

(ii) *Analysis.* (A) The relevant factors for classifying the transaction between Corp A and Data Center Operator are analyzed in the same manner as the computing capacity and data storage transactions in paragraphs (d)(1) and (8) of this section (*Example 1* and *Example 8*), respectively, such that the transaction between Corp A and Data Center Operator is classified as a provision of services by Data Center Operator to Corp A under paragraph (c) of this section.

(B) A transaction between Corp A and an end-user is a cloud transaction described in paragraph (b) of this section because the end-user obtains a non-de minimis right to on-demand network access to digital content of Corp A.

(C) An end-user has neither physical possession of nor control of the digital content. Additionally, Corp A has the right to determine the digital content used in the cloud transaction and retains the right to modify its selection of digital content. Digital content accessed by end-users is a component of an integrated operation in which Corp A's other responsibilities include maintaining and updating its content catalog. Corp A's end-users do not obtain a significant economic or possessory interest in any of the digital content in Corp A's catalog. The digital content provided by Corp A may be accessed concurrently by multiple unrelated end-users. Although, as a general matter, compensation based on the passage of time is more indicative of a lease than a service transaction, that factor is outweighed by the other factors, which support a services classification. Taking into account all of the factors, a transaction between an end-user and Corp A is classified as a provision of services under paragraph (c) of this section.

(10) *Example 10: Downloaded digital content subject to § 1.861–18*—(i) *Facts.* Corp A offers digital content in the form of videos and music solely for download onto end-users' computers or other electronic devices for a fee. Once downloaded, the end-user accesses the videos and songs from the end-user's computer or other electronic device, which does not need to be connected to the internet in order to play the content. The end-user owes no additional payment to Corp A for the ability to play the content in the future.

(ii) *Analysis.* Under paragraph (b) of this section, the download of digital content onto an end-user's computer for storage and use on that computer does not constitute on-demand network access by the end-user to the digital content of Corp A. Accordingly, the transaction between the end-user and Corp A is not a cloud transaction described in paragraph (b) of this section, and this section does not apply to the transaction. Because the transaction involves the transfer of digital content as defined in § 1.861–18(a)(3), it will be classified under § 1.861–18. See § 1.861–18(h)(21).

(11) *Example 11: Access to online database*—(i) *Facts.* Corp A offers an online database of industry-specific materials. End-users access the materials through Corp A's website, which aggregates and organizes information typically and hosts a proprietary search engine. Corp A hosts the website and database on its own servers and provides

multiple end-users access to the website and database concurrently. Corp A is solely responsible for maintaining and replacing the servers, website, and database (including adding or updating materials in the database). End-users have no ability to alter the servers, website, or database. Most materials in Corp A's database are publicly available by other means, but Corp A's website offers an efficient way to locate and obtain the information on demand. Certain materials in Corp A's database constitute digital content within the meaning of § 1.861–18(a)(3), and Corp A pays the copyright owners a license fee for using them. Each end-user may download any of the materials to its own computer and keep such materials without further payment. The end-user pays Corp A a fee based on the number of searches or the amount of time spent on the website, and such fee is not dependent on the amount of materials the end-user downloads. The fee that the end-user pays is substantially higher than the stand-alone charge for accessing the same digital content outside of Corp A's system.

(ii) *Analysis.* (A) Corp A's provision to an end-user of access to Corp A's website and online database is a cloud transaction described in paragraph (b) of this section because the end-user obtains a non-de minimis right to on-demand access to Corp A's computer hardware and software resources.

(B) An end-user's downloading of the digital content would be classified as a sale of copyrighted articles under § 1.861–18. Nonetheless, taking into account the entire arrangement, including that the primary benefit to the end-user is access to Corp A's database and its proprietary search engine, and that the stand-alone charge for accessing the digital content would be substantially less than the fee Corp A charges, the downloads are de minimis. Accordingly, under paragraph (c)(3) of this section, there is no separate classification of the downloads.

(C) The end-user has neither physical possession of nor control of the database, software, or the servers that host the database or software. Corp A retains the right to replace its servers and update its software and database. The database, software, and servers are part of an integrated operation in which Corp A is responsible for curating the database, updating the software, and maintaining the servers. Corp A provides each end-user on-demand network access to its software and online database concurrently with other end-users. Certain end-users pay Corp A a fee based on time spent on Corp A's website, which could be construed as compensation based on the passage of time and thus be more indicative of a lease than a service transaction. However, the fee that the end-user pays is substantially higher than the stand-alone charge for accessing the same digital content outside of Corp A's system. Accordingly, on balance, the fee arrangement supports the classification of the transaction as a service transaction. Taking into account all of these factors, the arrangement between end-users and Corp A is treated as the provision of services under paragraph (c) of this section.

(e) *Effective/applicability date.* This section applies to cloud transactions occurring pursuant to contracts entered into in taxable years beginning on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

(f) *Change in method of accounting required by this section.* In order to comply with this section, a taxpayer engaging in a cloud transaction pursuant to a contract entered into on or after the date described in paragraph (e) of this section may be required to change its method of accounting. If so required, the taxpayer must secure the consent of the Commissioner in accordance with the requirements of § 1.446–1(e) and the applicable administrative procedures for obtaining the Commissioner's consent under section 446(e) for voluntary changes in methods of accounting.

§ 1.937–3 [Amended]

■ **Par. 5.** Section 1.937–3 is amended by removing Examples 4 and 5 from paragraph (e).

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–17425 Filed 8–9–19; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 155

[Docket No. USCG–2018–0493]

RIN 1625–AC50

Person in Charge of Fuel Transfers

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Coast Guard is proposing to amend the requirements regulating personnel permitted to serve as a person in charge (PIC) of fuel oil transfers on an inspected vessel by adding the option of using a letter of designation (LOD) in lieu of a Merchant Mariner Credential (MMC) with a Tankerman-PIC endorsement. Thousands of towing vessels are currently transitioning from being uninspected vessels to becoming inspected vessels. This proposal would allow a PIC currently using the LOD option on one of those uninspected vessels to continue to use that option to perform the same fuel oil transfers once the vessel receives its initial Certificate

of Inspection. Under this proposal, obtaining a MMC with a Tankerman-PIC endorsement would become optional for PICs of fuel oil transfers on inspected vessels.

DATES: Comments and related material must be received by the Coast Guard on or before October 15, 2019. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before October 15, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0493 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

Collection of information. Submit comments on the collection of information discussed in section VI. D of this preamble both to the Coast Guard’s online docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget using one of the following two methods:

- *Email:* dhsdeskofficer@omb.eop.gov.
- *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Cathleen Mauro, Office of Merchant Mariner Credentialing (CG–MMC–1), Coast Guard; telephone 202–372–1449, email Cathleen.B.Mauro@uscg.mil.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions. Documents this proposal mentions as being available in the docket, and all public comments, will be available in our online docket at <https://www.regulations.gov>, and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

We do not plan to hold a public meeting but you may submit a request for one using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking we will issue a **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

- CFR Code of Federal Regulations
 COI Certificate of Inspection
 CPI–U Consumer Price Index for all Urban Consumers
 DHS Department of Homeland Security
 DOI Declaration of Inspection
 FR Federal Register
 GSA General Services Administration
 LOD Letter of designation

- MERPAC Merchant Marine Personnel Advisory Committee
 MISLE Marine Information for Safety and Law Enforcement
 MMC Merchant Mariner Credential
 MPH Miles per hour
 NPRM Notice of proposed rulemaking
 OMB Office of Management and Budget
 PIC Person in charge
 PWSA Ports and Waterways Safety Act
 § Section
 TSAC Towing Safety Advisory Committee
 U.S.C. United States Code

III. Basis and Purpose

The Coast Guard’s authority under Subtitle II and Chapter 700 of Title 46 United States Code, specifically 46 U.S.C 3306 and 70034,¹ allows us to establish and amend regulations for a person in charge (PIC) of fuel oil transfers. This proposed rule is authorized by Subtitle II provisions to regulate lightering (46 U.S.C. 3715) and personnel qualifications for all inspected vessels, including nontank vessels (46 U.S.C. 3703), and by 46 U.S.C. chapter 700 provisions regarding waterfront safety, including protection of navigable waters and the resources therein (46 U.S.C. 70011).

This proposed rule would allow an alternative method of meeting requirements for personnel allowed to serve as the PIC of a fuel oil transfer on an inspected vessel. In 1998, the Coast Guard established the option of using a letter of designation (LOD) for uninspected vessels in 33 CFR 155.710(e)(2).² The LOD designates the holder as a PIC of the transfer of fuel oil and states that the holder has received sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC.³ The same year we created the LOD option, we stated that the formal instruction required by this option should ensure that personnel acting as PICs of fuel oil transfers have the ability to safely and adequately carry out their duties and

¹ Authority in 46 U.S.C. 70034 was formerly reflected in 33 U.S.C. 1231. On December 4, 2018, the Frank LoBiondo Coast Guard Authorization Act of 2018, Public Law 115–282, was enacted. Its section 401 titled “Codification of Ports and Waterways Safety Act,” restated the Ports and Waterways Safety Act (PWSA) authorities in an enacted title of the U.S. Code. Specifically, it added chapter 700, Ports and Waterways Safety, to Title 46. Also, its section 402 repealed the PWSA (Pub. L. 92–340), as amended, which had been reflected in 33 U.S.C. 1221–1231, 1232–1232b.

