation of part 154. The NPRM addressed proposed changes to alleviate these problems.

These regulations have also been reviewed under the Coastal Zone Management Act of 1972 (CZMA), (16 U.S.C. 1451 *et seq.*), as amended, and its implementing regulations, 15 CFR Parts 921, 923, 925, 927, 928, 932 and 933 as promulgated by the National Oceanic and Atmospheric Administration (NOAA). Among other things, the CZMA requires that an applicant for a Federal license or permit to conduct any activity "affecting any land or water use or natural resource of the coastal zone" must provide to the licensing or permitting agency a certification that the proposed activity will comply with the approved Coastal Zone Management Program of any affected State (16 U.S.C. 1456(c)(3)). The CZMA Federal consistency requirements further provide that no Federal license or permit may be granted until the affected State(s) have concurred with the applicant's certification, such concurrence is presumed, or the Secretary of Commerce has found that the activity either is consistent with the CZMA or in the interest of national security (16 U.S.C. 1456(c)(3)(A)).

However, 16 U.S.C. 1456(f) exempts from Federal consistency determinations any requirement imposed by or established pursuant to the Federal Water Pollution Control Act (FWPCA), as amended (33 U.S.C. 1251 *et seq.*).

Similarly, 16 U.S.C. 1456(e)(1) provides that the CZMA does not diminish Federal or state jurisdiction over the planning, development, or control of water resources, submerged lands, or navigable waters, among other things.

The regulations established in parts 154 and 156 of this rulemaking could appear to implicate the CZMA and its Federal consistency requirement because they require Coast Guard approval for bulk transfers of oil or hazardous materials between facility's and vessels, for approval of a facility's Operations Manual, and for any

alternative procedure or equipment used to comply with these regulations. These activities appear to be the type that may affect land or water use or a natural resource of a coastal zone.

These requirements are intended to protect the coastal environment. The Coast Guard does not anticipate any conflict between these regulations and a State's coastal zone management plan. However, because these regulations are issued under the authority of the FWPCA, as amended by the Water Quality Act of 1987 (Pub. L. 100-4, 101 Stat. 75) and the Oil Pollution Act of 1990 (Pub. L. 101-380, 104 Stat. 507 *et seq.*), the Coast Guard finds they are exempt from CZMA consistency requirements under 16 U.S.C. 1456(f).

The FWPCA requires the issuance of regulations to prevent the discharge of oil or hazardous materials from vessels and facilities, to require installation and inspection of discharge removal equipment on vessels, and to require monitoring, reporting, and recordkeeping regarding discharges of oil or hazardous materials by facilities (33 U.S.C. 1321(j)(1) (C) and (D), (j)(6) and (m)(2)).

The Coast Guard notes that the existing part 154 and 156 regulations also cite the Ports and Waterways Safety Act (33 U.S.C. 1231) regarding ports and waterways regulations and 46 U.S.C. 3715 regarding lightering; however, those provisions do not address the core purpose of this rulemaking, which is to regulate bulk oil and hazardous materials transfers between facilities and vessels. In contrast, the regulations being implemented today are promulgated under the mandate of the FWPCA and are consequently exempt from the CZMA's Federal consistency requirements (16 U.S.C. 1456(f)).

## Discussion of Comments and Changes

The Coast Guard received 28 letters commenting on the NPRM entitled "Facilities Transferring Oil or Hazardous Materials in Bulk" published in the Federal Register on February 23, 1995 (60 FR 10044), and has considered the comments in developing this final rule.

## Weights and Measures

Coast Guard regulatory practice is that primary weights and measures be specified in metric units. Therefore, this rule specifies all weights and measures in metric units followed by English equivalents. The conversion of weights and measures ensure that equipment or procedures complying with the English values in the NPRM will also comply with the metric values in this rule.

Therefore, the conversions should have no impact on compliance with this rule.

#### *Applicability*

Four comments addressed the proposed changes to § 154.100. Two of these comments requested that the wording of this section be clarified to state that these regulations do not apply to offshore facilities regulated under the Department of Interior's (DOI's) Minerals Management Service (MMS) regulations in 33 CFR 250. Under Executive Order 12777, jurisdictional responsibility for offshore facilities was delegated to MMS. On February 3, 1994, under the Memorandum of Understanding (MOU) between DOI, the Environmental Protection Agency (EPA) and the Department of Transportation (DOT), spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities were assigned to the DOI. Section 154.100 has been revised to clarify that this part does not apply to offshore facilities operating under the jurisdiction of the Secretary of the DOI.

A new paragraph is added to the applicability section which specifies all of the requirements that are applicable to mobile transfer facilities.

#### *Definitions*

The definitions of "caretaker status", "marine transfer area", and "onshore facility" have been added, and the definitions of "facility", "offshore facility" and "transfer" have been revised.

The Coast Guard is adding a definition of "caretaker status" to these regulations. "Caretaker status" is used to identify a facility whose marine transfer equipment has been taken out of service. Two comments discussed the proposed definition of "caretaker status" in the NPRM. One of these comments stated that existing state requirements for decommissioning criteria obviate the need for a new Federal definition. One of these comments stated that the Coast Guard should further justify the need to define the term "caretaker status". The Coast Guard does not agree with these comments. The revised regulations contain numerous references to facilities that are in a "caretaker status". Without clear definition of this term, it would be difficult for industry to comply with Coast Guard regulations. The proposed definition has been clarified to state that it only applies to those parts of a waterfront facility subject to Coast Guard jurisdiction.

The Coast Guard is also adding a definition for "marine transfer area" to these regulations. This term is used

several times in the existing and revised regulations but has not been previously defined. The new definition is similar to the one found in other Coast Guard waterfront facility regulations and is intended to delineate those areas of a waterfront facility subject to Coast Guard jurisdiction.

Two comments addressed the proposed definition of "facility". One comment requested that a definition of "onshore facility" be added to the regulations. The Coast Guard agrees with this comment and is adding the definition of "onshore facility" as found in the Federal Water Pollution Control Act (FWPCA) [33 U.S.C. § 1321(a)(10)]. The definition of "facility" has also been clarified to exclude offshore facilities operating under the jurisdiction of the Secretary of the DOI. Additionally, the definition of "offshore facility" has been revised to conform with the definition in the authorizing legislation.

