



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 105

[Docket No. USCG-2014-0195]

RIN 1625-AC18

Commercial Fishing Vessels Dispensing Petroleum Products

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

---

**SUMMARY:** The Coast Guard is revising its safety regulations for uninspected commercial fishing vessels (CFVs) carrying flammable or combustible liquid cargoes in bulk. The revisions align the regulations with the current applicable statute and make minor nonsubstantive changes. This rule promotes the Coast Guard's maritime safety and stewardship (environmental protection) missions.

**DATES:** This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2014-0195 and are available on the Internet by going to

<http://www.regulations.gov>, inserting USCG-2014-0195 in the “Keyword” box, and then clicking “Search.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or e-mail Mr. Jack Kemerer, Fishing Vessel Safety Division (CG-CVC-3), Office of Commercial Vessel Compliance (CVC), U.S. Coast Guard; telephone 202-372-1249, e-mail [Jack.A.Kemerer@uscg.mil](mailto:Jack.A.Kemerer@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

#### **Table of Contents for Preamble**

- I. Abbreviations
- II. Basis, Purpose, and Background
- III. Discussion of Comments and Changes
- IV. Incorporation by Reference
- V. Regulatory Analyses
  - A. Regulatory Planning and Review
  - B. Small Entities
  - C. Assistance for Small Entities
  - D. Collection of Information
  - E. Federalism
  - F. Unfunded Mandates Reform Act
  - G. Taking of Private Property
  - H. Civil Justice Reform
  - I. Protection of Children
  - J. Indian Tribal Governments
  - K. Energy Effects
  - L. Technical Standards
  - M. Environment

#### **I. Abbreviations**

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

UL Underwriters Laboratories Inc.  
U.S.C. United States Code

## **II. Basis, Purpose, and Background**

The basis of this regulatory action is the Secretary of Homeland Security's regulatory authority under 46 U.S.C. 2103, 3703 and 49 U.S.C. 5103. The Secretary's authority under these sections was delegated to the Coast Guard in DHS Delegation No. 0170.1(II) (80), (92.a), and (92.b).

Section 2103 of Title 46 gives the Secretary general regulatory authority to implement Subtitle II of 46 U.S.C. (Chapters 21 through 147), including Chapter 37 (Carriage of Liquid Bulk Dangerous Cargoes). Section 3703 of Title 46 gives the Secretary both mandatory and discretionary regulatory authority for the specific implementation of Chapter 37. Section 5103 of Title 49 gives the Secretary the authority<sup>1</sup> to designate the hazardous material covered by Chapter 51 (Transportation of Hazardous Material) and to regulate the safety with which that material is transported.

The primary purpose of this rule is to revise Coast Guard regulations at 46 CFR part 105 so that they align with 46 U.S.C. 3702(c) and (d), as those provisions were last amended in 1984.

Incidentally to their main commercial fishing industry activities, some commercial fishing vessels (CFVs, a term that applies to fishing, fish tender, and fish processing vessels) carry petroleum and other combustible cargoes, to dispense or deliver to other CFVs at sea, or to remote villages (typically in Alaska) that in large

---

<sup>1</sup> This authority originally was conferred on the Secretary of Transportation and in 2002 transferred to the Secretary of Homeland Security; Pub. L. 107-296 (codified at 6 U.S.C. 468(b)). As we discuss in section III of this preamble, this final rule amends the "Authority" line of 46 CFR part 105 to reflect this transfer of authority.

part are economically dependent on the commercial fishing industry. Our NPRM<sup>2</sup> provided a detailed history of statutes addressing these vessels.<sup>3</sup> Congress last amended these statutes in 1984, and the currently applicable provisions appear in 46 U.S.C. chapter 37's provisions for the carriage of liquid bulk dangerous cargoes as section 3702(c) and (d). Chapter 37 generally applies to tank vessels, but under paragraph (c), it does not apply to a fishing or fish tender vessel of not more than 500 gross tons. Under paragraph (d), chapter 37 also does not apply to a fish processing vessel of not more than 5,000 gross tons, but that vessel is subject to regulation when carrying flammable or combustible liquid cargo in bulk.

