before assuming the watch as OUTV; so neither is generally available for transfers. The usual practice has been for an unlicensed and undocumented person to act as the actual PIC, although the OUTV remains the Legal PIC. Currently, it is not uncommon for an unlicensed and undocumented person to act as the actual PIC, although the OUTV remains the legal PIC. Under paragraph 155.710(e)(1) of the final rule, it may become necessary for a UTV to carry aboard either another licensed person or an unlicensed person with an MMD endorsed as Tankerman-PIC or restricted Tankerman-PIC. The Coast Guard has determined that requiring licensing or documentation for the person in charge of a fueling operation is good marine practice. The fuel transfer process should be such that either the documented person on the fuel flat, or the individual ''in charge'' of the fuel transfer on the towing vessel, should be knowledgeable enough, and have the authority, to shut down the transfer in the event of a problem. Each should be appropriately qualified to handle their responsibilities, and accountable for any mistakes that they might make.

Beyond any public comments addressing 33 CFR 155.710(e) in general, the Coast Guard also seeks comments on the following issues:

(1) Somebody aboard each UTV must be accountable for the safe completion of every transfer of fuel. Who should be legally responsible for it—an OUTV? Another licensed or documented person? Or an unlicensed and undocumented person? If the last of these, what recourse would the Coast Guard have against that person if a spill occurred during a transfer in which he or she was the legal PIC?

(2) Should the PIC of a transfer of fuel aboard the UTV have to hold either (a) a license; or (b) an MMD endorsed for Tankerman-PIC, restricted Tankerman-PIC, or Tankerman-PIC (Barge)?

(3) What kind of formal training should an applicant have to prove to hold an MMD endorsed in any of these three ways?

Dated: September 4, 1997.

**R.C. North,**

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

[FR Doc. 97–24592 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Parts 155 and 156

**[CGD 90–071a]**

**RIN 2115–AD87**

# Overfill Devices

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing minimum standards for overfill devices as required by the Oil Pollution Act of 1990 (OPA 90). The purpose of the overfill device is to warn of cargo tank overfills. This regulation requires the phased-in installation and use of the devices on the cargo tanks of certain tank vessels that carry oil or oil residue as primary cargo. This regulation should reduce the likelihood of spills when oil is loaded as cargo.

**DATES:** This final rule is effective on October 17, 1997.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

**FOR FURTHER INFORMATION CONTACT:** LTJG J.K. Grzelak, Project Manager, Office of Standards Evaluation and Development (G–MSR), telephone (202) 267–1249.

**SUPPLEMENTARY INFORMATION:**

## Regulatory History

Section 4110 of the Oil Pollution Act of 1990 (OPA 90) [Pub. L. 101–380) adds a statutory note following 46 U.S.C. 3703 requiring, in part, the establishment of minimum standards for overfill devices on certain tank vessels.

To meet the statutory requirements, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, ''Overfill Devices,'' in the **Federal Register** (58 FR 4040; January 12, 1993). The Coast Guard received 32 letters commenting on the proposal.

In response to some comments, the Coast Guard published a notice (58 FR 54315; October 21, 1993) and held a public meeting at U.S. Coast Guard Headquarters in Washington, DC, on November 17, 1993. Twenty-eight people attended the meeting. A list of the attendees and audio tapes of the meeting are available in the public docket for this rulemaking [CGD 90–071a] at the address listed under **ADDRESSES**.

On October 21, 1994, the Coast Guard published an interim rule entitled, ''Overfill Devices'' in the **Federal Register** (59 FR 53286). On January 19, 1995, the interim rule went into effect and the comment period closed. The Coast Guard received 7 letters commenting on the interim rule. No additional public meeting was requested and none was held.

## Background and Purpose

An overfill spill occurs when too much oil is pumped or gravitated into a cargo tank during a transfer operation (e.g., from a facility to a tank vessel or from one tank vessel to another). Human error is the most often reported cause of this type of spill. Many overfill spills are small; however, some reported overfill spills have involved large quantities of oil.