Eight comments addressed the proposed revision to the definition of "transfer". One comment supported the proposed definition as written. Seven comments strongly objected to the proposed definition. The majority of the dissenting comments stated that the proposed definition would create a regulatory conflict with the requirements of 33 CFR 156.150 which specifies that a transfer may not take place until the declaration of inspection and all necessary inspections have been completed by the persons in charge. One comment also requested that the definition be revised to indicate when a transfer is considered complete. After review of industry comments, the Coast Guard is revising the definition of "transfer" to state that a transfer begins when the persons in charge meet to begin the process of completing the declaration of inspection. This revised definition recognizes standard industry practices and better focuses the intent of the regulations on those actions that directly lead to the flow of products. The definition of "transfer" is also being revised to state that a transfer is considered complete when all the connections for the transfer have been uncoupled and secured, and when the persons in charge have completed the declaration of inspection to specify the date and time the transfer was completed. The rule contains an amendment that is consistent with the regulations in § 156.150.

#### *Alternatives*

Three comments discussed the proposed changes to § 154.107. These comments generally objected to the extended time frame for review of a

request for alternative procedures, methods or equipment standards, suggesting that industry could be subjected to hardship if a facility operator had to wait 60 days for the Captain of the Port (COTP) to complete the examination of a request for an alternative. After further review, the Coast Guard is retaining the 30 day time period for COTPs to review proposed alternatives.

#### *Letter of Intent*

One comment was received on the proposed changes to § 154.110 citing that it would be more appropriate to change the requirement in § 154.1035 to include the requirement for the name of the facility owner in the Facility Response Plan (FRP). The Coast Guard disagrees with this comment. The Coast Guard recognizes that including this information may be duplicative of the FRP requirements; however, FRP requirements currently only apply to facilities transferring oil and not to those facilities transferring hazardous materials. As stated in the preamble to the NPRM, this additional information will be of great assistance in determining and locating the responsible party during a spill or other emergency.

#### *Operations Manual: Contents*

Seven comments discussed the proposed changes to § 154.310. The majority of the comments stated that the proposed facility map requirement was redundant to the information required in the FRP. The Coast Guard recognizes that this requirement may be duplicative for some facilities; however, the FRP requirements currently only apply to those facilities that transfer oil, not to those facilities transferring hazardous materials. Several of these comments also objected to the requirement for a single map of the facility, drawn to scale, to be included in the Operations Manual. The majority of these comments noted that, for large facilities, a single map of this type would be impractical. The Coast Guard agrees with these comments and is revising the proposed requirement to allow multiple maps, plans, drawings, diagrams or aerial photographs that are considered acceptable by the COTP in order to comply with this requirement.

Four comments addressed the proposal that Material Safety Data Sheets (MSDS) be included in the Operations Manual rather than the information currently required by paragraph 154.310(a)(5). The majority of comments supported the use of the MSDS, but objected to the requirements that they be included in the Operations

Manual. Several comments noted that as large facilities routinely handle a high volume of products, the Operations Manual could increase in size by more than a thousand pages. The Coast Guard agrees with these comments. Noting that facilities are currently required to maintain MSDSs under subpart F of this part, and under other Federal, State or local regulations, the Coast Guard is retaining the current product information requirements in § 154.310(a)(5).

Eight comments discussed the proposal to add the names and telephone numbers of state and local officials to the list of names and addresses currently required under paragraph 154.310(a)(7). The majority of the comments stated that the inclusion of this information was redundant to the information required by the FRP. The Coast Guard recognizes this information may be duplicative for some facilities; however, the Coast Guard emphasizes the importance of this information and the necessity that it be readily available to transfer personnel. Several comments requested that the requirement be reworded to allow the title and position of the appropriate Federal, State and/or local officials' name to be listed, because of the frequency in personnel changes. The Coast Guard agrees with these comments and has revised the regulations to require that the title and/or position instead of the name be included.

Two comments discussed the proposed requirement that the maximum allowable working pressure (MAWP) be recorded in the Operations Manual. Both comments supported the inclusion of this information; therefore, the proposed language is retained. An editorial correction is also made to paragraph 154.310(a)(15) to correct the reference.

Four comments addressed the proposed extension of the response period from 14 to 45 days under paragraph 154.320(a)(1), which amends the Operations Manual after examination by the COTP. All of these comments supported the extension of the facility response time in order to better identify any inadequacies found by the COTP. The proposed language is retained. Also, an editorial correction is made to paragraph 154.320(d) to correct the reference.

#### *Operations Manual: Procedures for Examination*

The Coast Guard is revising its procedures for reviewing and approving Operations Manuals in paragraphs 154.300 and 154.325. Rather than issue a Letter of Adequacy each time an

Operations Manual is reviewed and/or amended, COTPs will now examine the manual to verify it meets the requirements of this chapter. Facility operators will now submit two copies of their Operations Manual, or any changes, to the COTP for review. If the manual, as submitted, meets the requirements of this chapter, the COTP will return one copy to the facility operator marked "Examined by the Coast Guard". This change will alleviate some of the paperwork burden on COTPs and on the industry, and conform the Operations Manual regulations in this chapter to other U.S. Coast Guard waterfront facility regulations.

#### *Hose Assemblies*

Five comments discussed the proposed changes to § 154.500. One comment supported the proposed language as written. Another comment stated that some arrangement must be made to ensure that vessels pumping ashore to the receiving facility do not exceed the facility's MAWP. The Coast Guard agrees with this comment, and an amendment that conforms to § 156.120 is being included to ensure that as part of the process of completing the declaration of inspection, the persons in charge shall ensure that the transfer pressure does not exceed the facility's MAWP. Two comments objected to the proposed change, stating that the current requirements have become industry standards and changing them would be counterproductive to the intent of the proposed rule. The Coast Guard does not agree with these comments. As stated in the NPRM, it is more reasonable for the MAWP to be based on the actual operational pressure of the transfer system, rather than a pre-specified number. When the MAWP is based on the actual operational pressure, industry can develop tests and inspection criteria based on the needs of the system, avoiding unnecessary expense by testing to a level far higher than that of their systems' operational pressure.

#### *Closure Devices*

Two comments agreed with the proposed changes to § 154.520. One of these comments requested that language be included stating that a gasket or other suitable material be installed along with a closure device. The Coast Guard agrees with this comment and has added language similar to the requirement in § 156.130 for closure devices.

