

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 155**

[Docket No. USCG–2011–0430, Formerly CGD–90–068]

RIN 1625–AA02, Formerly RIN 2115–AD66

Discharge Removal Equipment for Vessels Carrying Oil**AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

SUMMARY: The Coast Guard is finalizing an interim rule that requires vessels carrying oil in bulk as cargo to carry discharge removal equipment, install spill prevention coamings, and install emergency towing arrangements. The rule also requires these vessels to have prearranged capability to calculate damage stability in the event of a casualty. By reducing the risk of oil spills, improving vessel oil spill response capabilities, and minimizing the impact of oil spills on the environment, this rulemaking promotes the Coast Guard's maritime safety and stewardship missions.

DATES: This final rule is effective May 9, 2016.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0430 and are available using the Federal eRulemaking Portal. You can find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG–2011–0430 in the “Keyword” box, and then clicking “Search.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. David Du Pont, Office of Standards Evaluation and Development (CG–REG), U.S. Coast Guard; telephone 202–372–1497, or email David.A.DuPont@uscg.mil.

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I. Abbreviations

DHS Department of Homeland Security
 DRE Discharge removal equipment
 E.O. Executive Order
 FR Federal Register
 NOI Notice of intent
 OPA 90 Oil Pollution Act of 1990 (Pub. L. 101–380, 104 Stat 484, August 18, 1990)
 § Section
 U.S.C. United States Code
 VRP Vessel response plan

II. Regulatory History

This final rule was preceded by several rulemaking documents. On August 30, 1991, the Coast Guard published an advance notice of proposed rulemaking to solicit information to assist the Coast Guard in development of proposed rules that implement the Oil Pollution Act of 1990¹ (OPA 90) mandate for discharge removal equipment (DRE).² On September 29, 1992, the Coast Guard published a notice of proposed rulemaking that proposed to establish DRE regulations.³ On December 22, 1993, the Coast Guard published an interim final rule (IFR) that established DRE requirements for on-deck spills, and also required vessels to install spill prevention coamings, to install emergency towing arrangements, and to have a prearranged capability to calculate damage stability in the event of a casualty.⁴ On March 27, 2012, the Coast Guard published a notice of intent (NOI) to finalize with request for comments.⁵ Several other rulemaking-related documents were published. For a complete list, see the Basis and Purpose section of the 2012 NOI.

III. Basis and Purpose

The legal basis for this rule is OPA 90 section 4202(a)(6), which amended section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) by, among other things, adding a new paragraph (6) to require vessels operating on the navigable waters of the United States and carrying oil or a hazardous substance in bulk as cargo to carry appropriate DRE on board.

The purpose of this rule is to finalize the interim rule, which was intended to reduce the risk of oil spills, improve

vessel oil spill response capabilities, and minimize the impact of oil spills on the environment.

IV. Discussion of Comments and Changes

The Coast Guard received one submission containing two individual comments in response to the NOI. No public meeting was requested and none was held.

One comment supported finalizing the DRE rulemaking, and we agree with that view.

One comment recommended that the Coast Guard require vessel response plans (VRP) and include DRE procedures and training in that requirement. While outside the scope of this rulemaking, we note that Coast Guard regulations already include VRP requirements that incorporate DRE procedures and training. In a separate rulemaking finalized in 1996, the Coast Guard issued VRP requirements for tank vessels (see 61 FR 1081 (January 12, 1996)). The VRP regulations include a requirement to develop procedures for the crew to deploy DRE (see 33 CFR 155.1035(c)(3)) and for the exercise of the entire response plan every 3 years (see 33 CFR 155.1060(a)(5)).

This final rule makes no changes to the interim rule.

V. Discussion of the Rule

The Coast Guard is finalizing the interim rule we issued in 1993. The interim rule amended 33 CFR 155.140, incorporating third party references applicable to all of 33 CFR part 155, and added 33 CFR 155.200, 155.205, 155.210, 155.215, 155.220, 155.225, 155.230, 155.235, 155.240, and 155.245. It also amended 33 CFR 155.310. Sections 155.200 through 155.310 appear in part 155, subpart B, Vessel Equipment. The interim rule's regulations have been in place more than 20 years, and industry has long since been in compliance. Each of the sections added or amended by the interim rule has since been amended at least once by other rulemakings, in part to respond to public comments on the interim rule, but except as discussed below, each retains the general scope it had as a result of the interim rule. This final rule makes no changes to these sections, as subsequently amended.

Section 155.200 provides definitions applicable to subpart B. The section was subsequently amended in 2002 and 2008.

Section 155.205 requires oil tankers and offshore oil barges, with an overall length of 400 feet or more, to carry and have available for use equipment and supplies for containing and removing

¹ Public Law 101–380, 104 Stat. 484 (August 18, 1990).

² 56 FR 43534 (Aug. 30, 1991).

³ 57 FR 44912 (Sept. 29, 1992).

⁴ 58 FR 67988 (Dec. 22, 1993).

⁵ 77 FR 18151 (Mar. 27, 2012).

on-deck oil cargo spills. The section was subsequently amended in 1998.

Section 155.210 requires oil tankers and offshore oil barges, with an overall length of less than 400 feet, to carry and have available for use equipment and supplies for containing and removing on-deck oil cargo spills. The section was subsequently amended in 1998.

Section 155.215 contains requirements for discharge containment and removal equipment and supplies on inland oil barges. The section was subsequently amended in 1998.