Coast Guard regulations require vessel owners and operators to follow pollution prevention procedures during oil transfer operations (33 CFR parts 155 and 156). Existing regulations did knot require devices on cargo tanks to detect and warn of impending overfills until January 19, 1995, when the interim rule for overfill devices went into effect.

More detailed background information on overfill spills and devices can be found in the preamble of the NPRM under Background and Purpose.

## Discussion of Comments and Changes

Seven letters were received in response to the interim rule. The Coast Guard has reviewed all of the comments and they are discussed as follows:

## Applicability

One comment, writing on behalf of 7 agricultural associations, strongly supported the Coast Guard's interim rule as it applies to animal fats and vegetable oils. This final rule continues to exclude tank vessels carrying animal fats and vegetable oils from overfill device requirements. To make this exclusion clear, paragraph (f) of 33 CFR 155.480 has been revised in this final rule.

One comment expressed opposition to the requirements for overfill devices on black oil barges, specifically those that carry Number 6 oil, because they carry that oil only for a few months out of the year and the heat required to keep the product liquefied renders the equipment useless. The Coast Guard finds that heavy oils are just as likely to overflow from cargo tanks as lower viscosity oils, regardless of the time of year. Vessel

owners and operators must choose overfill devices best suited for the oil they carry, and in accordance with 33 CFR 155.750(e)(2), 46 CFR 39.20–7(b)(3), and 46 CFR 39.20–9(b)(3), they must test their equipment prior to each cargo loading. If a method of overfill detection is not technologically available for a particular type of high-temperature service oil, such as Number 6 oil, the owner or operator of a vessel, on a case-by-case basis, may request an alternative means of compliance in accordance with 33 CFR 155.120(c).

Two comments stated that the rule should apply to all tank vessels, regardless of cargo capacity, because smaller vessels operate almost exclusively in confined waterways with longer flushing periods, higher environmental sensitivities, and restricted cleanup access. A similar comment stated that the implementation costs of higher standards are cost-effective when compared with the probable costs of spill response, cleanup, and liability for damages for tank vessels less than 1,000 cubic meters ($M^3$). The Coast Guard has reviewed the costs of this rule, especially with respect to small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and has determined that it is appropriate to limit the applicability to vessels with a cargo capacity of 1,000 $M^3$ (approximately 6,290 barrels, 1 barrel equals 42 U.S. gallons) or more to balance the benefits of this rulemaking with the costs. Therefore, this final rule does not change the applicability of overfill device requirements to include tank vessels less than 1,000 $M^3$.

One comment objected to the exemption of vessels that were likely to be phased out of service in the next 5 years. The Coast Guard disagrees with this comment because the costs of upgrading overfill devices on these vessels would not be recovered by the year 2000. In addition, the Coast Guard has determined that the costs incurred by these vessels would outweigh the environmental clean-up costs should an overfill occur. For these reasons, this final rule retains the exemption for single-hull vessels that will be phased out by the year 2000.

Two comments suggested that the regulation should apply during all cargo transfer operations, not just loading. As stated in the interim rule, overfill incidents occur during internal cargo transfers and discharges; however, these incidents are infrequent and do not result in large spills into the water. Tank vessel owners and operators are still encouraged to use overfill devices for all transfer operations, but this final rule continues to apply only during loading.

One comment suggested clarification of the application of this rule to foreign-flag tank vessels because it questioned the procedure for determining the compliance date under 33 CFR 155.480(d) if the cargo tank internal examinations were conducted on a rolling basis, rather than all at once. To avoid the duplication of costly gas-freeing of cargo tanks, the Coast Guard allowed for installation of overfill devices as tanks are due for internal examinations in the interim rule. This provision has not changed in this final rule.