#### *Small Discharge Containment*

Thirteen comments addressed the proposed changes to § 154.530. All of these comments objected to adding the proposed requirement that fixed or portable containment be placed under each hose connection during coupling, uncoupling, and transfer. The majority of the comments noted that hoses used for transfer operations are normally comprised of several lengths of hoses flanged together with permanent connections and it would be infeasible to provide containment under every connection as they are often located over water or in a vertical alignment where it is impossible to place containment. Noting that paragraph 156.120(p) requires the persons in charge to ensure that all connections in the transfer system are leak free prior to transfer and that paragraph 156.130 allows for permanently connected flanges, the Coast Guard has clarified § 154.530 to state that containment is required under each hose connection that will be coupled or uncoupled as part of the transfer operation during coupling, uncoupling and transfer.

#### *Discharge Removal*

Ten comments discussed proposed changes to § 154.540. All of these comments objected to the proposed 1 hour time requirement for removal of any discharge into the containment. These comments opposed the new requirement as too restrictive and requested that the flexibility of the existing language be retained. Noting the requirement in paragraph 156.120(n) and that the discharge containment should be periodically drained to provide the required capacity, the Coast Guard is revising the proposed language to require that any discharged product be removed from the containment within 1 hour of completion of the transfer.

The NPRM proposed to add a paragraph to § 154.545 that would specify that equipment required to be retained under this section may be used in the planning requirements of the facility response plan required by subpart F. No comments were received on this recommendation and the proposed language is retained.

#### *Communications*

Four comments discussed the proposed changes to § 154.560. Two comments agreed with the proposed changes. One comment noted that labels tend to wear off over time or become unreadable and, as an alternative, suggested that each facility should be allowed to maintain documentation on

the premises certifying that the equipment in use is intrinsically safe. The Coast Guard agrees with this comment and has revised the proposed language to allow facility operators the option of maintaining documentation at the facility, which shows that the equipment in use meets the requirements of this part. An amendment which conforms to § 154.740 is also included in the requirement to have these records available for inspection by the COTP.

#### *Persons in Charge: Designation and Qualification*

Fifteen comments discussed the proposed changes to § 154.710. Some confusion resulted from a misprint in the NPRM that listed § 154.720(a)(23) as a reference. The correct reference should have read § 154.310(a)(21), which requires a description of the training program for persons in charge to be included in the Operations Manual. The majority of the comments objected to a separate approval of the facility's training program by the COTP, as this could lead to vast disparity among the different COTPs as to what training is required. The majority of the comments also noted that by examining the Operations Manual, the COTP is already examining the training program since it is described there in accordance with § 154.310(a)(21). The Coast Guard agrees with these comments and is removing the requirement for the COTP to separately approve the facility's training program.

Seven comments addressed the proposal that the person in charge (PIC) should be in visual sight of the transfer system from the time a hose connection is completed, until the time the connection is broken. All of these comments objected to this requirement as unreasonable and impractical. Several of these comments also noted the requirements in paragraphs 156.160 (a) and (c) where each PIC must directly supervise certain critical operations and must be in the immediate vicinity, immediately available to the transfer personnel. Upon further review, the Coast Guard is removing this proposal.

The Coast Guard wishes to clarify that the requirements for designation and qualification as a PIC in this rule apply only to waterfront facility personnel. The requirements for designation and qualification as a PIC on vessels are contained in a separate rulemaking entitled "Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases" (61 FR 17134; April 4, 1995).

New paragraph (e) is being added to § 154.710 to state that training to meet

other regulatory requirements can be used to meet the requirements of this section as long as that training addresses the requirements of this section.

#### *Safety Requirements*

Twelve comments discussed the proposed changes to § 154.735. Two of these comments supported the continuation of the hot work permit program. Several comments supported doing away with the hot work permit, but objected to the responsibility for the safety of all hot work on vessels moored to the facility being placed on the facility's owner and operator. These comments noted the difficulty a facility would have in providing oversight and subsequent liability concerns. The Coast Guard agrees with these comments and has removed the language concerning hot work on vessels, noting that hot work on tankships and tank barges is already regulated under 46 CFR 35.01-1.

Three comments addressed the proposed changes to § 154.735(s) providing that tank cleaning or gas freeing operations conducted by the facility on vessels carrying oil residues or mixtures be conducted in accordance with specified sections of the International Safety Guide for Oil Tankers and Terminals (ISGOTT). The provision to allow facility owners or operators to request the COTP to approve, in accordance with § 154.107, alternative methods of compliance based on sound industry practices satisfied these comments. One comment stated that the ISGOTT manual was being revised in the near future and that the referenced sections would have to be updated. The Coast Guard has reviewed the new version of the ISGOTT manual and revised this section accordingly.

Seven comments addressed the proposed security requirements for waterfront facilities. All of these comments objected to the proposed requirements. These comments outlined the existing procedures currently used by facilities for controlling access to marine transfer areas such as fencing, gates, and video surveillance. The revised rule has been reworded in a manner similar to the existing text to allow facilities more flexibility in their security arrangements based on existing procedures and local conditions. The proposed requirement that personnel have facility-issued identification cards has been removed.

No comments were received on the proposal to prohibit smoking at waterfront facilities except in designated areas; therefore, the proposed language is retained.

Five comments discussed the proposal to require that three-way warning signs, similar to those required under 33 CFR 126.15(o)(2)(i), be displayed on the facility at the point of transfer, without obstruction, at all times, on a fixed facility, and during coupling, transfer operations, and uncoupling on a mobile facility. Two of these comments supported the proposal as written. One comment requested that, since the requirements for tank vessels and tank barges already cover the requirements for warning signs at the point of transfer, the location of the warning signs should be at each shoreside entrance to the dock or berth for fixed facilities. The Coast Guard agrees with this comment and has revised the final rule accordingly. One of these comments requested that facilities with non-exclusive use of dock space be allowed to use portable signs posted only during transfer operations. While the Coast Guard agrees with this comment, it believes this method does not need to be a regulatory requirement, but rather an alternative that the COTP can approve on a case by case basis.

#### *Records*

Seven comments discussed the proposed changes to § 154.740. The majority of these comments supported the maintaining of records in a central location. However, all of the comments objected to the requirement that these records be maintained in the same location as the Operations Manual. The majority of these comments noted that, particularly at large facilities, there are multiple copies of the Operations Manual scattered throughout the facility; however, requiring these records at each location would create a heavy paperwork burden on the industry. The majority of these comments requested that the facility be allowed to designate a centralized location for these records, since many of them are already computerized. The Coast Guard agrees with these comments and has revised the final rule to allow facilities flexibility in designating a centralized location where the records will be kept.