² See Qualifications for Tankermen and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases final rule (63 FR 35822, July 1, 1998).

³ 33 CFR 155.715.

responsibilities while minimizing the risks of pollution from fuel oil spills.⁴

Thousands of towing vessels are currently transitioning from being uninspected vessels to becoming inspected vessels.⁵ While this proposed rule is not limited to towing vessels, it would allow a PIC currently using the LOD option on one of those uninspected towing vessels to continue to use that option to perform the same fuel oil transfers once the vessel becomes an inspected vessel. Both Executive Orders 12866 (Regulatory Planning and Review) and 13777 (Enforcing the Regulatory Reform Agenda) direct us to eliminate unnecessary regulatory burdens.⁶ We believe that the LOD option provides a level of safety and protection for fuel oil transfers equivalent to the Tankerman-PIC option, while eliminating the burden of obtaining and maintaining a Merchant Mariner Credential (MMC). As a result, the Coast Guard is proposing to add this LOD alternative so that individuals on inspected vessels would have an option that is currently only available to individuals on uninspected vessels.

This option would be available only for transfers of fuel oil. The PIC requirements in 33 CFR 155.710(a), (b) and (f) for vessels transferring cargo would remain unchanged.

IV. Background

The need to issue this proposed rule to eliminate an unnecessary burden became more evident after we published the “Inspection of Towing Vessels” final rule. As towing vessels transition from an uninspected to inspected status, fuel transfer operations on thousands of towing vessels will now require PICs to have MMCs instead of LODs even though fueling operations remain unchanged.⁷ The change in the PIC requirement was triggered by the transition to inspected vessels.

The requirements for a Tankerman PIC endorsement described in 46 CFR 13.210 include the completion of Coast Guard approved training in firefighting and in Tankship Dangerous Liquids or Liquefied Gas as appropriate. Training is approved under the requirements in

46 CFR part 10, subpart D. Formal instruction provided by the owner or operator of a vessel does not require review or approval by the Coast Guard prior to delivery.

The Coast Guard compared the requirement to complete approved training in order to obtain an MMC with a Tankerman PIC endorsement for PICs on inspected vessels and the formal instruction provided on uninspected vessels, as a requirement for issuing an LOD on uninspected vessels. The Coast Guard could not discern a meaningful difference in fueling operations on uninspected towing vessels and inspected vessels that require Tankerman-PIC endorsements. As uninspected vessels move to becoming inspected vessels their fuel oil transfer operations do not change, but the change in the requirement to hold an MMC means the individuals conducting the fuel oil transfer must obtain substantially more costly training and demonstrate experience with cargo transfers. While fuel oil transfers are similar in nature to cargo transfers, they cannot be used to demonstrate the service requirements for a Tankerman PIC endorsement described in 46 CFR 13.203(b). As a result, the Coast Guard is proposing to allow the use of LODs on all inspected vessels. The existing § 155.710(e)(1) requirement is overly burdensome on personnel engaged in fuel oil transfers on inspected vessels that require a Declaration of Inspection (DOI),⁸ and we have no evidence that it increases the level of safety of life, environmental protection, or protection of property at sea beyond that provided by the LOD option.

A. Requirements in 33 CFR Part 155 for Person in Charge of Fuel Oil Transfers

The regulations in § 155.700 require the designation of a PIC for any transfer of fuel oil to, from, or within a vessel with a capacity of 250 or more barrels, and § 155.710(e) specifically refers to PICs engaged in the transfer of fuel oil requiring a DOI. Personnel designated as a PIC through the LOD option described in 33 CFR 155.715 must receive formal instruction from the operator or agent of the vessel to ensure their ability to safely and adequately carry out the duties and responsibilities of the PIC. The Coast Guard believes this formal instruction, which has been adequate

for uninspected vessels, is also adequate for inspected vessels. Section 155.710(e) specifies the qualifications of a PIC for any fuel oil transfer requiring a DOI on inspected and uninspected vessels. On inspected vessels, the PIC of a fuel oil transfer requiring a DOI must hold a valid MMC with either an officer endorsement authorizing service⁹ on board the vessel, or a Tankerman-PIC endorsement.

Under § 155.710(e)(2), on uninspected vessels, the PIC of a fuel oil transfer has the option of either meeting PIC requirements for inspected vessels, or being designated as a PIC through an LOD as described in 33 CFR 155.715. The LOD must not only designate the person as a PIC, but it must also state that the person has received sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC described in 33 CFR 156.120 and 156.150.

B. Cargo-Based Origins of Requirements To Obtain MMC Tankerman-PIC Endorsement

In 1995, the Coast Guard established the requirements for Tankerman-PIC endorsements in 46 CFR part 13, which were developed primarily for the transfer of cargo.¹⁰ These requirements were specifically intended to improve the handling of liquid cargoes and reduce the risk and severity of spills from tankships. The provisions were not necessarily designed for transfers of oil solely used to fuel the propulsion or auxiliary machinery of the vessel, but fuel oil transfers are subject to these part 13 requirements. The part 13 training and certification requirements, which include service on tankships and completion of an approved course for Tankship Dangerous Liquids,¹¹ are extensive and appropriate for complex tankship operations.

⁹ In our references to an officer endorsement required under § 155.710(e), we are referring to an officer endorsement authorizing service as a master, mate, pilot engineer, or operator on the vessel where the office seeks to serve as a PIC for a fuel oil transfer.

¹⁰ A 1995 interim rule set out the handling, transfer, and transport of oil and certain hazardous liquid cargoes in bulk aboard vessels, and at that time the Coast Guard concluded, “this rule will improve the handling, transfer, and transport of these cargoes and reduce the risk and severity of spillage from tank vessels.” (60 FR 17134, April 4, 1995). When describing approval of tankerman endorsement courses, we noted that the Coast Guard would evaluate courses—including simulated transfer of cargo—to determine the credit allowed toward meeting the proposed service requirements (60 FR at 17139).

¹¹ Section 13.201(b)(2) and (4).

⁴ 63 FR 35822, 35825, July 1, 1998.

⁵ See 46 CFR 136.202, and discussion in Regulatory Analysis regarding the number of towing vessel making this transition.

⁶ See Section 1(b)(11) and Section 1, respectively.

⁷ The “Inspection of Towing Vessels” final rule established 46 CFR subchapter M, which requires towing vessels described in 46 CFR 136.105 to obtain a Certificate of Inspection. When towing vessels obtain their COI, their status changes from being an uninspected vessel to an inspected vessel, affecting which requirements in § 155.710(e) must be met for someone to serve as the PIC of a fuel oil transfer. (81 FR 40003, June 20, 2016)

⁸ Section 156.150(a) requires a DOI before commencing any transfer of fuel oil and applies to vessels with a capacity of 250 barrels or more that engage in the transfer of oil or hazardous material on the navigable waters or contiguous zone of the United States. This requirement does not apply to public vessels. For source of applicability, see § 156.100.

C. Different Standards Are Appropriate for Fuel Oil Transfers

Since 1998, when the Coast Guard established the LOD option, it has recognized that not all of the training and service requirements for a Tankerman-PIC endorsement were necessary for fuel oil transfers. The Coast Guard's successful use of LODs for uninspected vessels reflects that service on a tankship, and completing approved training oriented toward tankships, are not necessary for non-tankship inspected vessels when transferring fuel oil. As a result, in March 2017, the Coast Guard issued CG-MMC Policy Letter No. 01-17 titled, "Guidelines for Issuing Endorsements for Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels."

Under CG-MMC Policy Letter No. 01-17, personnel on towing vessels have been relieved of some approved training costs, including travel to and from training facilities, and applicable tuition to comply with the full Tankerman-PIC requirements in 46 CFR part 13. In addition, CG-MMC Policy Letter No. 01-17 relieves the requirement for service experience on a tankship. However, under CG-MMC Policy Letter No. 01-17, personnel who do not hold an officer endorsement but who seek to be a PIC on an inspected towing vessel still need to obtain an MMC with a Tankerman-PIC endorsement restricted to fuel transfers on towing vessels to comply with § 155.710(e). This policy eased some of the requirements for obtaining an MMC with a qualifying endorsement for inspected towing vessels, but it did not completely relieve the burden of obtaining the credential or maintaining the endorsement through the renewal process every 5 years and it only addresses inspected towing vessels—not other inspected vessels.

The review of the requirements to obtain an MMC with a Tankerman PIC endorsement leading to the development of CG-MMC Policy Letter No. 01-17 also applies to other categories of inspected vessels transferring fuel oil. The requirements in 46 CFR part 13 were developed primarily for the transfer of cargo, and the approved training and service requirements are not necessary when transferring fuel oil. Although our existing requirements for inspected vessels that receive oil solely to fuel the propulsion or auxiliary machinery of the vessel offer some flexibility by allowing a credentialed officer to act as the PIC, in practice this is of limited value because it is a common practice for towing vessels to engage in operations such as midstreaming—

fueling while underway and holding the vessel midstream—where it is not possible for the officers holding an MMC to serve as PIC for the fuel transfer.

D. Federal Advisory Committee Recommendations

The Coast Guard tasked the Towing Safety Advisory Committee (TSAC)¹² and Merchant Marine Personnel Advisory Committee (MERPAC)¹³ to review CG-MMC Policy Letter No. 01-17 and the existing PIC requirements for vessel fuel transfers and make recommendations for amendments.