We first issued our current 46 CFR part 105 safety regulations for CFVs dispensing petroleum or combustible cargoes in 1969. Part 105 generally applies to any fishing or fish tender vessel of not more than 500 gross tons, and to any fish processing vessel of not more than 5,000 gross tons, engaged in the Oregon, Washington, or Alaska salmon or crab fisheries, if it has, or proposes to have, permanently or temporarily installed tanks or containers for dispensing petroleum products of Grade B and lower flammable or combustible liquids, in bulk and in limited quantities.<sup>4</sup> Note, however, that under current 46 U.S.C. 3702(c) and (d), there is no longer any statutory basis for restricting our regulations to CFVs dispensing petroleum or combustible cargoes engaged in the Oregon, Washington, or Alaska salmon or crab fisheries, and that the only CFVs for which those regulations are

---

<sup>2</sup> 79 FR 49261 (August 20, 2014). Note that the NPRM was originally published under an incorrect docket number (USCG-2013-0195), but a subsequent document (80 FR 204, January 5, 2015) corrected this error.

<sup>3</sup> NPRM, p. 49262.

<sup>4</sup> 46 CFR 105.05-1(a) and (b).

authorized are the fish processors of not more than 5,000 gross tons discussed in 46 U.S.C. 3702(d).

### **III. Discussion of Comments on NPRM**

We published a notice of proposed rulemaking on August 20, 2014.<sup>5</sup> The NPRM proposed the revisions that we are making in this final rule, and drew comments from one individual, who did not identify an affiliation with any industry or non-industry group. Neither that individual nor anyone else responded to our request for comments specifically addressing our proposed incorporation by reference of two industry consensus standards.

The commenter suggested that we modify our proposed definition of “bulk” to align with other Coast Guard regulations and our Marine Safety Manual. We agree, because bulk is not determined by or limited to a specified quantity and we have modified the definition accordingly, although the definition we are adopting deviates slightly from the commenter’s suggestion by eliminating an obsolete reference to a quantity of 250 barrels, and instead harmonizes with other uses of “bulk” in 46 CFR 10.107, and 33 CFR part 160. At the same time, we reviewed our other proposed definitions, and revised the definition of “cargo” to align with 46 CFR 30.10-5’s definition and as discussed in Chapter 35 of the Marine Safety Manual. We revised for better clarification the definitions for “dispensing” and “dispensing tank,” which are terms that have always appeared in these regulations but never previously been defined. Also, we revised the definition of “certificate of compliance” to state that the term may refer to any document attesting to an affected vessel’s compliance. We made

---

<sup>5</sup> 79 FR 49261.

a similar change to the text of § 105.10(b). These changes are necessary because at this time Coast Guard systems do not facilitate issuance of certificates to the affected vessels, and instead the vessels receive letters of compliance. We hope to adjust our systems in the near future so that certificates, instead of letters, can be issued.

The commenter also recommended that we modify our proposal for § 105.15 to clearly state that vessels, persons, and operations involved in cargo transfers are subject to the pollution prevention requirements of 33 CFR subchapter O. Compliance with pollution prevention requirements is already a Coast Guard requirement,<sup>6</sup> but for better clarity we added paragraph (e) to § 105.15 to point out that these persons must comply with all applicable 33 CFR part 155 and 156 requirements.

#### **IV. Discussion of the Rule**

This final rule is substantively unchanged from the NPRM and the explanations provided in its preamble. It changes part 105's applicability provisions to align with current section 3702(c) and (d), makes non-substantive changes in wording and in part 105's organization, adds a new industry standard that we incorporate in part 105 by reference and updates another, and revises part 105's authority line (which we did not propose in the NPRM, but which is a non-substantive change).

*Non-substantive rewording and reorganization.* We are making non-substantive wording changes to better align the wording with wording used in applicable Coast Guard policies, and simplifying part 105's structure by eliminating its subparts and consolidating and renumbering its sections, as shown in Table 1.

**Table 1: Current and New Sections of Part 105**

<b>Current § or subpart</b>	<b>New § of part 105</b>
-----------------------------	--------------------------

<sup>6</sup> See 46 CFR 28.255(h), which applies to part 105 vessels.