Conforming changes to certain sections of 33 CFR part 156 have been made to ensure consistency with the changes made to part 154.

#### *Requirements for Transfer*

In 33 CFR 156.120 the definition of "transfer" has been revised to conform to the definition in § 154.105. As previously discussed, other amendments have been revised to conform to § 156.120(w)(5) to ensure that transfer pressures do not exceed a

facility's maximum allowable working pressure (MAWP). A new paragraph (dd) has been added to § 156.120 to clarify that welding, hot work and smoking will not be permitted on vessels during transfer operations. The Coast Guard recognizes that smoking on tank barges or tank vessels is currently regulated under 46 CFR 35.30-5. However, numerous problems have developed because vessel personnel have been discovered smoking during the bunkering of freight vessels which are not currently covered under the regulations. An editorial correction is made to § 156.120(f) to correct the reference.

#### *Supervision by Person in Charge*

Eight comments addressed the proposed changes to § 156.160. All of these comments objected to the proposed requirement as impractical and infeasible due to the length of time that transfers take, and the need to occasionally stop a transfer for weather, other facility operations, equipment checks, or crew rest breaks. The Coast Guard agrees with these comments and has retained the original text of the regulations.

#### *Equipment Tests and Inspections*

Five comments addressed the proposed changes to § 156.170. One comment requested that, as stated in the preamble, language in the final rule include a provision stating that the test medium does not have to be water. The Coast Guard agrees with this comment and has revised the final rule accordingly. However, facility operators are cautioned against using oil or hazardous material as a test medium. Because leaks are an expected result of any test, a discharge of oil or hazardous material resulting from a test could be considered a willful discharge. An editorial correction is made to § 156.170(c)(1)(i) to correct the reference.

One comment requested that components that have been gas-freed and blanked-off be exempted from the testing requirements. This comment stated that industry frequently takes some components out of service for extended periods of time; therefore, these components should not be required to be tested unless they are returned to service. The revisions to the proposed text allow this option as the Coast Guard has removed the word "active" from the proposed § 156.170(f)(1) so that facilities that are not in a caretaker status will be required to conduct their tests either annually, or not less than 30 days prior to the first transfer past the one year inspection

date. For example, if a facility had previously tested its components, and then had removed these components from service for the previous 15 months, this facility would be required to test the components that had been removed from service not less than 30 days prior to the first transfer using the components.

Two comments supported the proposal to give the COTP the authority to approve alternative methods of compliance to the testing requirements in this section. Therefore, the proposed language is retained.

#### *Exemptions*

Editorial corrections are being made to § 154.108 and § 156.110 to reflect the change in the office title from Chief, Office of Marine Safety, Security and Environmental Protection to the Chief, Marine Safety and Environmental Protection. This change is a result of recent Coast Guard streamlining initiatives.

#### *Incorporation by Reference*

The Director of the Federal Register has approved the material in § 154.106 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

#### *Regulatory Evaluation*

This is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 11040; February 26, 1979). A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. The Evaluation is summarized as follows:

It is estimated that 2,591 fixed and 539 mobile marine transportation related facilities will be affected by these regulations. Many of the revisions are clarifying changes that will impose no additional costs on facilities presently in compliance with the regulations. For example, information previously kept separately is now required to be kept in the same location. Since this information is not required to be included in the operations manual, no additional cost is incurred for the review by the Coast Guard or the facility.

There are some new requirements associated with this Final Rule. These requirements include the following: a map or maps, drawings, or other diagrams acceptable to the COTP showing the boundaries of the Coast Guard's jurisdiction (§ 154.310(a)(2)); additional requirements for mobile transfer facilities including sufficient fire extinguishers, protective equipment, three-way warning signs, electrical wiring and the "person in charge requirements" (§ 154.100(d)); a more extensive training and qualification program for persons in charge (§ 154.710(c)); and three-way warning signs (§ 154.735(v)).

However, other revisions lessen the burden on industry. Examples of the reduction in burden are the deletion of the requirement that transfer hoses have a maximum allowable working pressure of at least 150 psi (§ 154.500(b)) and deletion of the requirement for a facility to obtain a hot work permit (§ 154.735(1)).

In consideration of the additions and deletions to part 154 and 156, it is estimated that the annual net cost to all facilities would be \$5,448,235, when capital costs are incurred over a 5 year period.

The overriding benefit of the regulations to industry and the Coast Guard would be the establishment of rules that are easier to understand and that would facilitate and foster industry compliance, leading to a higher level of environmental protection.

The direct monetary benefit of increased protection would come from the reduction of spills resulting from facility operations. These regulations are designed to achieve an overall reduction of oil and hazardous materials spilled into the water by 20%. The weighted average of the annual volume of bulk oil and hazardous material spilled from 1986 to 1995 from facilities was 4,124,430 gallons. The estimated costs of spill cleanup, third party damages, and natural resource damages resulting from this volume total \$82,488,600. A 20% reduction will give an annual benefit of \$16,497,720.

Comparing the monetary benefits of the provisions against the compliance cost to industry, the annual benefit of the regulations is estimated to be \$11,049,485.

#### *Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and 1996 amendments (enacted as Chapter 8 of Title 5, U.S. Code) the Coast Guard must consider whether this rule, if adopted, will have a significant economic impact on a substantial number of small

entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The majority of facilities are owned by large corporations. The new requirements established by this rule, measured against the proposed relief from other requirements currently in effect, will result in a negligible cost increase for facilities that presently comply with part 154.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, as adopted, will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This rule contains new collection-of-information requirements in the following sections: § 154.310 and § 154.560. The following particulars apply:

*DOT No.:* 2115.

*OMB Control No.:* 2115-0078.

*Administration:* U.S. Coast Guard.

*Title:* Changes to regulations covering Facilities Transferring Oil or Hazardous Materials in Bulk.

*Need for Information:* It is required that information, presently kept separately, now be kept in a centralized location. However, little new information is required. Maintaining all records in one location where they are readily accessible will encourage facility owners and operators to be better prepared and thereby help to prevent spills and accidents resulting from improper procedures.

*Proposed Use of Information:* To determine regulatory compliance.

*Frequency of Response:* On occasion.

*Burden Estimate:* 22,632 hours per year.

*Respondents:* 3,130 operators of bulk oil and hazardous materials transfer facilities.

*Form(s):* Not applicable.