In December 2017, after reviewing CG-MMC Policy Letter No. 01-17 and existing regulations, TSAC recommended that the Coast Guard amend § 155.710(e) so that an LOD can be used by an individual on a towing vessel inspected under subchapter M to satisfy the requirements for the transfer of fuel oil described in 33 CFR 155.710.

MERPAC also reviewed CG-MMC Policy Letter No. 01-17 and the existing regulations. In October 2017, MERPAC issued a report and recommendation that viewed the policy as an appropriate interim solution. However, MERPAC did not endorse requiring MMCs for PICs for the long term. Instead, MERPAC recommended a regulatory change in which all inspected vessels would have the option to satisfy the PIC requirement for fuel transfers through either an LOD, as described in 33 CFR 155.715, or through holding an MMC with an officer or Tankerman-PIC endorsement.

The Coast Guard reviewed the recommendations from both TSAC and MERPAC, and agreed with MERPAC's broader recommendation that all inspected vessels should have the option of using an LOD to satisfy the requirement for designating the PIC of fuel transfers.

Under the LOD option, a PIC's formal instruction is tailored to the vessel identified in the LOD and must meet the requirements in § 155.715. This

provides an equivalent level of safety of life, environmental protection, or protection of property at sea as the current requirement for a PIC on an inspected vessel. Therefore, we are proposing to allow the LOD to be used by PICs of fuel oil transfers on any inspected vessel. The TSAC and MERPAC recommendations are available in the docket for this rulemaking.

V. Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 155.710(e), which sets forth the provisions for the qualifications of the PIC of any fuel oil transfer requiring a DOI. The proposal would not change the existing requirements for the PIC on uninspected vessels, and the requirements for vessels transferring cargo would also remain unchanged. The change would provide inspected vessels two options for meeting requirements to serve as the PIC of a fuel oil transfer. Vessel operators could comply with the current inspected vessel requirement of having a PIC with a valid MMC with either an officer or Tankerman-PIC endorsement, or use the new option for inspected vessels of designating a PIC with an LOD as described in 33 CFR 155.715.

A. Proposed Amendments to § 155.710(e)

We propose to revise the text of current paragraphs (e)(1) and (e)(2) and redesignate them as paragraphs (e)(1)(i) and (e)(1)(ii). We would then redesignate the remaining paragraphs in that section and amend a reference in the redesignated paragraph regarding tank barges to reflect our removal of paragraph (e)(2).

With respect to MMCs, we would also remove obsolete terminology such as merchant mariner "licenses" and "Merchant Mariner Documents." The Coast Guard ceased issuing those types of documents in 2009 when we transitioned to the streamlined MMC. Also, we would clarify the first sentence of § 155.710(e) by changing "shall verify" to "must verify."

B. Proposed Amendments to § 155.715

In § 155.715, we would change the reference to § 155.710(e)(2) so that it refers to § 155.710(e)(1) instead. This change would reflect our amendments to § 155.710(e). Also, to remove a long-standing conflict of referring to the same letter as both "letter of instruction" and "letter of designation," we would amend the reference to a letter of instruction by simply referring to it as "the letter referenced in § 155.710(e)(1)."

¹² Issued in June 2016, TSAC Task 16-01, Recommendations Regarding the Implementation of 46 Code of Federal Regulations Subchapter M—Inspection of Towing Vessels, directed TSAC to provide "comments on the implementation of Subchapter M that the Committee feels are necessary." In its third report in response to this task, in December 2017, TSAC issued Report No. 3 that addressed the subject of Persons-In-Charge of Towing Vessel Fuel Transfers. A copy of this report is available in the docket.

¹³ Issued in May 2017, MERPAC Task 99, Towing Vessel Restricted Tankerman PIC Endorsement, requested MERPAC to review and comment on CG-MMC Policy Letter 01-17 and the applicable regulations and provide recommendations for amendments, if needed. In October 2017, MERPAC issued its report, which is available in the docket.

This letter has become known by the title we gave it in the § 155.715 heading, “letter of designation.” Section 155.715 requires the letter to designate the holder as a PIC of the transfer of fuel oil and to state that the holder has received sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC described in 33 CFR 156.120 and 156.150. Changing our reference to it as “the letter referenced in § 155.710(e)(1)” would not change any of those requirements, but it would make it clear that “letter of designation” is the correct way to refer to the letter referenced in § 155.710(e) that must satisfy the requirements of § 155.715.

C. Proposed Rule Only Addresses Fuel Oil Transfers, Not LNG Fuel Transfers

This proposed rule would not apply to liquefied natural gas (LNG) fuel transfers. Both §§ 155.710(e) and 155.715 apply solely to the transfer of “fuel oil.” *Fuel oil* means any oil used to fuel the propulsion and auxiliary machinery of the ship carrying the fuel.¹⁴

VI. Regulatory Analyses

A. Regulatory Planning and Review

Executive Orders 13563 (Improving Regulation and Regulatory Review) and 12866 (Regulatory Planning and 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 and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it.

DHS considers this rule to be an Executive Order 13771 deregulatory action. See the OMB Memorandum titled “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). Details on the estimated cost savings of this proposed rule can be found in the rule’s economic analysis below.

On June 20, 2016, the Coast Guard published an Inspection of Towing Vessels final rule.¹⁵ The Coast Guard estimated the rule would apply to more than 5,500 towing vessels that had previously been uninspected vessels. That rule established 46 CFR subchapter M, Towing Vessels (parts 136 through 144), which requires vessels subject to it to obtain a certificate of inspection (COI). The phase-in period for obtaining a COI under subchapter M runs from July 20, 2018, to July 20, 2022.¹⁶

As uninspected vessels subject to the requirements of 33 CFR 155.710(e)(2), these towing vessels had the flexibility of designating a PIC of a fuel oil transfer through an LOD rather than meeting the requirement to have a mariner aboard with a valid MMC with an officer or Tankerman-PIC endorsement.¹⁷ When a towing vessel covered by the 2016 rule (81 FR 40003) obtains a COI, it will become an inspected vessel subject to the requirements of 33 CFR 155.710(e)(1) under which individuals designated as PIC of a fuel oil transfer must hold an MMC with either an officer or Tankerman-PIC endorsement. When exercising the option to designate a PIC through an LOD, the cost of providing formal instruction as described in 33 CFR 155.715 is borne by vessel operating companies; whereas, we are assuming the cost of obtaining the approved training for an MMC with a Tankerman-PIC endorsement is borne by the individual obtaining the credential, making the MMC requirement relatively more expensive for individuals who perform the same function in either case. Further, because a Tankerman-PIC endorsement is available as a minimum qualification,

we do not assume that an individual would choose to obtain an officer endorsement as their qualification for PIC because a less burdensome option is available. The option of obtaining an MMC with endorsements other than a Tankerman-PIC, which is the minimum qualification necessary to comply with existing regulations, is the choice of the individual. In cases where an officer endorsement is used to satisfy the PIC requirement, we assume that it is because the individual already holds an MMC with other endorsements. The Coast Guard assumes the MMC was obtained in order to seek employment as an officer on vessels and serves as a PIC as part of their routine duties, rather than obtaining an officer endorsement to serve explicitly as PIC. The Coast Guard seeks input on the validity of this assumption.

In March 2017, the Coast Guard issued CG–MMC Policy Letter No. 01–17 titled “Guidelines for Issuing Endorsements for Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels.” This policy minimized the burden of obtaining an MMC with the Tankerman-PIC endorsement necessary to serve as a PIC of a fuel oil transfer on an inspected towing vessel by allowing persons to obtain an MMC with a Tankerman-PIC endorsement restricted to fuel transfers on towing vessels. This policy allows those with an existing LOD to use the LOD to satisfy service requirements. This proposed rule would allow for an alternative method of designating who may serve as the PIC of a fuel oil transfer on an inspected vessel by providing the LOD option to inspected vessels that was previously only available to uninspected vessels. This would ease the economic burden on individuals who would otherwise bear the cost to obtain an MMC with a Tankerman-PIC endorsement.

Section 155.715 of title 33 of the CFR describes the requirements for an LOD, including proof that the holder “has received sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC.” This formal instruction is less burdensome than the approved training required to obtain the Tankerman-PIC endorsement, including a Coast Guard-approved firefighting course and a Coast Guard-approved tankship dangerous liquids course.¹⁸ This deregulatory action relieves individuals of the cost of obtaining and renewing an MMC while allowing continued operation of vessels during

¹⁵ See 81 FR 40003, June 20, 2016.

¹⁶ See 46 CFR 136.202, which calls for 25 percent of the vessels to have COIs by July 22, 2019. It also calls for an additional 25 percent to obtain COIs for each of the remaining 3 years of the phase-in period. The final rule was made effective July 20, 2016, but it delayed implementation of most of its part 140 operations requirements, part 141 lifesaving requirements, part 142 fire protection requirements, part 143 machinery and electrical systems and equipment requirements, and part 144 construction and arrangement requirements until July 20, 2018. See §§ 140.105, 141.105, 142.105, 143.200, and 144.105.

¹⁷ In previous information collections letters of designation, LODs are referred to as letters of instruction (LOIs).

¹⁸ 46 CFR 13.201—Original application for Tankerman-PIC endorsement.