One comment wanted to know the meaning of the term ''newly constructed tank vessel'' and wanted clarification on what requirements would apply to this type of vessel. The interim rule used the phrase ''newly constructed tank vessel'' to reference vessels built after January 19, 1995. This reference is not necessary because after January 19, 1995, tank vessels affected by the rule had to meet the requirements of 33 CFR 155.480 regardless of their build date. Therefore, the Coast Guard has determined that the clause referencing newly constructed tank vessel requirements at the end of paragraph (b) of 33 CFR 155.480 in the interim rule is redundant and it has been removed.

In addition, the Coast Guard noted that applying the overfill device requirements to foreign-flag tank vessels in the EEZ is not consistent with the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The Convention sets forth the generally recognized principles of international law concerning the establishment of laws and regulations by a coastal state in its EEZ to prevent, reduce, and control pollution from vessels. Article 211(5) of UNCLOS specifies that such laws and regulations by a coastal state in its EEZ are authorized if they give effect to accepted international rules and standards established through the competent international organization or general diplomatic conference. For consistency, the Coast Guard has eliminated the reference to the EEZ in § 155.480(b) and revised § 155.100 to clarify that overfill devices will be required on U.S.- and foreign-flag tank vessels, with a cargo capacity of 1,000 or more cubic meters, loading oil or oil residue as cargo and operating in the navigable waters of the United States, or at a port or terminal under the jurisdiction of the United States.

**Minimum Standards for Overfill Devices on Tankers**

Two comments stated that the systems which automatically shutdown the transfer pumps before an overfill occurs should be required on all tank vessels. The vapor control regulations in 46 CFR part 39 authorize the use of automatic shutdown systems during barge loading and lightering operations. The Coast Guard allows the use of this system aboard barges to be consistent with related regulations and standards. However, this final rule does not make this alternative a requirement for all vessels because it is not cost beneficial to maritime operators already using other systems.

**Minimum Standards for Overfill Devices on Barges**

One comment discussed the 5-year monitoring period for the effectiveness of high-level indicating devices, such as stick gauges. As stated in the interim rule, if at the end of the 5-year period, the Coast Guard determines that the overfill spill record of tank barges equipped with these devices is not essentially as good or better than the overfill spill record of other tank vessels covered by the regulations, then the Coast Guard may remove the provision in the regulation allowing the use of high-level indicating devices as substitutes for overfill alarms. One comment argued that an agency should not change a previously allowed regulatory alternative unless there is compelling evidence to support such a change. In addition, the comment stated that it is particularly unfair to make such a change after the affected industry has invested in new equipment, expecting that its use will be permitted.

The Coast Guard reviewed the spill data from tank vessels for the years 1989 through 1991, and collected further spill data for tank vessels for the years 1992 through June 1996. The interim rule, which required overfill devices for tank vessels, was effective on January 19, 1995. Since then, the percentage of oil spills due to overfills from tank barges has been significantly reduced. In the years 1992 through 1994, tankers averaged approximately 1.7 overfills per month and tank barges averaged 3.3 overfills per month.

After the requirement for overfill devices was implemented, the average number of overfills for tankers was 0.4 per month and the average number for tank barges was 1.1 per month. This is a 76 percent decrease in the total number of overfills for tankers and a 66 percent decrease for tank barges. Based on these calculations, the Coast Guard

has determined that the 5-year monitoring period is no longer necessary because statistics indicate that overfill devices, as required in the interim rule, are effective. The provision in the regulation for the use of high-level indicating devices, as an alternative to overfill alarms, will be retained in this final rule. The stick gauge alternative for tank barges will also be retained in this final rule because the Coast Guard has determined that it is cost effective.

**Training**

On comment stated that the Coast Guard should proceed quickly with publishing an interim rule regarding tankerman qualifications and training standards. A similar comment stated that manning and training standards for smaller vessels are insufficient. The Coast Guard recognizes that the majority of overfills are due to human error and is currently developing a final rule entitled, ''Qualifications for Tankermen and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases.'' An interim rule for the project was published in the **Federal Register** on April 4, 1995 (60 FR 17134), and was effective on March 31, 1996.