*Average Burden Hours per*

*Respondent:* 15.8 hours to prepare and submit an amendment to an existing Operations Manual and 88 hours to prepare and submit a new Operations Manual.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. This final rule contains information collection requirements which have been approved under OMB no. 2115-0078 and which expires on July 31, 1996. The Coast Guard has submitted the requirements to OMB for review and renewal under section 3504(h) of the Paperwork Reduction Act.

The U.S. Coast Guard will publish a notice in the Federal Register prior to the effective date of this final rule of OMB's decision to approve, modify or disapprove the information collection requirements. Individuals and organizations may submit comments on the information collection requirements by October 7, 1996, and should direct them to the Executive Secretary, Marine Safety Council (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., rm 10235, 725 17th St. NW., Washington, DC 20503, Attention: Desk Officer for DOT.

#### Federalism

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

#### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2.e(34)(A), (D), and (E) of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation.

This rulemaking will have no direct environmental impact. This rulemaking will revise the regulations covering facilities transferring oil or hazardous material in bulk. These revisions will clarify and consolidate the present rules, as well as adding a number of new operational requirements. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under "ADDRESSES".

#### List of Subjects

##### 33 CFR Part 154

Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Incorporation by reference.

##### 33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR parts 154 and 156 as follows:

#### PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

##### Subpart A—General

2. In § 154.100, paragraph (a) is revised and paragraph (d) is added to read as follows:

##### § 154.100 Applicability.

(a) This part applies to each facility that is capable of transferring oil or hazardous materials, in bulk, to or from a vessel, where the vessel has a total capacity, from a combination of all bulk products carried, of 39.75 cubic meters (250 barrels) or more. This part does not apply to the facility when it is in a caretaker status. This part does not apply to any offshore facility operating under the jurisdiction of the Secretary of the Department of Interior.

\* \* \* \* \*

(d) The following sections of this part apply to mobile facilities:

- (1) Section 154.105 Definitions.
- (2) Section 154.107 Alternatives.
- (3) Section 154.108 Exemptions.
- (4) Section 154.110 Letter of Intent.
- (5) Section 154.120 Facility examinations.
- (6) Section 154.300 Operations Manual: General.
- (7) Section 154.310 Operations Manual: Contents. Paragraphs (a)(2), (a)(3), (a)(5) through (a)(7), (a)(9), (a)(12), (a)(14), (a)(16), (a)(17)(ii) through (a)(17)(iv), (a)(18), (a)(20) through (23), (c) and (d).
- (8) Section 154.320 Operations Manual: Amendment.
- (9) Section 154.325 Operations Manual: Procedures for examination.
- (10) Section 154.500 Hose assemblies. Paragraphs (a), (b), (c), (d)(1) through (3) and (e)(1) through (3).
- (11) Section 154.520 Closure devices.
- (12) Section 154.530 Small discharge containment. Paragraphs (a)(1) through (3) and (d).
- (13) Section 154.545 Discharge containment equipment.
- (14) Section 154.550 Emergency shutdown.

(15) Section 154.560 Communications.

(16) Section 154.570 Lighting. Paragraphs (c) and (d).

(17) Section 154.700 General.

(18) Section 154.710 Persons in charge: Designation and qualification. Paragraphs (a) through (c), (d)(1) through (3), (d)(7) and (e).

(19) Section 154.730 Persons in charge: Evidence of designation.

(20) Section 154.735 Safety requirements. Paragraphs (d), (f), (g), (j)(1) through (2), (k)(1) through (2), (m), (o) through (q), (r)(1) through (3), (s) and (v).

(21) Section 154.740 Records. Paragraphs (a) through (f) and (j).

(22) Section 154.750 Compliance with Operations Manual.

3. In § 154.105, the following definitions of "Caretaker Status", "Marine Transfer Area", and "Onshore Facility" are added in alphabetical order and the definitions of "Facility", "Offshore Facility" and "Transfer" are revised to read as follows:

**§ 154.105 Definitions.**

\* \* \* \* \*

*Caretaker Status* denotes a facility where all piping, hoses, loading arms, storage tanks, and related equipment in the marine transfer area are completely free of oil or hazardous materials, where these components have been certified as being gas free, where piping, hoses, and loading arms terminating near any body of water have been blanked, and where the facility operator has notified the COTP that the facility will be in caretaker status.

\* \* \* \* \*

*Facility* means either an onshore or offshore facility, except for an offshore facility operating under the jurisdiction of the Secretary of the Department of Interior, and includes, but is not limited to, structure, equipment, and appurtenances thereto, used or capable of being used to transfer oil or hazardous materials to or from a vessel or public vessel. Also included are facilities that tank clean or strip and any floating structure that is used to support an integral part of the facility's operation. A facility includes federal, state, municipal, and private facilities.

\* \* \* \* \*

*Marine transfer area* means that part of a waterfront facility handling oil or hazardous materials in bulk between the vessel, or where the vessel moors, and the first manifold or shutoff valve on the pipeline encountered after the pipeline enters the secondary containment around the bulk storage tank required under 40 CFR 112.7 inland of the

terminal manifold or loading arm, or, in the absence of secondary containment, to the valve or manifold adjacent to the bulk storage tank, including the entire pier or wharf to which a vessel transferring oil or hazardous materials is moored.

\* \* \* \* \*

*Offshore facility* means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

\* \* \* \* \*

*Onshore facility* means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

\* \* \* \* \*

*Transfer* means any movement of oil or hazardous material to, from, or within a vessel by means of pumping, gravitation, or displacement. A transfer is considered to begin when the person in charge on the transferring vessel or facility and the person in charge on the receiving facility or vessel first meet to begin completing the declaration of inspection as required by § 156.150 of this chapter. A transfer is considered to be complete when all the connections for the transfer have been uncoupled and secured with blanks or other closure devices and both of the persons in charge have completed the declaration of inspection to include the date and time the transfer was complete.

\* \* \* \* \*

4. In § 154.106, paragraphs (a) and (b) and the entries for "National Fire Protection Association (NFPA)" and "Oil Companies International Marine Forum (OCIMF)" are revised to read as follows:

**§ 154.106 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 change in the Federal Register and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC and at the U.S. Coast Guard, Office of the Compliance (G-MOC), Room 1116, 2100 Second Street SW., Washington, DC 20593-0001, and

is available from the sources indicated in paragraph (b) of this section.