¹⁴ As provided in § 155.110, this 33 CFR 151.05 definition of “fuel oil” applies to §§ 155.710 and 155.715.

fuel oil transfers. The individuals expected to take advantage of this deregulatory action are the same individuals currently serving as a PIC through the use of an LOD on an uninspected towing vessel. While the inspection status of the vessels in the baseline population changes, we do not

expect the fuel oil transfer operations on those vessels to change. Therefore we assume that the baseline risk of fuel oil transfers on towing vessels remains the same.

This deregulatory action would modify the text of 33 CFR 155.710 to specify that inspected vessels would

also have the flexibility of designating a PIC of a fuel oil transfer through an LOD rather than meeting the requirement to have a mariner aboard with a valid MMC with an officer or Tankerman-PIC endorsement. This is the only change to § 155.710, as the requirements for an LOD remain the same.

TABLE 1—SUMMARY OF IMPACTS

Category	Summary
Applicability	Extend the LOD option described in 33 CFR 155.710(e)(2) to inspected vessels for fuel oil transfers. This would allow PIC designation to be fulfilled by an LOD rather than an MMC with an officer or Tankerman-PIC endorsement.
Affected Population	The 11,480 individuals on 5,740 vessels that transfer fuel oil and that have a capacity to carry at least 250 barrels or that receive fuel oil from a vessel with a capacity to carry at least 250 barrels.
Cost Savings (2018 \$ Discounted at 7%)	10-year period of analysis: \$250,384,488, Annualized: \$35,649,118.

Affected Population

(1) *Vessel Population.*

Section 155.700 of 33 CFR requires each owner or operator of a vessel with a capacity of 250 barrels or more that engages in the transfer of fuel oil on the navigable waters or contiguous zone of the United States to designate the PIC of each transfer of fuel oil to or from the vessel. The affected population for this deregulatory action is a subset of all inspected vessels subject to the PIC requirements in 33 CFR 155.710(e)(1). The recent change from uninspected to inspected status makes subchapter M vessels uniquely impacted by the MMC requirement. The Coast Guard is not aware of other inspected vessel populations that would likely make use of this rule.

The vessel types identified as the affected population in the subchapter M rule are the same types identified under this rule. Since inspections started in 2018, more vessels have been identified, with a current population of 5,740. There are still difficulties identifying a steady population since inspections are ongoing through year 2022, during which Coast Guard is able to identify previously unencountered vessels and vessels not subject to subchapter M that were previously thought to be.¹⁹

Not all of the 5,740 affected vessels will become inspected vessels (obtain their COI) at the same time. As of June 2019, there are 766 inspected towing vessels under subchapter M.²⁰ That

number will continue to increase but is subject to change as inspections are completed. Table 2 below lists the number of inspections completed or expected to be completed in each year of the phase-in period.²¹ For the purpose of this analysis, the first effective year will be 2020. We will not count cost savings for vessels that already obtained their COI in 2018 and 2019 because we assume they would already need individuals with MMCs to continue operations.

TABLE 2—PROJECTION OF SUB-CHAPTER M VESSELS OBTAINING A COI

Year	New COIs	Total subchapter M inspected vessels
2018	253	253
2019	983	1,236
2020	2,031	3,267
2021	1,236	4,503
2022	1,237	5,740

In the case of towing vessels, excluding a vessel from the population based on fuel capacity is unreliable because a vessel with a smaller (under 250 barrels) capacity may obtain fuel oil from a larger (250 or more barrels)

vessel causing both to need a PIC to initiate a fuel oil transfer between the vessels. Section 156.120(s) requires a PIC at the transferring and receiving ends, and § 156.115 states that no person may serve as PIC on both ends unless authorized by the captain of the port.

The Coast Guard does not know if a given vessel with a capacity of less than 250 barrels will receive fuel from a vessel with a capacity of 250 or more barrels of fuel oil. Therefore, we assume that vessels with a capacity under 250 barrels may sometimes be required to have a designated PIC when transferring fuel oil with vessels with a larger capacity based on the requirements in § 156.120(s). The number of fuel oil transfers between large- (250 or more barrels) and small- (under 250 barrels) capacity vessels is unknown, but the Coast Guard assumes it to be a significant amount.

(2) *Affected Individuals.*

To estimate the impact of this deregulatory action, we must first establish a baseline of what the world would look like if no deregulatory action was taken. In this case, the baseline assumes that all newly inspected subchapter M vessels would use individuals with MMCs to serve as the PIC for fuel oil transfers. Any cost savings from this rule stem from the utilization of an LOD to qualify as PIC for fuel transfers and thus the avoided costs of obtaining MMCs strictly for the purpose of being qualified as PIC of a fuel oil transfer.

Each vessel from the affected population is assumed to have at least two individuals able to serve as a PIC to ensure that at least one of them is available for duty at any point in a 24-

¹⁹ Several vessel types are currently incorrectly marked as Subchapter M in the Marine Information for Safety and Law Enforcement (MISLE) database, including harbor assist, emergency assist, passenger barges, and non-self-propelled towing vessels. For a list of vessels that are not included in subchapter M applicability, see 46 CFR 136.105.

²⁰ Monthly numbers of inspections completed from July 2018 through June 2019 provided on June

27, 2019 by the National Towing Vessel Coordinator of the Office of Commercial Vessel Compliance.

²¹ Projected inspections provided by the Office of Commercial Vessel Compliance, June 27, 2019. A total of 1,236 inspections are expected to be completed by the end of 2019, with 253 already completed in 2018, and 513 already completed as of June 2019. Another 470 are projected before the end of 2019 for a total of 983 to be completed in 2019. The office expects a surge of inspections in 2020 because all single vessel companies will have to obtain a COI for their vessel by July 2020. In addition the inspections originally scheduled during the government shutdown of early 2019 were rescheduled as soon as possible.

hour period.²² Because a PIC cannot serve on more than one vessel at a time (unless authorized by the captain of the port), the vessel population can be used as an accurate basis for the number of PICs needed. From the population of 5,740 vessels, each carrying two PICs, we achieve an affected population of individuals equal to 11,480. The population of 5,740 becomes constant in Year 3 of the analysis period or in 2022 and thereafter, once all affected vessels are inspected.

The Coast Guard assumes that as vessels obtain their COI, individuals will get original MMCs to serve as the PIC of fuel oil transfers on those vessels. The Coast Guard uses a turnover rate of

30 percent each year, and assumes that any mariner lost to turnover in a given year is replaced by a mariner with an original MMC in order to maintain a stable population of mariners able to serve the total population of active vessels.²³ Further, it is necessary to track the length of service to determine when mariners would be required to renew their MMC at 5 years of service as the cost of renewal is significantly less than the cost of obtaining an original MMC.²⁴ We request comment on our assumption of a 30 percent turnover rate.

Two estimates are central to estimating cost savings: First, the number of individuals expected to

obtain an original MMC in each year; and second, the number of individuals expected to renew their MMC in each year beginning in Year 4. An original MMC must be renewed every 5 years, such that an MMC originally obtained in 2018 would be renewed in 2023. While we do not count cost savings for original MMCs obtained before 2020, we do count cost savings for avoided renewals of those MMCs since the renewal would occur after the effective year of 2020. The total numbers for these two estimates are listed below in table 3 in the columns labeled “Total new MMCs” and “Renewals.”

TABLE 3—SUMMARY OF AFFECTED POPULATION OF THE PROPOSED RULE

Calendar year	Effective year	Total affected vessels	MMCs needed	New COIs	Original MMCs from new COIs	Original MMCs from turnover	Total new MMCS	Renewals
2018 .....	.....	253	506	253	506	0	506	0
2019 .....	.....	1,236	2,472	983	1,966	152	2,118	0
2020	Year 1	3,267	6,534	2,031	4,062	742	4,804	0
2021	Year 2	4,503	9,006	1,236	2,472	1,960	4,432	0
2022	Year 3	5,740	11,480	1,237	2,474	2,702	5,176	0
2023	Year 4	5,740	11,480	0	0	3,444	3,444	121
2024	Year 5	5,740	11,480	0	0	3,444	3,444	508
2025	Year 6	5,740	11,480	0	0	3,444	3,444	1,153
2026	Year 7	5,740	11,480	0	0	3,444	3,444	1,064
2027	Year 8	5,740	11,480	0	0	3,444	3,444	1,243
2028	Year 9	5,740	11,480	0	0	3,444	3,444	827
2029	Year 10	5,740	11,480	0	0	3,444	3,444	827

Note: This table does not contain totals because the values in the columns are not additive. The columns merely show the affected population annually and should not be used for summation.

The “Total new MMCs” column equals the number of individuals who are newly credentialed each year due to vessels obtaining COIs and individuals who are newly credentialed to replace those who left in the previous year. This is the sum of the columns “Original MMCs from new COIs” and “Original MMCs from turnover.” In Year 1 (2020), there are 4,062 original MMCs from new COIs and 742 original MMCs from turnover in 2019, for a total of 4,804 original MMCs. The 742 original MMCs from turnover account for 30 percent of the total number of 2,472 MMCs needed in 2019. In Year 2 (2021), there are 4,432 total new MMCs—2,472 are due to new COIs and 1,960 are from turnover in the first year. The 1,960 new MMCs due to turnover in the first year account for 30 percent of the 6,534 total MMCs needed for that year.