<b>of part 105</b>	
105.01-1	105.1
105.01-3	105.3
105.01-5	Transfer substance to § 105.5 and remove
105.05-1	105.1, 105.11
105.05-2	105.11
105.05-3	Transfer substance to § 105.5 and remove
105.05-5	105.11
105.05-10	105.1, 105.11
105.10-5	105.5
105.10-10	105.5
105.10-15	105.5
105.10-20	105.5
105.10-25	Remove definition of “commercial fishing vessel” as obsolete in light of the 1984 legislation. New § 105.5 defines “commercial fish processing vessel,” the only type of CFV to which part 105 still applies
Subpart 105.15	105.10
105.20-1	105.10
105.20-3, -5, -10, -15	105.12
Subpart 105.25	105.12
Subpart 105.30	105.13
Subpart 105.35	105.14
105.45-1(a)(1), (a)(2)	105.10
105.45-1(b)	Specific new requirements for cargo transfer operations appear in new § 105.15. We remove current § 105.45-1(b) because its credentialing provisions duplicates requirements currently contained in 46 CFR subchapter B (Merchant Marine Officers and Seamen).
105.45-5, -10, -15, -20	105.15
105.90-1	105

*Incorporation by reference.* We are incorporating new industry standard UL 19 and updating the version of ASTM 323 that we incorporate, for the reasons we explained in the NPRM.<sup>7</sup>

*Authority.* We are editing the “Authority” line for part 105, to update information about the sources of our authority to issue the regulations it contains.

---

<sup>7</sup> NPRM, p. 49264, Table 2.

We are deleting the current reference to 49 U.S.C. Appendix 1804. Appendix 1804 has been replaced by 49 U.S.C. 5103, giving the Department of Transportation the authority to regulate the transportation of hazardous materials. That authority was delegated to the Coast Guard by 49 CFR 1.46(c)(4), (l), and (m), as that section existed when the Coast Guard was transferred to DHS. When Congress transferred the Coast Guard to DHS, it enacted 6 U.S.C. 468(b), preserving the then-existing authorities and functions of the Coast Guard. We are also deleting the current reference to Executive Order (E.O.) 11735 because it confers no regulatory authority on the Secretary of the department in which the Coast Guard is operating.

We are adding the following authorities to the part 105 authority line. As discussed in the preceding paragraph, we are adding 6 U.S.C. 468(b) and 49 U.S.C. 5103, which together preserve the Coast Guard's former Department of Transportation authority to regulate the transportation of hazardous materials. We are adding section 2103 in Title 46 of the U.S. Code, which gives the Secretary of the department in which the Coast Guard is operating general regulatory authority to implement 46 U.S.C. Subtitle II, which contains the other sections of 46 U.S.C. that we list in our authority line. We are also adding E.O. 12777, which delegates the President's regulatory authority under 33 U.S.C. 1321(j)(5) and (j)(6) to the Secretary. We are also amplifying the listing for DHS Delegation No. 0170.1 to specify the paragraphs of that Delegation in which the Secretary delegates the regulatory authority conferred by these documents to the Coast Guard.

#### **IV. Incorporation by Reference**

The Director of the Federal Register has approved the material in § 150.3 for

incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are reasonably available to the public by contacting the sources listed in § 105.3. The rule incorporates UL 19, which prescribes standards for fire hoses and hose assemblies, and an updated version of ASTM 323, which sets out the Reid standard method for assessing petroleum vapor pressure.

## **V. Regulatory Analyses**

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

### **A. Regulatory Planning and Review**

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

The Coast Guard did not receive any comments related to the regulatory assessment found in the proposed rule during the public comment period. We received no additional information or data that will alter our assessment on the NPRM.

Therefore, we are adopting as final the regulatory assessment for the NPRM, with minor administrative edits as noted below. The following assessment replicates the analysis found in the NPRM regulatory assessment.

The Coast Guard does not expect this rule to result in any economic impact on industry. The revisions reflect 1984 statutory changes, simplify regulatory text, and clarify existing language in order to harmonize the existing regulations with current industry practices. We estimate that 14 commercial fish processing vessels are affected by this rule and we obtained this number by using the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database. Additionally, Coast Guard subject matter experts working in the Office of Commercial Vessel Compliance (CVC-3), have independently verified and confirmed the total affected population to be 14 vessels. Our analysis of this population shows that all the commercial fish processing vessels affected by this rule are fitted with storage tanks that allow them to transport liquid cargoes in bulk.

The updates in this rule do not require changes to industry practices because these updates simply reflect current industry practices; therefore, this rule does not impose any cost on the affected population. Table 1 "Current and New Sections of Part 105" (earlier in this preamble) lists the changes and we summarize the changes and the economic impact of this rule in the following paragraphs:

#### 105.1 Purpose and applicability

This provision has been revised to align with the 1984 Act and to implement 46 U.S.C. 3702(d). Part 105 will apply to section 3702(d) commercial fish processing vessels

not greater than 5,000 gross tons and built after 1976, but will no longer apply to other commercial fishing vessels of 500 gross tons or less. Additionally, the 1984 Act removed the geographical limitations which were restricted to the States of Washington, Alaska, and Oregon and this provision is updating current CFR language to reflect these statutory changes. We do not expect this provision to change industry operations and believe it will have no economic impact on industry.