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

\* \* \* \* \*

National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269-9101

NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 1994.....154.735

\* \* \* \* \*

Oil Companies International Marine Forum (OCIMF), 96 Victoria Street, 15th Floor, London SW1E 5JW, England

International Safety Guide for Oil Tankers and Terminals, Section 6.10, Fourth Ed., 1996.....154.810

International Safety Guide for Oil Tankers and Terminals, Sections 9.1, 9.2, 9.3 and 9.5, Fourth Ed., 1996.....154.735

5. Section 154.107 is amended by revising paragraph (b) to read as follows:

**§ 154.107 Alternative.**

\* \* \* \* \*

(b) The COTP takes final approval or disapproval action on the request, submitted in accordance with paragraph (a) of this section, in writing within 30 days of receipt of the request.

6. Section 154.108 is amended by revising paragraphs (a) introductory text and (d) to read as follows:

**§ 154.108 Exemptions.**

(a) The Chief, Marine Safety and Environmental Protection, acting for the Commandant, grants an exemption or partial exemption from compliance with any requirement in this part if:

\* \* \* \* \*

(d) An exemption is granted or denied in writing. The decision of the Chief, Marine Safety and Environmental Protection is a final agency action.

7. In § 154.110, paragraph (b)(1) is revised to read as follows:

**§ 154.110 Letter of intent.**

\* \* \* \* \*

(b) \* \* \*

(1) The names, addresses, and telephone numbers of the facility operator and the facility owner;

\* \* \* \* \*

**Subpart B—Operations Manual**

8. In § 154.300, paragraphs (a) introductory text, (c), (e) and (f) are revised to read as follows (the note following paragraph (b) is unchanged):

**§ 154.300 Operations Manual: General.**

(a) The facility operator of each facility to which this part applies shall

submit, with the letter of intent, two copies of an Operations Manual that:

\* \* \* \* \*

(c) The COTP shall examine the Operations Manual when submitted, after any substantial amendment, and as otherwise required by the COTP.

\* \* \* \* \*

(e) If the manual meets the requirements of this part and part 156 of this chapter, the COTP will return one copy of the manual marked "Examined by the Coast Guard" as described in § 154.325.

(f) The facility operator shall ensure that a sufficient number of copies of the examined Operations Manual, including a sufficient number of the translations required by paragraph (a)(3) of this section, are readily available for each facility person in charge while conducting a transfer operation.

\* \* \* \* \*

9. In § 154.310, paragraphs (a)(2), (a)(7), (a)(15), (a)(16) and (a)(22) are revised and paragraph (a)(23) is added to read as follows:

**§ 154.310 Operations manual: Contents.**

(a) \* \* \*

(2) A physical description of the facility including a plan and/or plans, maps, drawings, aerial photographs or diagrams, showing the boundaries of the facility subject to Coast Guard jurisdiction, mooring areas, transfer locations, control stations, wharfs, the extent and scope of the piping subject to the tests required by § 156.170(c)(4) of this chapter, and the locations of safety equipment. For mobile facilities, a physical description of the facility;

\* \* \* \* \*

(7) The name and telephone number of the qualified individual identified under § 154.1026 of this part and the title and/or position and telephone number of the Coast Guard, State, local, and other personnel who may be called by the employees of the facility in an emergency;

\* \* \* \* \*

(15) Quantity, type, location, and instructions for use of fire extinguishing equipment required by § 154.735(d) of this part;

(16) The maximum allowable working pressure (MAWP) of each loading arm, transfer pipe system, and hose assembly required to be tested by § 156.170 of this chapter, including the maximum relief valve setting (or maximum system pressure when relief valves are not provided) for each transfer system;

\* \* \* \* \*

(22) Statements explaining that each hazardous materials transfer hose is marked with either the name of each

product which may be transferred through the hose or with letters, numbers, symbols, color codes or other system acceptable to the COTP representing all such products and the location in the Operations Manual where a chart or list of symbols utilized is located and a list of the compatible products which may be transferred through the hose can be found for consultation before each transfer; and

(23) For facilities that conduct tank cleaning or stripping operations, a description of their procedures.

\* \* \* \* \*

10. In § 154.320, paragraphs (a)(1) and (d) are revised to read as follows:

**§ 154.320 Operations manual: Amendment.**

(a) \* \* \*

(1) The COTP will notify the facility operator in writing of any inadequacies in the Operations Manual. The facility operator may submit written information, views, and arguments regarding the inadequacies identified, and proposals for amending the Manual, within 45 days from the date of the COTP notice. After considering all relevant material presented, the COTP shall notify the facility operator of any amendment required or adopted, or the COTP shall rescind the notice. The amendment becomes effective 60 days after the facility operator receives the notice, unless the facility operator petitions the Commandant to review the COTP's notice, in which case its effective date is delayed pending a decision by the Commandant. Petitions to the Commandant must be submitted in writing via the COTP who issued the requirement to amend the Operations Manual.

\* \* \* \* \*

(d) Amendments to personnel and telephone number lists required by § 154.310(a)(7) of this part do not require examination by the COTP, but the COTP must be advised of such amendments as they occur.

11. Section 154.325 is revised to read as follows:

**§ 154.325 Operations Manual: Procedures for examination.**

(a) The operator of a facility shall submit two copies of the Operations Manual to the Captain of the Port of the zone in which the facility is located.

(b) Not less than 60 days prior to any transfer operation, the operator of a new facility shall submit, with the letter of intent, two copies of the Operations Manual to the Captain of the Port of the zone in which the facility is located.

(c) After a facility is removed from caretaker status, not less than 30 days

prior to any transfer operation the operator of that facility shall submit two copies of the Operations Manual to the COTP of the zone in which the facility is located unless the manual has been previously examined and no changes have been made since the examination.

(d) If the COTP finds that the Operations Manual meets the requirements of this part and part 156 of this chapter, the COTP will return one copy of the manual to the operator marked "Examined by the Coast Guard".

(e) If the COTP finds that the Operations Manual does not meet the requirements of this part and/or part 156 of this chapter, the COTP will return the manuals with an explanation of why it does not meet the requirements of this chapter.

(f) No person may use any Operations Manual for transfer operations as required by this chapter unless the Operations Manual has been examined by the COTP.

(g) The Operations Manual is voided if the facility operator—

(1) Amends the Operations Manual without following the procedures in § 154.320 of this part;

(2) Fails to amend the Operations Manual when required by the COTP; or

(3) Notifies the COTP in writing that the facility will be placed in caretaker status.