We calculate renewals by multiplying the total number of original MMCs in a

given starting year by the probability that an individual would still be employed as a PIC after five years. Where $((1 - 0.30)^{(5-1)} = (0.7^4))$ is the probability of remaining, (0.7) given a turnover rate of 0.3, compounded for each year after the first year of having the MMC in the 5 years before renewal. For Year 4, this is equivalent to $121 = [506 \times (0.7^4)]$. For Year 5, this is equivalent to $508 = [2,118 \times (0.7^4)]$. For Year 6, this is equivalent to $1,153 = [4,804 \times (0.7^4)]$. For Year 7, this is equivalent to $1,064 = [4,432 \times (0.7^4)]$. For Year 8, this is equivalent to $1,243 = [5,176 \times (0.7^4)]$. For Year 9 and all subsequent years, renewals become $827 = [3,444 \times (0.7^4)]$.

Cost Savings

Cost savings come from the forgone cost to individuals of obtaining and renewing an MMC. For towing vessels that only recently became inspected

vessels, the cost of an MMC for the sole purpose of serving as PIC of a fuel oil transfer is a new burden. Not all of the individuals impacted by the 2016 towing vessel final rule have obtained an MMC yet.²⁵ The cost savings for this deregulatory analysis assumes that the cost PICs would save for an MMC is comprised of two elements: (1) PICs who obtained an MMC but would no longer need to renew it; and (2) PICs who avoid getting an MMC altogether. The avoided cost includes the evaluation and issuance fees for an MMC, the tuition and travel expenses associated with the required approved training, and the expense of meeting the MMC renewal requirements every 5 years.

Based on the requirement in 33 CFR 155.715 for the operator or agent of a vessel to ensure the holder of an LOD has received formal instruction to ensure their ability to carry out the

²² Information collection request (ICR), “Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping” OMB control number 1625–0072.

²³ We obtained the 30 percent turnover rate from an OMB-approved ICR (OMB Control Number 1625–0072), which we updated as part of a periodic renewal in 2018.

²⁴ An MMC is valid for a term of 5 years from the date of issuance. Per 46 CFR 10.205(a).

²⁵ 81 FR 40003.

duties of a PIC, the Coast Guard assumes that companies utilizing an LOD would provide the formal instruction. All those companies already utilizing an LOD while their vessels are uninspected would already have the capacity to provide the formal instruction required for the holder of an LOD on an inspected vessel after this rule; therefore, we estimate companies who employ PICs would not incur additional costs (and subsequently cost savings) as a result of the requirements of this proposed rule. The Coast Guard requests comments from the public on whether or not your company, who provides formal instruction for the purpose of a

PIC obtaining an LOD, would incur costs from this proposed rule.

The costs to individuals stem from the requirements to obtain an MMC with a Tankerman-PIC endorsement as described in 46 CFR 13.201. These requirements include completion of Coast Guard-approved courses in both firefighting and tankship Dangerous Liquids. As of May 2019, the average cost of a Basic Fire Fighting course is \$731.31 and ranges in length of 2 to 5 days depending on whether it is offered as a separate module or as part of the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers Basic Training. We assume an average course length of 27 hours, which would require

4 days of training. Similarly, the average cost of a Dangerous Liquids course is \$985.62 with almost all offerings being 5 days in duration with an average of 38 hours of training. The length of the training in days assumes an 8-hour day, and that any part of an additional day would be considered a full day's opportunity cost in order to account for travel (that is, a mariner would not be able to leave training at noon and return to work). Because very few of the training facilities offer both courses—and none of the training facilities offer the courses concurrently—mariners would need to schedule each training course separately. See table 4 below for the summary of course costs.

TABLE 4—AVERAGE COURSE COSTS

Course	Tuition	Length (days)	Length (days rounded)	Length (hours)
Basic Fire Fighting	\$731.31	3.27	4	27
Dangerous Liquids	985.62	4.80	5	38
Summary	1,716.93	8.07	9	65

In addition, 46 CFR 10.219 prescribes the fees for obtaining an MMC with a Tankerman-PIC endorsement. This includes an evaluation fee of \$95 and an issuance fee of \$45. Every 5 years there is a cost to renew the credential with the endorsement, which includes a \$50 evaluation fee and a \$45 issuance fee.²⁶ For the original issuance and renewal,

there is a security screening expense of \$125.25.²⁷

The Coast Guard assumes varying modes of travel for mariners getting to and from approved training based on the distribution of travel modes derived in the Vessel Security Officer (VSO) Interim Rule.²⁸ The percentages below in table 5 reflect the same percentages

from this rule.²⁹ In further analysis, we use the average cost per mariner, weighted by the distribution of travel type.³⁰ We estimate the total travel cost of the for mariners to be about \$102,837,070, undiscounted. We estimate the average travel cost for a mariner to be about \$8,958, undiscounted.

TABLE 5—DISTRIBUTION OF TRAVEL COSTS FOR INDIVIDUALS

Mode of transport	Distribution (%)	Affected mariner population	Cost (2018 USD)
Commute	26.50	3,042	\$27,072,685
Drive/Lodge	16.70	1,917	15,590,931
Fly/Lodge	56.80	6,521	60,173,453
Total	100	11,480	102,837,070
Average Cost per Mariner			8,958

Note: Totals may not sum due to independent rounding.

In table 6, we show the unit costs that comprise the total costs to individuals in table 9. Each method of travel has a

different cost, while the costs of training courses and MMC applications are the same for all travel types. The total cost

per mariner includes the fixed costs of the two approved training courses and travel costs. As travel costs are highly

²⁶ From 46 CFR 10.219(a), Table 1—Fees. Using column “Evaluation then the fee is . . .” and rows “Original endorsement for ratings other than qualified ratings” and “Renewal endorsement for ratings other than qualified ratings.”

²⁷ Transportation Security Administration 30-Day notice. [Docket No. TSA–2006–24191] Revision of Agency Information Collection Activity Under OMB Review: Transportation Worker Identification Credential (TWIC®) Program (82 FR 14521, March 21, 2017).

²⁸ 73 FR 29060, May 20, 2008, “Implementation of Vessel Security Officer Training and Certification Requirements-International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended” rule corrected June 17, 2008 (73 FR 34190).

²⁹ See Table 4.—TOTAL NATIONAL SHARE OR PERCENTAGE OF—Total National Share of Percentage of VSOs THAT WILL COMMUTE, DRIVE/LODGE, AND FLY/LODGE That Will

Commute, Drive/Lodge, and Fly/Lodge in 73 FR 29060, 29065.

³⁰ We use the average cost because the distribution in travel does not change in any given year. If the actual locations of individuals used to develop the baseline was known, then we could base the distribution on actual travel. However, this information is not known and could not be known for every individual in each year.

variable, we obtained the most recent cost figures for travel and lodging, available from either 2017 or 2018, as

described in the source reference column.

TABLE 6—UNIT TRAVEL COST ESTIMATES
[Adjusted to 2018 USD]

Item	Unit cost	Source reference
Opportunity cost of applicant time.	\$60.66	The total opportunity cost of time is the base wage multiplied by the loaded wage factor to obtain total compensation including non-wage benefits. \$39.61 is the mean wage estimate from the 2019 National Occupation Employment and Wage Statistics for Captains, Mates, and Pilots of Water Vessels (53–5021). https://www.bls.gov/oes/2018/may/oes535021.htm . The loaded wage factor of (33.11/21.62) is obtained by dividing the total compensation by wages and salaries for full-time transportation workers. These are annual averages of quarterly data series CMU2010000520610D and CMU2020000520610D respectively, obtained from BLS Employer Cost for Employee Compensation. https://www.bls.gov/data/ .
Driving Mileage (rate per mile).	\$0.58	“Privately Owned Vehicle Mileage Reimbursement Rates” from GSA tables published on January 1, 2019. https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates .
Non-Commuting Driving Time.	100 mile/27.08 mph commuting speed.	For a mariner who would drive/lodge to the school 100 miles round trip, we divide 100 miles by the average commuting speed of 27.08 miles per hour (mph). We obtained 27.08 mph from the Federal Highway Administration's (FHA) Summary of Travel Trends, 2017. https://www.fhwa.dot.gov/policyinformation/documents/2017_nhts_summary_travel_trends.pdf . pg 79.
Round-trip Air-Fare	\$346	From the U.S. Department of Transportation (DOT), Bureau of Transportation Statistics (BTS). Average price of a round-trip airfare for 2018 in unadjusted dollars. https://www.bts.gov/sites/bts.dot.gov/files/Annual%20Fares%201995-2018.xlsx .
Round-trip Airport Transfer ..	\$61.28	We used the cost of a round-trip airport transfer from a Coast Guard interim rule, “Validation of Merchant Mariners’ Vital Information and Issuance of Coast Guard Merchant Mariner’s Licenses and Certificates of Registry”, published on January 13, 2006 (71 FR 2154). Figure found in table 4, page 2160. A later figure could not be found so this figure was adjusted for inflation using the GDP deflator factor of 1.23 times the original cost of \$50. The round-trip airport transfer cost is based on research of the average private and public transfer costs, including taxi or car rental costs associated with U.S. airports and regional destinations. It is not a mathematical or rigorous estimate, but an average transfer cost based on information available from associations and trade groups, airports, transit authorities, and governments.
Flying Excursion Time	16 hours	A mariner that would fly/lodge in order to attend a training course or school would incur an opportunity cost of flying. We assume the total air excursion time of 16 hours, equivalent to two days of travel.
Incidentals and Meals (per diem).	\$64.57	Obtained from the Composite of General Services Administration (GSA) domestic per diem rates for meals/incidentals (https://www.gsa.gov/travel/plan-book/per-diem-rates) in training site and REC cities for January 2018. Taxes ARE included in the M&IE rate per FAQ #12. https://www.gsa.gov/travel/plan-book/per-diem-rates/frequently-asked-questions-per-diem#12 .
Lodging (per night)	\$142.16	Obtained from the Composite of General Services Administration (GSA) domestic per diem rates for lodging (https://www.gsa.gov/travel/plan-book/per-diem-rates) training site, and REC cities for January 2018. Taxes are not automatically included, so lodging taxes and state sales taxes were added to the lodging per diem.