#### 105.3 Incorporation by reference

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

#### 105.5 Definitions

The rule updates the definitions that are required to identify the population of commercial fish processing vessels transporting and dispensing limited quantities of flammable or combustible liquid cargo in bulk. The rule, per the one commenter’s comment, revised the definition of “bulk.” In addition, as we noted above the definitions of “cargo,” “dispensing,” and “dispensing tank,” were also modified for alignment and clarification purposes. These provisions do not cause any economic

burden to industry because they are simply clarifying, not changing, the criteria that are applicable to the affected population.

#### 105.10 Vessel examinations

The change in language from “vessel inspection” to “vessel examination” is a technical change that is consistent with the Coast Guard’s terminology related to commercial fishing vessels. The term inspection is typically used to describe Coast Guard activities related to vessels that require a Certificate of Inspection (COI). Similar activities on vessels not required to hold a COI, such as commercial fishing vessels, are typically referred to as examinations. This change is solely to provide consistency and will not produce any economic burden on industry.

#### 105.11 Prohibitions

There is one substantive change to this section, which is to replace § 105.05-5 specifications on how petroleum products must be stored on vessels with a specification of what storage arrangements are prohibited. Positive statements of what storage arrangements are allowed may be unduly restrictive, because these statements leave no room for the future evolution of safe storage arrangements. This provision will not cause an economic burden on industry since the provision is simply stating the Coast Guard’s authority to review and address any safety concerns with the storage and transportation of petroleum products.

#### 105.12 Cargo tanks and pumping system requirement

This provision will consolidate the requirements for plans and drawings which are currently found in subparts 105.20, 105.25, and 105.90, in the new §105.10. These editorial changes will shorten the current format by simplifying details found within subparts 105.20, 105.25, and 105.90. These editorial changes will not cause an economic burden on the affected population.

#### 105.13 Electrical fitting and fixtures

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

#### 105.14 Fire extinguishing equipment

This provision shortens the format and simplifies details found in subpart 105.35. This provision will not cause an economic burden on the affected population since the changes in this provision are editorial.

#### 105.15 Cargo transfer operations

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

## B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not impose any economic impact on any entities. In the NPRM the Coast Guard certified that this rule would not have a significant economic impact on a substantial number of small entities. The Coast Guard received no comments related this certification nor to its discussion and analysis of impacts on small entities during the public comment period. We have received no additional information or data that would alter our determination, discussion and analysis from the NPRM.

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

## C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard, including categories for inspected vessels. It is also well-settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the

States. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).)

This rule amends the applicability of existing regulations in order to align with the statutory authority granted, through delegation, to the Coast Guard under 46 U.S.C. 3306, and further outlined under 46 U.S.C. 3702, to promulgate regulations for commercial fish processing vessels when carrying flammable or combustible liquid cargoes in bulk. This authority was specifically defined by Congress and, hence, States and local governments do not have the authority to determine the applicability of Coast Guard-issued regulations for commercial fish processing vessels, nor do they have the authority to promulgate regulations within the category of commercial fish processing vessels carrying flammable or combustible liquid cargoes in bulk. Therefore, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

#### F. Unfunded Mandates Reform Act

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

#### G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175, (“Consultation and Coordination with Indian Tribal Governments”), because it will 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 rule under E.O. 13211, (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not

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

#### L. Technical Standards

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

This rule uses the following new voluntary consensus standards, which are listed and summarized below:

ASTM D323-08 Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method), 2014. This standard covers procedures for the determination of vapor pressure of gasoline, volatile crude oil, and other volatile petroleum products.

UL 19, Standard for Safety for Lined Fire Hose and Hose Assemblies, Twelfth Edition 2001. This standard covers the construction, performance, and testing of fire hoses.

Following publication of our NPRM, we received no public comments on incorporation of these materials by reference.

#### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370f, and have made a 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. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(d) and (e) of the Instruction and 6.a. of the “Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy” (67 FR 48243, July 23, 2002). This rule involves regulations concerning vessel operation safety standards; regulations concerning equipment approval and carriage requirements; and regulations concerning the examination of and equipping of vessels. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 105

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

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

**Part 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS**

Sec.

- 105.1 Purpose and applicability.
- 105.3 Incorporation by reference.