Another related comment stated that the Coast Guard should require the monitoring of transfer operations because they are of critical importance, regardless of the type of overfill device in use. The person in charge of transfer procedures is already required by 33 CFR 155.750(e)(1) (i) and (ii) to monitor the level of cargo in the tank, and shut down transfer operations in time to ensure that the cargo level in each tank does not exceed the maximum amount permitted by 33 CFR 155.775(b).

**Maximum Cargo Level of Oil**

One comment recommended that the Coast Guard change the level of cargo allowed in the cargo tank to 95 percent. The rule will continue to establish a 98.5 percent level as the maximum level of fill because it is consistent with the regulations for vapor control systems in 46 CFR 39.30–1(e). Accordingly, a tank may not be filled higher than 98.5 percent or the level at which the overfill alarms are set, for those cases where shutdown must be initiated at a level below 98.5 percent to ensure that an overfill does not occur.

**Other Issues**

One comment questioned the need for additional overpressurization protection for a tank barge outfitted only with a closed loading system. The comment also requested clarification of the adequacy of high-level indicating devices as a means of satisfying the liquid overpressurization requirements of 46 CFR part 39. Overpressurization requirements for closed loading systems that do not use vapor control are outside the scope of this rule, but the Coast Guard may address it separately in a future rulemaking project.

Two comments suggested rewording 33 CFR 155.480 so that it is not misinterpreted as requiring an independent overfill system on each cargo tank of a tankship or misinterpreted as requiring an audible and visible alarm at each tank top. The Coast Guard has retained these paragraphs as written in the interim rule because the original wording clearly recognizes tank overfill systems, with centralized control and alarm functions, without excluding independent devices as means of satisfying the requirements of this rule.

One comment requested a grandfather provision for those vessels who had overfill devices installed before the effective date of this rulemaking. The Coast Guard based the requirements for overfill devices on the overfill protection requirements in 46 CFR part 39. The Coast Guard has determined that the vessels which complied with those rules would not need to have their overfill device arrangements grandfathered. For vessels not subject to 46 CFR part 39, the Coast Guard allowed for equivalent alternatives to specifically assist those owners or operators who installed devices prior to January 19, 1995. In addition, alternative arrangements are permitted under this rule, therefore, the Coast Guard has not included a grandfather clause in this final rule.

One comment suggested that the overfill device requirements in 33 CFR 155.480 be rewritten to stand alone, instead of cross referencing 46 CFR part 39. The intent of this rulemaking is to conform overfill device requirements to the requirements for overfill prevention of vessels using vapor control systems. Because the Coast Guard wishes to ensure these two parts conform, this final rule does not change the cross-reference contained in 33 CFR 155.480.

One comment stated that 33 CFR 155.480(b)(2)(l) fails to recognize the inherent simplicity of the river barge as compared to the ocean tanker. The comment suggested a battery powered system with a light indicating that the system has power, as another alternative for barges. Again, these recommended changes to 33 CFR 155.480(b)(2)(i) are not consistent with the vapor control rules. The Coast Guard chose to conform these rules with the existing marine vapor control rules to assist those who must comply with them.

One comment requested that a summary shutdown, that does not indicate which tank is overfilling, be accepted in lieu of a shutdown that does indicate which tank is overfilling. As written, the interim rule and this final rule allow a summary shutdown arrangement.