**Subpart C—Equipment Requirements**

12. In § 154.500, paragraphs (a) and (b) are revised to read as follows:

**§ 154.500 Hose assemblies.**

\* \* \* \* \*

(a) The minimum design burst pressure for each hose assembly must be at least four times the sum of the pressure of the relief valve setting (or four times the maximum pump pressure when no relief valve is installed) plus the static head pressure of the transfer system, at the point where the hose is installed.

(b) The maximum allowable working pressure (MAWP) for each hose assembly must be more than the sum of the pressure of the relief valve setting (or the maximum pump pressure when no relief valve is installed) plus the static head pressure of the transfer system, at the point where the hose is installed.

\* \* \* \* \*

13. Section 154.520 is revised to read as follows:

**§ 154.520 Closure devices.**

(a) Except as provided in paragraph (b) of this section, each facility to which



this part applies must have enough butterfly valves, wafer-type resilient seated valves, blank flanges, or other means acceptable to the COTP to blank off the ends of each hose or loading arm that is not connected for the transfer of oil or hazardous material. Such hoses and/or loading arms must be blanked off during the transfer of oil or hazardous material. A suitable material in the joints and couplings shall be installed on each end of the hose assembly or loading arm not being used for transfer to ensure a leak-free seal.

(b) A new, unused hose, and a hose that has been cleaned and is gas free, is exempt from the requirements of paragraph (a) of this section.

14. In § 154.530, paragraph (a) is revised and paragraph (e) is added to read as follows:

**§ 154.530 Small discharge containment.**

(a) Except as provided in paragraphs (c), (d), and (e) of this section, each facility to which this part applies must have fixed catchments, curbing, or other fixed means to contain oil or hazardous material discharged in at least—

(1) Each hose handling and loading arm area (that area on the facility that is within the area traversed by the free end of the hose or loading arm when moved from its normal stowed or idle position into a position for connection);

(2) Each hose connection manifold area; and

(3) Under each hose connection that will be coupled or uncoupled as part of the transfer operation during coupling, uncoupling, and transfer.

(e) Fixed or portable containment may be used to meet the requirements of paragraph (a)(3) of this section.

15. Section 154.540 is revised to read as follows:

**§ 154.540 Discharge removal.**

Each facility to which this part applies must have a means to safely remove discharged oil or hazardous material, within one hour of completion of the transfer, from the containment required by § 154.530 of this part without discharging the oil or hazardous material into the water.

16. In § 154.545, paragraph (e) is added to read as follows:

**§ 154.545 Discharge containment equipment.**

(e) Equipment and procedures maintained to satisfy the provisions of this chapter may be utilized in the planning requirements of subpart F of this part.

17. In § 154.560, paragraph (e) is revised to read as follows:

**§ 154.560 Communications.**

\* \* \* \* \*

(e) Portable radio devices used to comply with paragraph (a) of this section during the transfer of flammable or combustible liquids must be marked as intrinsically safe by the manufacturer of the device and certified as intrinsically safe by a national testing laboratory or other certification organization approved by the Commandant as defined in 46 CFR 111.105-11. As an alternative to the marking requirement, facility operators may maintain documentation at the facility certifying that the portable radio devices in use at the facility are in compliance with this section. Subpart D—Facility Operations.

18. In § 154.710, paragraphs (b), (c), (d) introductory text, (d)(7) and (d)(8) are revised and paragraph (e) is added to read as follows:

**§ 154.710 Persons in charge: Designation and qualification.**

\* \* \* \* \*

(b) The person has had at least 48 hours of experience in transfer operations at a facility in operations to which this part applies. The person also has enough experience at the facility for which qualification is desired to enable the facility operator to determine that the person's experience is adequate;

(c) The person has completed a training and qualification program established by the facility operator and described in the Operations Manual in accordance with § 154.310(a)(21), that provides the person with the knowledge and training necessary to properly operate the transfer equipment at the facility, perform the duties described in paragraph (d) of this section, follow the procedures required by this part, and fulfill the duties required of a person in charge during an emergency, except that the COTP may approve alternative experience and training requirements for new facilities; and

(d) The facility operator must certify that each person in charge has the knowledge of, and skills necessary to—

\* \* \* \* \*

(7) Follow local discharge reporting procedures; and

(8) Carry out the facility's response plan for discharge reporting and containment.

(e) Training conducted to comply with the hazard communication programs required by the Occupational Safety and Health Administration (OSHA) of the Department of Labor (DOL) (29 CFR 1910.1200) or the Environmental Protection Agency (EPA) (40 CFR 311.1), or to meet the requirements of subpart F of this part

may be used to satisfy the requirements in paragraphs (c) and (d) of this section, as long as the training addresses the requirements in paragraphs (c) and (d) of this section.

19. In § 154.735, the introductory text, paragraphs (l) and (s) through (t) are revised and paragraphs (u) through (v) are added to read as follows:

**§ 154.735 Safety requirements.**

Each operator of a facility to which this part applies shall ensure that the following safety requirements are met at the facility:

\* \* \* \* \*

(l) All welding or hot work conducted on or at the facility is the responsibility of the facility operator. The COTP may require that the operator of the facility notify the COTP before any welding or hot work operations are conducted. Any welding or hot work operations conducted on or at the facility must be conducted in accordance with NFPA 51B. The facility operator shall ensure that the following additional conditions or criteria are met:

(1) Welding or hot work is prohibited during gas freeing operations, within 30.5 meters (100 feet) of bulk cargo operations involving flammable or combustible materials, within 30.5 meters (100 feet) of fueling operations, or within 30.5 meters (100 feet) of explosives or 15.25 meters (50 feet) of other hazardous materials.

(2) If the welding or hot work is on the boundary of a compartment (i.e., bulkhead, wall or deck) an additional fire watch shall be stationed in the adjoining compartment.

(3) Personnel on fire watch shall have no other duties except to watch for the presence of fire and to prevent the development of hazardous conditions.

(4) Flammable vapors, liquids or solids must first be completely removed from any container, pipe or transfer line subject to welding or hot work.

(5) Tanks used for storage of flammable or combustible substances must be tested and certified gas free prior to starting hot work.

(6) Proper safety precautions in relation to purging, inserting, or venting shall be followed for hot work on containers;

(7) All local laws and ordinances shall be observed;

(8) In case of fire or other hazard, all cutting, welding or other hot work equipment shall be completely secured.