Section 155.220 contains requirements for discharge containment and removal equipment and supplies on vessels carrying oil as a secondary cargo. The section was subsequently amended in 1998.

Section 155.225 requires oil tankers and offshore oil barges to be properly equipped for the internal transfer of cargo to tanks or other spaces within the vessel's cargo block. The section was subsequently amended in 1998.

Section 155.230 contains emergency towing capability requirements for offshore oil barges. Section 155.230, as subsequently amended in 2000, 2009, 2010, and 2014, now contains a range of control system requirements for all tank barges, including emergency towing capability requirements.

Section 155.235, as subsequently amended in 1997 and 2009, contains emergency towing capability requirements for oil tankers of not less than 20,000 deadweight tons.

Section 155.240 requires oil tankers and offshore oil barges to have access to onshore, computerized equipment to calculate a damaged vessel's stability and residual structural strength. The section was subsequently amended in 1998.

Section 155.245 contains damage stability and residual strength requirements for inland oil barges. The section was subsequently amended in 1998.

The amendment to § 155.310 revised coaming and oil draining requirements to the section's oil discharge containment requirements. The section was subsequently amended in 1998.

VI. Incorporation by Reference

The interim rule (as amended) contains material incorporated by reference (IBR). The Director of the Federal Register previously approved all of this IBR material in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

VII. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to

rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

E.O.s 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 and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule is not a significant regulatory action under section 3(f) of E.O. 12866 as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. The Office of Management and Budget (OMB) has not reviewed it under E.O. 12866.

This rule finalizes the 1993 interim rule, and does not change or add new requirements to that rule or the subsequent amendments listed at the end of this document. Owners and operators have been in compliance since 1993 with the requirements this rule will finalize. The comments of the 2012 notice of intent required no change to the final rule. Therefore, the actual net costs of the final rule are zero.

The Coast Guard has developed an updated analysis of the impacts of the DRE requirements compared against the pre-statutory baseline (1993). The intent of the updated analysis is to use the most up-to-date data to present an impact analysis had industry not complied with the 1993 IFR. A copy of the analysis is available in the docket where indicated under **ADDRESSES**.

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 finalizes the 1993 interim rule, and does not change or add new requirements. As a rule finalizing a previous interim rule, Regulatory

Flexibility Act, 5 U.S.C. 601–612 requirements do not apply. Nonetheless, as the actual net costs of the final rule are zero, the Coast Guard believes 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 could better evaluate its effects on them and participate in the rulemaking. This rule involves regulations concerning the equipping of vessels. 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 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 described in E.O. 13132. Our analysis is explained below.

This rule is promulgated under the authority of OPA 90 Title IV, section 4202(a)(6), as codified in 33 U.S.C. 1321(j)(6). 33 U.S.C. 1321(o) contains a savings clause which states, "Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such

State, or with respect to any removal activities related to such discharge.” Although generally vessel equipping, operation, and manning requirements 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)), the Coast Guard believes that the savings clause in 33 U.S.C. 1321(o) is a limited exception to that general preemption principle. As long as the State discharge removal equipment requirement is in accordance with the principles of *Locke* (e.g., is limited to the regulation and protection of local waterways), it will not be preempted unless compliance with both State and Federal law is impossible, or when the State law stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress. The Coast Guard does not intend to preempt more stringent State discharge removal equipment requirements unless those requirements conflict with Coast Guard requirements. At this time, the Coast Guard has no knowledge of any conflicting State discharge removal equipment requirements. This rule also does not implicate those fields saved to certain State regulation under Sections 702 and 711 of the Coast Guard Authorization Act of 2010. Therefore, this 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 would 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 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 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 voluntary consensus standards listed in 33 CFR 155.140.

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 concluded that this action is not likely to have a significant effect on the human environment. This rule is categorically

excluded under section 2.B.2, and figure 2–1, paragraph (34)(d) of the Instruction and under section 6.b. of the “Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy” (67 FR 48243, 48245, July 23, 2002). This rule involves regulations concerning the equipping of vessels. In addition, it implements a Congressional mandate (section 4202(a) of OPA 90). An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 155

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

For the reasons discussed in the preamble, the interim rule amending 33 CFR part 155 that was published at 58 FR 67988 on December 22, 1993, and amended at:

- (a) 59 FR 3749 on January 26, 1994;
- (b) 61 FR 33666 on June 28, 1996;
- (c) 62 FR 51194 on September 30, 1997;
- (d) 63 FR 35531 on June 30, 1998;
- (e) 63 FR 71763 on December 30, 1998;
- (f) 64 FR 67176 on December 1, 1999;
- (g) 65 FR 31811 on May 19, 2000;
- (h) 67 FR 58524 on September 17, 2002;
- (i) 69 FR 18801 on April 9, 2004;
- (j) 73 FR 35015 on June 19, 2008;
- (k) 73 FR 79316 on December 29, 2008;
- (l) 73 FR 80648 on December 31, 2008;
- (m) 74 FR 45026 on August 31, 2009;
- (n) 75 FR 36285 on June 25, 2010;
- (o) 78 FR 13249 on February 27, 2013;
- (p) 78 FR 60122 on September 30, 2013;
- (q) 79 FR 38436 on July 17, 2014; and,
- (r) 80 FR 5934 on February 4, 2015.

is adopted as a final rule without change.

Dated: April 1, 2016.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

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