Table 7, “MMC Costs for Mariners,” shows how the above unit costs for travel and tuition contribute to the total average cost per mariner. The average cost of \$8,957.93 is for each mariner expected to obtain an original MMC. Tuition costs and travel costs do not apply for renewal if a mariner served at least 90 days of service during the

preceding 5 years.³¹ If a mariner cannot fulfill that service requirement, we assume that they turnover and must complete the requirements for an original MMC. The Coast Guard estimates the average travel cost for a mariner that commutes to approved training is about \$8,899.05. The average travel cost for a mariner that drives and

stays overnight for approved training is about \$8,132.31. Finally, we estimate the average travel cost for a mariner that flies and stays overnight for approved training to be about \$9,228.15. This cost analysis uses an average because the distribution of travel is constant year to year.

³¹ See 46 CFR 13.120 Renewal of tankerman endorsement.

TABLE 7—MMC COSTS FOR MARINERS

Category	Derivation	Amount	Training cost by travel mode		
			Commuting	Drive/Lodge	Fly/Lodge
Tuition	Average price of \$731.31 for Basic Firefighting, and \$985.62 for Dangerous Liquids.	\$1,716.93	\$1,716.93	\$1,716.93	\$1,716.93
MMC Fees	\$95 evaluation fee, \$45 issuance fee.	140.00	140.00	140.00	140.00
Security Screening Fee	\$125.25	125.25	125.25	125.25	125.25
Round-trip Airfare	\$346.00	346.00	NA	NA	346.00
Round-trip Airport transfer	\$61.28	61.28	NA	NA	61.28
Lodging	\$142.16 per lodging night × 9 lodging nights.	1,279.45	NA	1,279.45	1,279.45
Commuting Meals & Incidental Expenses.	\$48.43 per diem × 9 training days (equivalent to 75% of full per diem).	435.86	435.86	NA	NA
Non-Commuting Meals & Incidental Expenses.	\$64.57 per diem × (7 training days) + \$48.43 × (4 first and last days of travel 75% of total).	645.71	NA	645.71	645.71
Commuting Motor Vehicle Costs	100-mile commute × \$0.58 per mile × 9 training days.	522.00	522.00	NA	NA
Non-Commuting Motor Vehicle Costs.	100-mile round-trip × \$0.58 per mile	58.00	NA	58.00	NA
Training Time (Opportunity Cost)	65 hrs. training × loaded hourly wage.	3,942.95	3,942.95	3,942.95	3,942.95
Commuting Driving Time (Opportunity Cost).	(100-mile round trip ÷ 27 mph commuting speed) × loaded hourly wage × 9 days.	2,016.05	2,016.05	NA	NA
One Non-Commuting Driving Time (Opportunity Cost).	(100-mile round trip ÷ 27 mph commuting speed) × loaded hourly wage.	224.01	NA	224.01	NA
One Flying Time (Opportunity Cost)	16 hours × loaded hourly wage	970.57	NA	NA	970.57
Total Cost per Mariner .....	.....	.....	8,899.05	8,132.31	9,228.15

Note: Totals may not sum due to independent rounding.

Table 8, “Cost Savings to Individuals,” shows how the introduction of newly inspected vessels, and turnover from subsequent years, impact costs over a 10-year period of analysis. It should be noted that the renewal costs only enter in Year 6, when the first cohort of original MMCs

from Year 1 would be eligible to renew, given turnover in the first 5 years. The affected population in this analysis are reflected in the columns “Original MMCs” and “Renewals” in table 10. We showed this population previously in table 3. As shown in table 8, the Coast Guard estimates the total discounted

costs savings to mariners of this deregulatory savings analysis over a 10-year period of analysis to be about \$249.2 million using a 7-percent discount rate. We estimate the annualized cost savings over 10 years to be about \$35.5 million using a 7-percent discount rate.

TABLE 8—COST SAVINGS TO INDIVIDUALS

Calendar year	Effective year	Original MMCs	Total cost of original MMC*	Renewals	Renewal fee + security screening	Total annual cost of new MMCs	Total annual cost of renewals	Grand total annual cost	Grand total annual cost discounted 7%	Grand total annual cost discounted 3%
2018 .....	.....	506	.....	.....	.....	.....	.....	.....	.....	.....
2019 .....	.....	2,118	.....	.....	.....	.....	.....	.....	.....	.....
2020	1	4,804	\$8,958	.....	.....	\$43,030,327	.....	\$43,030,327	\$40,215,258	\$41,777,016
2021	2	4,432	8,958	.....	.....	39,703,350	.....	39,703,350	34,678,444	37,424,216
2022	3	5,176	8,958	.....	.....	46,364,469	.....	46,364,469	37,847,218	42,430,057
2023	4	3,444	8,958	121	220	30,851,121	26,758	30,877,879	23,556,586	27,434,596
2024	5	3,444	8,958	508	220	30,851,121	111,994	30,963,114	22,076,273	26,709,055
2025	6	3,444	8,958	1,153	220	30,851,121	254,024	31,105,145	20,726,672	26,050,069
2026	7	3,444	8,958	1,064	220	30,851,121	234,384	31,085,505	19,358,490	25,275,360
2027	8	3,444	8,958	1,243	220	30,851,121	273,707	31,124,828	18,114,933	24,570,226
2028	9	3,444	8,958	827	220	30,851,121	182,126	31,033,247	16,880,030	23,784,399
2029	10	3,444	8,958	827	220	30,851,121	182,126	31,033,247	15,775,729	23,091,650
Total .....	.....	.....	.....	.....	.....	.....	.....	346,321,110	249,229,632	298,546,644
Annualized .....	.....	.....	.....	.....	.....	.....	.....	.....	35,484,693	34,998,774

Note: Totals may not sum due to independent rounding.

* This column includes the cost for courses plus travel costs and fees.

We do not estimate cost savings to owners and operators of vessels because we assume that companies operating towing vessels already have the

capability of providing necessary formal instruction to those individuals being issued an LOD since they offered this formal instruction prior to their vessels

becoming inspected under the 2016 rule (81 FR 40003). Turnover in owners and operators is expected to be stable for the near future, so we do not expect there

to be new companies that would have to establish new formal instruction capabilities.³²

Without this deregulatory action, the Coast Guard would need to evaluate the MMC applications that would be submitted if an MMC with a Tankerman PIC endorsement were still required to serve as a PIC for fuel oil transfers. This

deregulatory savings analysis accounts for the cost savings to the Coast Guard as MMC applications for Tankerman-PIC endorsements would no longer require evaluation or issuance. Each application takes approximately 55 minutes to process, at a GS-8 loaded mean hourly wage rate of \$49, for a cost of \$44.92 per application.³³ As shown in

table 9, over a 10-year period of analysis, the Coast Guard would save about \$1,402,143 in 2018 dollars, discounted at a 7-percent discount rate, from the lower volume of MMC applications. We estimate annualized cost savings to the government to be \$199,634 using a 7-percent discount rate.

TABLE—9 COST SAVINGS TO THE COAST GUARD

Effective year	Original MMCs	Cost of reviewing original MMC	Renewals	Cost of reviewing renewed MMC	Grand total annual cost	Grand total annual cost discounted 7%	Grand total annual cost discounted 3%
1	4,804	\$44.92	.....	\$	\$215,762	\$201,646	\$209,477
2	4,432	44.92	.....	.....	199,080	173,884	187,652
3	5,176	44.92	.....	.....	232,480	189,773	212,752
4	3,444	44.92	121	44.92	160,150	122,178	142,291
5	3,444	44.92	508	44.92	177,532	126,578	153,141
6	3,444	44.92	1,153	44.92	206,497	137,598	172,938
7	3,444	44.92	1,064	44.92	202,492	126,102	164,645
8	3,444	44.92	1,243	44.92	210,511	122,520	166,180
9	3,444	44.92	827	44.92	191,835	104,345	147,025
10	3,444	44.92	827	44.92	191,835	97,519	142,743
Total .....	.....	.....	.....	.....	1,988,174	1,402,143	1,698,844
Annualized .....	.....	.....	.....	.....	.....	199,634	199,156

Note: Totals may not sum due to independent rounding.

Costs Incurred To Prepare Letter of Designation

While the use of an LOD saves the individual approved training costs, the actual letter of designation still takes time to prepare. Using the time estimate from the existing collection of information for PICs, we assume the preparation of a letter takes approximately 10 minutes.³⁴

The projected number of LODs used is based on the number of vessels becoming inspected and otherwise requiring a credentialed mariner to serve as PIC of a fuel oil transfer. The opportunity cost of the time to prepare an LOD uses the wage of a compliance officer, with a loaded mean hourly wage rate of \$53.39, multiplied by the time to prepare the LOD (\$53.39 × 10 minutes

or 0.167 hours), which is approximately \$8.92.³⁵ The opportunity cost for new individuals using an LOD over the 10-year analysis period is about \$247,287 in 2018 dollars, discounted, using a 7-percent discount rate. See table 10 below. We estimate the annualized cost to be about \$35,208 using a 7-percent discount rate.