- 105.5 Definitions.
- 105.10 Vessel examinations.
- 105.11 Prohibitions.
- 105.12 Cargo tank and pumping system requirements.
- 105.13 Electrical fittings and fixtures.
- 105.14 Fire extinguishing equipment.
- 105.15 Cargo transfer operations.

**Authority:** 6 U.S.C. 468(b); 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703, 4502; 49 U.S.C. 5103; E.O. 12777, sec. 2(d)(2) and (f), 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1(II) (80), (92.a), (92.b).

**§ 105.1 Purpose and applicability.**

This part implements 46 U.S.C. 3702(d), concerning the applicability to fish processing vessels of statutes relating to the carriage of liquid bulk dangerous cargoes. This part applies to each vessel of not more than 5,000 gross tons, the primary use of which is as a commercial fish processing vessel, and that incidental to its primary use, carries and dispenses limited quantities of flammable or combustible liquid cargo in bulk. Certain provisions in §§ 105.12 and 105.13 apply only to vessels the construction of which was contracted for before May 31, 1976.

**§ 105.3 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at Coast Guard Headquarters. Contact Commandant (CG-CVC), Attn: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593-7501; telephone 202-372-1244. Also, it is available for

inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

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

(1) ASTM D 323-08, “Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method),” approved December 15, 2008, incorporation by reference approved for § 105.5.

(2) [Reserved]

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

(1) UL 19, Standard for Safety - Lined Fire Hose and Hose Assemblies, Twelfth edition, approved November 30, 2001, incorporation by reference approved for § 105.14(d).

(2) [Reserved]

### **§ 105.5 Definitions.**

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

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

*Bulk* means a quantity of a commodity carried as a liquid cargo or liquid-cargo residue, without mark or count, in an integral, fixed, or portable tank. It does not include liquid cargo packaged in a portable tank that is loaded and discharged from a vessel with the contents intact.

*Cargo* means a combustible liquid or flammable liquid transported in commerce by a commercial fish processing vessel for delivery to a recipient inside or outside the fishing industry. It does not include combustible liquids or flammable liquids carried in a tank for use only by machinery and boats carried aboard the processing vessel, or for use only by vessels that are directly supporting the processing vessel's primary operations.

*Certificate of compliance* means the document issued and displayed in accordance with § 105.10.

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

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

*Dispensing* means the unloading of any quantity of flammable or combustible liquids in bulk.

*Dispensing tank* means any tank from which a quantity of a flammable or combustible liquid is filled or emptied onboard the vessel by means of pumping, gravitation, or displacement.

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

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

(1) *Grade A.* Any flammable liquid having a Reid vapor pressure of 14 pounds or more, as measured in accordance with ASTM D 323 (incorporated by reference, see § 105.3).

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

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

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

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

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

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

**§ 105.10 Vessel examination.**

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

(1) The owner or operator of each vessel subject to this part must apply, using Form CG-3752, available at [http://www.uscg.mil/forms/cg/cg\\_3752.pdf](http://www.uscg.mil/forms/cg/cg_3752.pdf), to the cognizant Officer in Charge, Marine Inspection, for the vessel to be examined in accordance with paragraph (b) of this section. In applying for a vessel's initial examination under this section, the application must be accompanied by a plan or sketch of each cargo tank and piping system for filling and dispensing bulk flammable or combustible cargoes, and a brief description of those systems, including their dimensions and materials used. If cargo tanks are located in enclosed compartments or below decks, the plans or sketches must show the ventilation system. Plans or sketches need not be submitted if the cargo tanks and piping systems have previously been accepted by the Coast Guard.

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

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

(b) After examining a vessel and finding it to be in substantial compliance with this part, the Coast Guard will issue, and the vessel's owner or operator must display on board, a certificate of compliance that describes the amounts of bulk liquid flammable or combustible cargoes that the vessel may carry, the number of crewmembers required to hold merchant mariner credentials and tankerman endorsements in accordance with 46 U.S.C. 8304 and 46 CFR part 13, and any conditions applicable to the carriage or dispensation of those cargoes. Each certificate of compliance is valid for not more than 2 years or until suspended or revoked. A letter of compliance may be issued as an alternative to a certificate of compliance.

**§ 105.11 Prohibitions.**

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

**§ 105.12 Cargo tank and pumping system requirements.**

(a) Cargo tanks for the carriage of bulk flammable or combustible liquids must be constructed of iron, steel, copper, nickel alloy, copper alloy, or aluminum. Tanks must be designed to withstand the maximum head to which they may be subjected, and tanks of more than 150 gallons capacity must have at least the thickness indicated in Table 1 of §105.12.