**Assessment**

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). Although it does not require an assessment of costs and benefits under section 6(a)(3) of Executive Order 12866, an assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. There were no comments received regarding the interim assessment. In addition, the change to 33 CFR 155.480 in no way changes the findings of the interim assessment. For these two reasons, and in that there is so little change in this final rule form the interim rule, the interim assessment is adopted as a final assessment under Executive Order 12866.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard received no comments on the interim rule from small entities. Sufficient flexibility alternatives were built into this rulemaking to accommodate small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and

participate in the rulemaking process. The NPRM for this rulemaking specifically asked small entities to comment if they thought this rulemaking would have a significant economic impact on their business. In addition, the Coast Guard held a public meeting at U.S. Coast Guard Headquarters on November 17, 1993, to hear public comment on the rulemaking. Based on the comments received on the NPRM, the Coast Guard revised the regulations to lessen the burden on small entities. For example, the Coast Guard has limited these regulations to tank vessels with a cargo carrying capacity of more than 1,000 $M^3$ to accommodate those small entities that do not pose as large an environmental threat, yet would incur substantial cost if overfill devices were required. Even with the restricted application, this final rule covers 21 tankships and 391 tank barges which are owned and operated by small companies. The Coast Guard has provided further flexibility for the affected small entities by permitting the alternative of high-level indicating devices for tank barges. This is a less expensive option and is less costly for the smaller entities contained within the tank barge industry. If you are a small entity affected by this final rule and need further help determining how this rule applies to you, please contact the Coast Guard Officer in Charge of Marine Inspection identified in 33 CFR part 3 that is nearest to your vessel's operation.

**Collection of Information**

This final rule provides for collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by 5 U.S.C. 3507(d), the Coast Guard has submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection. Section number 155.750 is approved under OMB control #2115–0121 which expires February 28, 2000. Section 156.150 was approved by OMB under OMB 2115–0506 and is currently under their review for renewal.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

**Federalism**

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. One comment requested that State and municipalities be allowed to adopt stricter requirements than these Federal regulations. The Coast Guard has determined that the standards for overfill devices in this final rule are vessel design requirements and therefore, preclude States or municipalities from adopting requirements for tank vessels operating in interstate or foreign commerce, that differ from those contained in this rule.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**. The Environmental Assessment discusses the action, subsequent expected environmental impacts, and the overall need for the action. These regulations are not expected to result in a significant impact on the quality of the human environment because overfills tend to result in relatively small spills.

**List of Subjects**

*33 CFR Part 155*

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 156*

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

For the reasons set forth in the preamble, the interim rule amending 33 CFR parts 155 and 156, which was published in 59 FR 53286 on October 21, 1994, is adopted as a final rule with the following changes:

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

1. The authority citation for part 155 and the note following the citation is revised to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

**Note:** Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 36, 33 CFR parts 150, 151, 153, and 157.

2. In § 155.100, revise paragraph (a) introductory text and add a new paragraph (c) to read as follows:

**§ 155.100 [Amended].**

(a) Subject to the exceptions provided for in paragraph (b) and (c) of this section, this part applies to each ship that:

* * * * *

(c) Section 155.480 applies to each tank vessel with a cargo capacity of 1,000 or more cubic meters (approximately 6,290 barrels), loading oil or oil reside as cargo that is operated under the authority of the United States, wherever located, or operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States.

3. In § 155.480, revise paragraphs (b) introductory text and (f) to read as follows:

**§ 155.480 Overfill devices.**

* * * * *

(b) Each tank vessel with a cargo capacity of 1,000 or more cubic meters (approximately 6,290 barrels), loading oil or oil residue as cargo, must have one overfill device that is permanently installed on each cargo tank and meets the requirements of this section.

* * * * *

(f) This section does not apply to tank vessels that carry asphalt, animal fat, or vegetable oil as their only cargo.

Dated: September 4, 1997.

**R.D. Herr,**

*Vice Admiral, U.S. Coast Guard, Acting Commandant.*

[FR Doc. 97–24586 Filed 9–16–97; 8:45 am]

**BILLING CODE 4910–14–M**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[MD Docket No. 96–186; FCC 97–215]**

### Assessment and Collection of Regulatory Fees for Fiscal Year 1997; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a footnote in the FCC's Report and Order for the final rule regarding Assessment and Collection of Regulatory Fees for Fiscal Year 1997, published in the