TABLE 10—COSTS OF PREPARING AN LOD

Year	Individuals needing a new LOD	Cost of preparing LOD per mariner	Total annual cost of preparing LOD	Grand total annual cost discounted 7%	Grand total annual cost discounted 3%
1	4,804	\$8.92	\$42,827	\$40,025	\$41,579
2	4,432	8.92	39,515	34,514	37,247
3	5,176	8.92	46,145	37,668	42,229
4	3,444	8.92	30,705	23,425	27,281
5	3,444	8.92	30,705	21,892	26,486
6	3,444	8.92	30,705	20,460	25,715
7	3,444	8.92	30,705	19,122	24,966
8	3,444	8.92	30,705	17,871	24,239
9	3,444	8.92	30,705	16,702	23,533
10	3,444	8.92	30,705	15,609	22,847
Total .....	.....	.....	343,423	247,287	296,124

³² Analysis from the 2016 towing vessel final rule found entry of 91 vessels and exit of 88 vessels. A subject matter expert confirmed that these numbers are similar and that it matches with firms' ownership.

³³ Information provided by subject matter expert in the Office of Merchant Mariner Credentialing, and corroborated by NMC officials. GS-8 mean hourly wage rate is \$49 Outside Government Rate

per Commandant Instruction 7310.1T November 2018.

³⁴ From OMB Control Number 1625-0072 (ICR 201803-1625-007)—0.167 hours equals approximately 10 minutes from Table 12.3 in Appendix A of ICR 201803-1625-007 (OMB Control Number 1625-0072) last updated in 2018.

³⁵ \$34.86 is the mean hourly wage estimate from the 2018 National Occupation Employment and

Wage Statistics for Compliance Officers (13-1041) <https://www.bls.gov/oes/2018/may/oes131041.htm>. The loaded wage factor of (\$33.11/\$21.62) is obtained by dividing the total compensation by wages and salaries for full-time transportation workers. These are annual averages of quarterly data series CMU2010000520610D and CMU2020000520610D respectively, obtained from BLS Employer Cost for Employee Compensation (<https://www.bls.gov/data/>).

TABLE 10—COSTS OF PREPARING AN LOD—Continued

Year	Individuals needing a new LOD	Cost of preparing LOD per mariner	Total annual cost of preparing LOD	Grand total annual cost discounted 7%	Grand total annual cost discounted 3%
Annualized	35,208	34,715

Note: Totals may not sum due to independent rounding.

Costs Incurred by the Coast Guard

The cost incurred by the Coast Guard only includes the time for inspectors in the field to review the documentation designating a PIC of a fuel oil transfer on board, which takes the same amount of time whether an LOD or an MMC is being reviewed since any method used to designate a PIC must be immediately available for inspection. We assume no cost change to the Coast Guard. Since

the LOD is not a credential issued by the Coast Guard, and is only verified on board a vessel, there is no additional time cost to reviewing LODs.

Net Cost Savings

Using a perpetual period of analysis, the Coast Guard estimates the total annualized cost savings of the proposed rule to be \$24,442,840 in 2016 dollars, using a 7-percent discount rate. The total cost savings is the sum of the cost

savings to individuals no longer obtaining MMCs, shown in table 8, and the time cost savings to the Coast Guard, shown in table 9, of no longer reviewing MMCs. Net cost savings are the total cost savings minus the costs incurred, shown in table 11. We estimate the net cost savings of this proposed rule over a 10-year period of analysis to be about \$250,384,488 discounted at 7-percent in 2018 dollars.

TABLE 11—SUMMARY OF NET COST SAVINGS OF THE PROPOSED RULE 2018\$

	Cost savings	Costs incurred	Net cost savings	Annualized cost savings
Grand Total	\$348,309,284	\$343,423	\$347,965,861	.....
Discounted 7%	250,631,775	247,287	250,384,488	35,649,118
Discounted 3%	300,245,488	296,124	299,949,365	35,163,216

Alternatives Considered

(1) *MMC with officer or Tankerman-PIC endorsement (No Limited Endorsement).*

Continue to require inspected vessels with a fuel oil capacity of 250 barrels or more—or that obtain fuel oil from a vessel with a fuel oil capacity of 250 barrels or more—to have an individual holding an MMC with either an officer or Tankerman-PIC endorsement designated as the PIC of any fuel oil transfer. Under this alternative, any designated PIC of a fuel oil transfer would be required to hold an MMC with an officer or Tankerman-PIC endorsement, without a limited endorsement for fuel oil transfers.

The Coast Guard rejected this alternative because there are no cost savings associated with it and therefore it would not meet the Coast Guard's goal of reducing regulations under E.O. 13771. Individuals would still bear the cost of obtaining an MMC, and after a vessel receives its COI, individuals previously qualified as PIC through the LOD options would not be able to be designated as a PIC until they obtain their MMC.

(2) *Continue to Issue Limited Endorsement MMCs with Tankerman-PIC Restricted to Fuel Oil Transfers on Towing Vessels.*

No regulatory change would be associated with this alternative. The

Coast Guard would continue to utilize the CG—MMC Policy Letter 01–17 to issue MMC endorsements for Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels. Under this continued action alternative, the existing policy letter would continue to provide a means for individuals on towing vessels previously designated as PIC of a fuel oil transfer using an LOD to be issued a limited endorsement Tankerman-PIC restricted to Fuel Transfers.

While limited endorsements save individuals the cost of approved training courses, such that they only pay the cost of applying for an MMC, the Coast Guard must still evaluate the MMC application and issue the credentials. These applications take 45 minutes to evaluate at a loaded GS–8 wage rate of \$49 per hour for a labor cost of about \$36.75. Over a 10-year period of analysis, we estimate the cost to the Government to review these applications to be about \$861,027 in 2018 dollars. In total, the net costs of continuing the letter over a 10-year period of analysis are about \$8,984,618 in 2018 dollars using a 7-percent discount rate. We estimate annualized cost savings to be about \$1,279,208 using a 7-percent discount rate.

The Coast Guard rejected this alternative because it provides neither a full solution nor long-term alternatives

for designating the PIC of a fuel oil transfer and it is more costly than the preferred alternative. The policy letter only applies to one industry segment, and individuals who obtain an MMC according to the policy letter would still incur the cost of renewing their credential every 5 years.

(3) *Preferred Alternative—new regulatory action allowing use of LODs for inspected vessels.*

Under this alternative, the regulations would be modified to provide the option for inspected vessels to designate the PIC of a fuel oil transfer utilizing an LOD. Under a new regulatory action, the Coast Guard would provide flexibility to all inspected vessels in how they designate the PIC of a fuel oil transfer. This is the preferred alternative as it relieves individuals who would otherwise not be required to have an MMC to obtain and renew a credential, and provides flexibility to industries equally.

Conclusion

The Coast Guard is interested in the potential impacts from this rule and we request public comment on these potential impacts. If you think that this rule would have a significant economic impact on you, your business, or your organization, please submit a comment to the docket at the address under **ADDRESSES** in the rule. In your comment, explain why, how, and to

what degree you think this rule would have an economic impact on you. We are especially interested in information on interactions of small and large vessels for fuel oil transfers.

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. Below is a threshold analysis of the small entity impacts.

In lieu of current revenue figures which may be distorted by ongoing inspections, for this analysis we use the small entity impact analysis of the 2016

Subchapter M rule, which we assume will be closely representative of revenues after the inspection period is over. The 2016 rule’s small entity impact analysis used a sample of 304 vessels from the population of 5,509.³⁶ Of the 304 vessels, about 59 percent were owned or operated by a small entity. We assume the same number of small entities would be impacted going forward, but will know better once inspections are completed and all fleets resume active status. As this is a deregulatory action, the majority of impact is cost savings to individuals, who do not qualify as small entities. The only impact to small entities is the cost imposed to industry as the time cost of preparing the letter of designation.

The Coast Guard finds the average annual cost to be \$75.91 based on the known fleet sizes of all towing vessel entities. Ideally, we would use the same

population used in the cost model to account for turnover, but accounting for turnover within each entity is complex. Instead, we make the most conservative assumption, which is that entities would need to prepare LODs for their entire fleet every year and compare to the revenue of the lowest earning fleet. There is no additional initial cost, only this annual cost.

Average annual cost takes the number of vessels in a fleet, times the cost of preparing a letter, \$8.92, times 2 to account for each of the two PICs needed per vessel. This average varies by the number of vessels in an entity’s fleet, see the distribution below. Note that the number of vessels in a fleet does not correlate with company size; a small business may have a large fleet or a large business may have a small fleet. On average, the cost incurred per entity is \$75.91, which is on average 0.0152 percent of revenues.³⁷

TABLE 14— AVERAGE COST BY FLEET SIZE CATEGORY

Fleet size category	Description	Number of entities	Average cost	Average of cost as % of total revenue
Small 1	Entity with only one vessel	611	\$17.83	0.0011
Small 2–5	Entity with 2 to 5 vessels	472	52.25	0.0037
Medium	Entity with 6 to 25 vessels	179	194.05	0.0292
Large	Entity with >25 vessels	32	873.17	0.0072
Avg	All fleet sizes		75.91	0.0152

In the most conservative case, a medium-sized fleet owned by the entity with the lowest revenue in the sample, which would have the highest possible cost as percentage of total revenue for

the affected population, the cost imposed by this rule is still less than one percent of total revenues. In this conservative example, the entity’s estimated annual cost would be

approximately \$321 for a fleet of 18 vessels, 0.76 percent of their \$42,000 revenue.³⁸ On average, the cost incurred is less than a quarter of one percent of revenues.