\* \* \* \* \*

(s) Tank cleaning or gas freeing operations conducted by the facility on vessels carrying oil residues or mixtures shall be conducted in accordance with

sections 9.1, 9.2, 9.3, and 9.5 of the OCIMF International Safety Guide for Oil Tankers and Terminals (ISGOTT), except that—

(1) Prohibitions in ISGOTT against the use of recirculated wash water do not apply if the wash water is first processed to remove product residues;

(2) The provision in ISGOTT section 9.2.10 concerning flushing the bottom of tanks after every discharge of leaded gasoline does not apply;

(3) The provision in ISGOTT section 9.2.11 concerning that removal of sludge, scale, and sediment does not apply if personnel use breathing apparatus which protect them from the tank atmosphere; and

(4) Upon the request of the facility owner or operator in accordance with § 154.107, the COTP may approve the use of alternative standards to ISGOTT if the COTP determines that the alternative standards provide an equal level of protection to the ISGOTT standards.

(t) Guards are stationed, or equivalent controls acceptable to the COTP are used to detect fires, report emergency conditions, and ensure that access to the marine transfer area is limited to—

(1) Personnel who work at the facility including persons assigned for transfer operations, vessel personnel, and delivery and service personnel in the course of their business;

(2) Coast Guard personnel;

(3) Other Federal, State, or local governmental officials; and

(4) Other persons authorized by the operator.

(u) Smoking shall be prohibited at the facility except that facility owners or operators may authorize smoking in designated areas if—

(1) Smoking areas are designated in accordance with local ordinances and regulations;

(2) Signs are conspicuously posted marking such authorized smoking areas; and

(3) “No Smoking” signs are conspicuously posted elsewhere on the facility.

(v) Warning signs shall be displayed on the facility at each shoreside entry to the dock or berth, without obstruction, at all times for fixed facilities and for mobile facilities during coupling, transfer operation, and uncoupling. The warning signs shall conform to 46 CFR 151.45-2(e)(1) or 46 CFR 153.955.

20. In § 154.740, the introductory text and paragraph (b) are revised and paragraph (j) is added to read as follows:

**§ 154.740 Records.**

Each facility operator shall maintain at the facility and make available for examination by the COTP:

\* \* \* \* \*

(b) The name of each person designated as a person in charge of transfer operations at the facility and certification that each person in charge has completed the training requirements of § 154.710 of this part;

\* \* \* \* \*

(j) If they are not marked as such, documentation that the portable radio devices in use at the facility under § 154.560 of this part are intrinsically safe.

**PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS**

21. The authority citation for part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1) (C) and (D); 46 U.S.C. 3715; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351, 49 CFR 1.46. Section 156.120(bb) is issued under the authority of section 4110, Pub. L. 101-380, 104 Stat. 515.

**Subpart A—Oil and Hazardous Materials Transfer Operations**

22. Section 156.110 is amended by revising paragraphs (a) introductory text and (d) to read as follows:

**§ 156.110 Exemptions.**

(a) The Chief, Marine Safety and Environmental Protection, acting for the Commandant, may grant an exemption or partial exemption from compliance with any requirement in this part, and the District Commander may grant an exemption or partial exemption from compliance with any operating condition or requirement in subpart C of this part, if:

\* \* \* \* \*

(d) An exemption is granted or denied in writing. The decision of the Chief, Marine Safety and Environmental Protection is a final agency action.

23. In § 156.120, the introductory text and paragraphs (f) and (w)(5) are revised and paragraphs (cc) and (dd) are added to read as follows:

**§ 156.120 Requirements for transfer.**

A transfer is considered to begin when the person in charge on the transferring vessel or facility and the person in charge on the receiving facility or vessel first meet to begin completing the declaration of inspection, as required by § 156.150 of this part. No person shall conduct an oil or hazardous material transfer operation unless:

\* \* \* \* \*

(f) The end of each hose and loading arm that is not connected for the transfer of oil or hazardous material is blanked off using the closure devices required by §§ 154.520 and 155.805 of this chapter;

\* \* \* \* \*

(w) \* \* \*

(5) Details of the transferring and receiving systems including procedures to ensure that the transfer pressure does not exceed the maximum allowable working pressure (MAWP) for each hose assembly, loading arm and/or transfer pipe system;

\* \* \* \* \*

(cc) Smoking is not permitted in the facilities marine transfer area except in designated smoking areas.

(dd) Welding, hot work operations and smoking are prohibited on vessels during the transfer of flammable or combustible materials, except that smoking may be permitted in accommodation areas designated by the master.

24. In § 156.150, paragraphs (c)(3) and (c)(5) are revised and paragraph (c)(6) is added to read as follows:

**§ 156.150 Declaration of inspection.**

\* \* \* \* \*

(c) \* \* \*

(3) The date and time the transfer operation is started;

\* \* \* \* \*

(5) A space for the date, time of signing, signature, and title of each person in charge during transfer operations on the transferring vessel or facility and a space for the date, time of signing, signature, and title of each person in charge during transfer operations on the receiving facility or vessel certifying that all tests and inspections have been completed and that they are both ready to begin transferring product; and

(6) The date and time the transfer operation is completed.

\* \* \* \* \*

25. In § 156.170, paragraphs (c)(1)(i), (c)(1)(iv) and (f)(1) are revised, paragraph (f)(2) is revised and redesignated as (f)(3) and paragraphs (f)(2) and (h) are added to read as follows:

**§ 156.170 Equipment tests and inspections.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Have no unrepaired loose covers, kinks, bulges, soft spots or any other defect which would permit the discharge of oil or hazardous material through the hose material, and no

gouges, cuts or slashes that penetrate the first layer of hose reinforcement as defined in § 156.120(i).

\* \* \* \* \*

(iv) Hoses not meeting the requirements of paragraph (c)(1)(i) of this section may be acceptable after a static liquid pressure test is successfully completed in the presence of the COTP. The test medium is not required to be water.

\* \* \* \* \*

(f) \* \* \*

(1) For facilities, annually or not less than 30 days prior to the first transfer conducted past one year from the date of the last tests and inspections;

(2) For a facility in caretaker status, not less than 30 days prior to the first transfer after the facility is removed from caretaker status; and

(3) For vessels, annually or as part of the biennial and mid-period inspections.

\* \* \* \* \*

(h) Upon the request of the owner or operator, the COTP may approve alternative methods of compliance to the testing requirements of paragraph (c) of this section if the COTP determines that the alternative methods provide an equal level of protection.

Dated: July 30, 1996.

J.C. Card,

*U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.*

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**BILLING CODE 4910-14-M**