Table 1 to § 105.12. Tank thickness.

<b>Material</b>	<b>ASTM specification (latest edition)</b>	<b>Thickness in inches and gauge number<sup>2 3</sup></b>
Nickel copper	B127, hot rolled sheet or plate	0.107 (USSG 12).
Copper nickel <sup>1</sup>	B122, Alloy No. 5	0.128 (AWG 8).
Copper <sup>1</sup>	B152, Type ETP	0.182 (AWG 5).
Copper silicon <sup>1</sup>	B97, Alloys A, B, and C	0.144 (AWG 7).
Steel or iron		0.179 (MSG 7).
Aluminum <sup>4</sup>	B209, Alloy <sup>5</sup>	5086 0.250 (USSG 3).

<sup>1</sup>Tanks fabricated with these materials must not be utilized for the carriage of diesel oil.

<sup>2</sup>The gauge numbers used in this table may be found in many standard engineering reference books. The letters “USSG” stand for “U.S. Standard Gauge” which was established by the act of March 3, 1892 (15 U.S.C. 206) for sheet and plate iron and steel. The letters “AWG” stand for “American Wire Gauge” (or Brown and Sharpe Gauge) for nonferrous sheet thicknesses. The letters “MSG” stand for “Manufacturers' Standard Gauge” for sheet steel thicknesses.

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

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

<sup>5</sup>And other alloys acceptable to the Commandant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 105.13 Electrical fittings and fixtures.**

(a) In compartments or areas containing tanks or pumps handling petroleum products other than Grade E products, no electrical fittings, fixtures, or equipment may be installed or used unless approved for a Class I, Group D hazardous location and labeled as such by UL or another recognized laboratory.

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

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

(d) Tanks, containers, and associated piping systems in use prior to December 1, 1969, on a vessel the construction of which was contracted for before May 31, 1976, are exempt from the requirements of this section provided they are maintained in a

condition that the Officer in Charge, Marine Inspection, finds satisfactory, and provided that major repairs or replacement of exempted equipment and systems is in accordance with this part.

**§ 105.14 Fire extinguishing equipment.**

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

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

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

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

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

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

(3) One length of the fire hose must be attached to each fire hydrant at all times. The fire hose may be a commercial fire hose or equivalent of not more than a 1½-inch diameter, or a garden hose of not less than a 5⁄8-inch nominal inside diameter. The hose must be in one piece, not less than 25 feet, and not more than 50 feet in length. If a 1½-inch diameter fire hose is used after January 1, 1980, each length of hose must be lined as a commercial fire hose that conforms to UL 19 (incorporated by reference; see § 105.3). A hose that bears a UL label as a lined fire hose is accepted as conforming to this requirement. The hose must have a combination nozzle approved by the Commandant in accordance with 46 CFR subpart 162.027. If a garden hose is used, it must be of a good commercial grade constructed of an inner rubber tube, plies of braided cotton reinforcement, and an outer rubber cover, or of equivalent material, and must be fitted with a commercial garden hose nozzle of good-grade bronze or equivalent metal. All fittings on fire hoses must be of brass, copper, or other suitable corrosion-resistant metal.

**§105.15 Cargo transfer operations.**

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

- (a) The operation must comply with any conditions listed in the vessel's certificate of compliance;
- (b) The person in charge of the operation must ensure that—
  - (1) Any galley fire is safely maintained during the operation or immediately extinguished if it cannot be so maintained; and
  - (2) No smoking takes place in the vicinity of the operation.
- (c) A red flag by day or a red electric lantern at night, visible on all sides, must be used to signal a dockside transfer operation. For non-dockside transfer operations, a red flag must be used to signal the operation; and
- (d) During a dockside transfer operation, a placard must be displayed to warn persons approaching the gangway. The placard must use letters at least 2 inches high, bear the heading "Warning," and prohibit open lights, smoking, or visitors.
- (e) The vessel, personnel, and operation are subject to all applicable pollution prevention requirements set forth in 33 CFR parts 155 and 156.

Dated: March 1, 2016.

V.B. Gifford, Jr.,  
Captain, U. S. Coast Guard,  
Director of Inspections and Compliance

[FR Doc. 2016-05262 Filed: 3/11/2016 8:45 am; Publication Date: 3/14/2016]