TABLE 15—DISTRIBUTION OF REVENUE IMPACTS

% Revenue impact	Average annual impact	Small entities with known revenue impact	Portion of small entities with known revenue data
<1	\$75.91	183	100
1–3	75.91	0	0
>3	75.91	0	0

Since the most conservative case shows that the impact of this rule would be less than 1 percent of revenues for a small entity, no small entity would have an impact greater than 1 percent of revenues. 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 proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section. In your comment, explain why you think it qualifies and how and to

what degree this proposed 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.

³⁶ See 81 FR 40003, June 20, 2016.

³⁷ While fleet size is known for all 1,295 entities covering the entire affected population of vessels, revenues are known only for a sample of 183

vessels of the original 5,509 vessels, data from the original FRFA of Inspection of Towing Vessels final rule (81 FR 40003). In Table 14, “Average cost” is based on the entire population of entities, “average

of cost as a % of total revenue” is based only on entities for whom revenue is known.

³⁸ The value of \$42,000 comes from the original FRFA of 81 FR 40003, June 20, 2016.

If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow below. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The collection of information under this proposed rule falls under the same collection of information already required for letters of designation described in OMB Control Number 1625-0072. This proposed rule does not change the content of responses, nor the estimated burden of each response, but does increase the number of annual respondents and responses from 190 to 3,111.

Title: Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction ³⁹ for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping.

³⁹ As stated in the Discussion of Proposed rule section, this proposed rule would provide for a consistent name of this letter by referring to it as a "Letter of Designation," and we would accordingly amend the title of this collection of information.

OMB Control Number: 1625-0072. *Summary of the Collection of Information:* The Letter of Instruction's contents should verify the PIC's credentials, stating that the holder has received sufficient formal instruction from the owner, operator, or agent of the vessel, as required by 33 CFR 155.715 and the current CFR 155.710(e)(2) and proposed 155.710(e)(1).

Need for Information: This information is needed to ensure that: (1) Certain U.S. vessels develop and maintain a waste plan; (2) certain U.S. vessels maintain refuse discharge records; (3) certain individuals that act as fuel transfer PIC receive a letter of instruction for prevention of pollution; and (4) certain Great Lakes vessels conduct dry cargo residue recordkeeping.

Use of Information: To ensure that fuel transfer competency standards are met, all PICs on uninspected vessels must carry a Letter of Instruction if they do not hold a Coast Guard issued credential.

Description of Respondents: Compliance officers for entities conducting transfers of fuel oil and needing to designate a PIC of such transfers.

Number of Respondents: Increase of 3,254 respondents from 190 to 3,444.

Burden of Response: 0.167 hours.

Estimate of Total Annual Burden: Increase of 611 hours from 32 hours to 643 hours.

As required by 44 U.S.C. 3507(d), we will submit a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine, among other things—

- How useful the information is;
- Whether the information can help us perform our functions better;
- How we can improve the quality, usefulness, and clarity of the information;
- Whether the information is readily available elsewhere;
- How accurate our estimate is of the burden of collection;
- How valid our methods are for determining the burden of collection; and
- How we can minimize the burden of collection.

If you submit comments on the collection of information, submit them by the date listed in the **DATES** section of this preamble to both the OMB and to the docket where indicated under **ADDRESSES**.

You need not respond to a collection of information unless it displays a

currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements 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. It is also well settled 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 Supreme Court's decision in *United States v. Locke and Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000).) This proposed rule, as promulgated under 46 U.S.C. 3306 and 3703, concerns personnel qualifications because it would amend requirements for who may serve as the PIC of fuel oil transfers on inspected vessels. Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 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, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please call or

email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates

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 million (adjusted for inflation) or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed 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 Executive Order 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 Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 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 a risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 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 Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because

it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

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 (for example, 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 does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guides 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 Record of Environmental Consideration 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 would be categorically excluded under paragraph L56 in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. Paragraph L56 pertains to the training, qualifying, licensing, and disciplining of maritime personnel. This proposed rule involves letters of designation to assign PIC of fuel oil transfers on inspected 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 33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend part 155 as follows:

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

■ 1. The authority citation for part 155 is revised to read as follows:

Authority: 3 U.S.C. 301 through 303; 33 U.S.C. 1321(j), 1903(b), 2735; 46 U.S.C 3306, 3703, 70011, 70034; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 155.1020 also issued under section 316 of Pub. L. 114–120. Section 155.480 also issued under section 4110(b) of Pub. L. 101–380.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 40, 150, 151, and 153.

■ 2. Amend § 155.710(e) as follows:

■ a. In the introductory text, remove the word “shall” and add, in its place, the word “must”;

■ b. Revise paragraph (e)(1);

■ c. Remove paragraph (e)(2);

■ d. Redesignate paragraphs (e)(3) and (e)(4) as paragraphs (e)(2) and (e)(3), respectively; and

■ e. In newly redesignated paragraph (e)(2), remove the text “or (2)”.

The revision reads as follows:

§ 155.710 Qualifications of person in charge.

* * * * *

(e) * * *

(1) On each inspected vessel required by 46 CFR chapter I to have an officer aboard, and on each uninspected vessel, either:

(i) Holds a valid merchant mariner credential issued under 46 CFR chapter I, subchapter B, with an endorsement as master, mate, pilot, engineer, or operator aboard that vessel, or holds a valid merchant mariner credential endorsed as Tankerman-PIC; or

(ii) Carries a letter satisfying the requirements of § 155.715 and designating him or her as a PIC, unless equivalent evidence is immediately available aboard the vessel or at his or her place of employment.

* * * * *

§ 155.715 [Amended]

■ 3. In § 155.715, remove the text “letter of instruction required in § 155.710(e)(2)” and add, in its place, the text “letter referenced in § 155.710(e)(1)”.

Dated: August 9, 2019.

David C. Barata,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Prevention Policy.

[FR Doc. 2019-17457 Filed 8-13-19; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2008-0108; FRL-9998-00-Region 1]

Air Plan Approval; Massachusetts; Transport State Implementation Plans for the 1997, 2008, and 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Massachusetts that address the interstate transport of air pollution requirements for Infrastructure SIPs for the 1997, 2008, and 2015 ozone national ambient air quality standards (NAAQS) (*i.e.*, Transport SIPs). The intended effect of this action is to propose approval of the Transport SIPs as revisions to the Massachusetts SIP. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before September 13, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2008-0108 at <https://www.regulations.gov>, or via email to simcox.alison@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary

submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1684, email simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. The term “the Commonwealth” refers to the State of Massachusetts.

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 - C. Background and Evaluation of the Transport SIP for the 2015 Ozone Standard
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

I. Background

On January 31, 2008, February 9, 2018, and September 27, 2018, the Massachusetts Department of Environmental Protection (DEP) submitted revisions to its State Implementation Plan (SIP) consisting of interstate transport SIPs for the 1997, 2008, and 2015 ozone NAAQS. The interstate transport SIPs we are proposing to approve were submitted to address the infrastructure requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA).

Over the past two decades, EPA has revised the primary ozone standard three times. On July 18, 1997, EPA

revised the ozone standard from 0.120 parts per million (ppm), based on a one-hour average, to 0.08 ppm, based on a three-year average of the annual fourth-highest daily maximum 8-hour average. *See* 62 FR 38856. On March 12, 2008, EPA revised the level of the primary ozone standard from 0.08 ppm to 0.075 ppm and maintained the form of the standard. *See* 73 FR 16436. Most recently, on October 1, 2015, EPA revised the primary ozone standard by lowering the level to 0.070 ppm while maintaining the form of the standard. *See* 80 FR 65292.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within three years after promulgation of a standard, or within a shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions.

The interstate transport SIP provisions require each state to submit a SIP that prohibits emissions that have certain adverse effects in another state due to interstate transport of air pollution. Section 110(a)(2)(D)(i) identifies four elements related to the evaluation of impacts of interstate transport of air pollutants; in this rulemaking, we are addressing the first two elements; the remaining two elements will be acted on under separate rulemaking actions. Specifically, the portions that we are proposing to approve pertain to section 110(a)(2)(D)(i)(I): (1) Significant contribution to nonattainment of the ozone NAAQS in any other state (commonly called “prong 1”); and (2) interference with maintenance of the ozone NAAQS (commonly called “prong 2”) by any other state. These two provisions (or “prongs”) are commonly referred to as the “good neighbor” provisions of the CAA. The first provision requires that a state's SIP for a new or revised NAAQS contain adequate measures to prohibit any source or other type of emissions activity in the state from emitting pollutants in amounts that “contribute significantly” to nonattainment of the NAAQS in another state. The second provision requires that a state's SIP prohibit any source or other type of emissions activity in the state from emitting pollutants in amounts that will “interfere with maintenance” of the applicable NAAQS in any other state.