

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

[Docket No. USCG–2018–0493]

RIN 1625–AC50

**Person in Charge of Fuel Transfers**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is amending the requirements regulating personnel permitted to serve as a person in charge (PIC) of fuel oil transfers on an inspected vessel by adding the option of using a letter of designation (LOD) in lieu of a Merchant Mariner Credential (MMC) with a Tankerman-PIC endorsement. Obtaining an MMC with a Tankerman-PIC endorsement is now optional for PICs of fuel oil transfers on inspected vessels. This change is not limited to towing vessels, but one effect of this rule is that a PIC currently using the LOD option on an uninspected towing vessel may continue to do so once the vessel receives its Certificate of Inspection.

**DATES:** This final rule is effective May 27, 2020. CG–MMC Policy Letter 01–17 is cancelled effective May 27, 2020.

**ADDRESSES:** To view comments on the notice of proposed rulemaking and documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2018–0493 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

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

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**I. Abbreviations**

- CFR Code of Federal Regulations
- COI Certificate of Inspection
- DHS Department of Homeland Security
- FR Federal Register
- LOD Letter of designation
- MERPAC Merchant Marine Personnel Advisory Committee
- MISLE Marine Information for Safety and Law Enforcement
- MMC Merchant Mariner Credential
- MPH Miles per hour
- NMC National Maritime Center
- NPRM Notice of proposed rulemaking
- OMB Office of Management and Budget
- PIC Person in charge
- § Section
- STCW International Convention of Standards of Training Certification and Watchkeeping for Seafarers
- TSAC Towing Safety Advisory Committee
- TWIC Transportation Worker Identification Card
- U.S.C. United States Code
- VSO Vessel Security Officer

**II. Basis and Purpose, and Regulatory History**

As we stated in the notice of proposed rulemaking (NPRM) published on August 14, 2019 (84 FR 40329), the Coast Guard established the option of using a letter of designation (LOD) for uninspected vessels in 1998.<sup>1</sup> The LOD designates the holder as a person in charge (PIC) of the transfer of fuel oil and states that the holder has received sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC.<sup>2</sup> When establishing the LOD option, we stated that the formal instruction required by this option should ensure that personnel acting as PICs of fuel oil transfers have the ability to safely and adequately carry out their duties and responsibilities while minimizing the risks of pollution from fuel oil spills.<sup>3</sup>

Thousands of towing vessels are currently transitioning from being

uninspected vessels to becoming inspected vessels.<sup>4</sup> While this rule is not limited to towing vessels, it will allow a PIC currently using the LOD option on one of those uninspected towing vessels to continue to use that option to perform the same fuel oil transfers once the vessel becomes an inspected vessel. This transition happens when the vessel is issued a certificate of inspection (COI).

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

Executive Orders 12866 (Regulatory Planning and Review) and 13777 (Enforcing the Regulatory Reform Agenda) direct us to eliminate unnecessary regulatory burdens.<sup>5</sup> We believe that the LOD option provides a level of safety and protection for fuel oil transfers equivalent to the Tankerman-PIC option, while eliminating the burden of obtaining and maintaining a Merchant Mariner Credential (MMC). By adding this LOD alternative, individuals on inspected vessels now have an option that was previously only available to individuals on uninspected vessels.

As discussed in the NPRM,<sup>6</sup> the Coast Guard tasked the Merchant Marine Personnel Advisory Committee (MERPAC) and the Towing Safety Advisory Committee (TSAC) to review existing PIC requirements for vessel fuel transfers and to make recommendations for amendments. The Coast Guard reviewed the recommendations from both TSAC and MERPAC and agreed with MERPAC's broader recommendation that all inspected vessels should have the option of using an LOD to satisfy the requirement for designating the PIC of fuel transfers. This final rule is consistent with MERPAC's recommendation and provides the relief sought for towing vessels in the TSAC recommendation.

In March 2017, the Coast Guard issued CG–MMC Policy Letter No. 01–17 titled, “Guidelines for Issuing Endorsements for Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels.”<sup>7</sup> As we stated in the NPRM,<sup>8</sup> this policy eased some of the requirements for obtaining an MMC

<sup>4</sup> See 46 CFR 136.202, and discussion in this document's Regulatory Analysis regarding the number of towing vessels making this transition.

<sup>5</sup> See Section 1(b)(11) and Section 1, respectively.

<sup>6</sup> 84 FR 40329, 40332, August 14, 2019.

<sup>7</sup> U.S. Coast Guard, *Guidelines for Issuing Endorsements for Tankermen PIC Restricted to Fuel Transfers on Towing Vessels* (Mar. 10, 2017), [https://www.dco.uscg.mil/Portals/9/NMC/pdfs/announcements/2017/cg-mmc\\_policy\\_letter\\_01-17\\_final\\_3\\_9\\_17-date.pdf](https://www.dco.uscg.mil/Portals/9/NMC/pdfs/announcements/2017/cg-mmc_policy_letter_01-17_final_3_9_17-date.pdf).

<sup>8</sup> 84 FR 40329, 40332, August 14, 2019.

<sup>1</sup> See Qualifications for Tankerman and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases final rule (63 FR 35822, July 1, 1998).

<sup>2</sup> 33 CFR 155.715.

<sup>3</sup> 63 FR 35822, 35825, July 1, 1998.

with a Tankerman PIC endorsement, but it did not completely relieve the burden of obtaining the credential or maintaining the endorsement through the renewal process every 5 years and it only addresses inspected towing vessels—not other inspected vessels.

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

We are making this rule effective upon publication because it relieves a restriction and 5 U.S.C. 553(d)(1) does not require us to wait 30 days before we make such rules effective. This rule relieves a restriction by allowing an LOD to be used to designate a PIC on an inspected vessel. Also, we find good cause under 5 U.S.C. 553(d)(3) for making this rule effective upon publication because it would be contrary to the public interest not to do so. Currently, under provisions in 46 CFR 136.202, thousands of uninspected towing vessels are becoming inspected towing vessels. Making this rule effective May 27, 2020 will enable more persons with an LOD currently serving as a PIC on an uninspected towing vessel to continue to do so without obtaining an MMC endorsement once that same vessel becomes an inspected vessel.

### III. Discussion of Comments

The Coast Guard received 10 written submissions during the 62-day comment period that ended October 15, 2019.

A common theme for those who supported the proposed rule, was that the vessel-specific training for an LOD is more practicable and appropriate for fuel oil transfers compared to the broader, cargo-transfer focused training for a Tankerman-PIC endorsement. Those who opposed the proposed rule generally viewed it as a change that would lower safety and environmental standards.

The Coast Guard summarizes and addresses the comments below.

#### A. Decades-Long Use of LODs Which Focus on Fuel Oil Transfers

*1. LODs have been used safely for more than 2 decades:* One commenter stated that the LOD option has been safely used on uninspected vessels for more than 2 decades and is a highly regulated process that ensures mariners serving as a PIC of fuel oil transfers are properly trained. The commenter noted that when vessel operators issue an LOD, they certify that the holder has received sufficient formal training and instruction to safely and adequately carry out the duties and responsibilities of transferring fuel oil as required by regulation. The commenter pointed out that “33 CFR 156.120 details 28 individual elements in the fuel transfer process that a PIC must understand and conduct, and that 33 CFR 156.150 requires documentation of each fuel transfer, including a signed declaration from the PIC certifying that each of those requirements was completed.” They assessed the LOD option as providing an equivalent level of safety and environmental stewardship when compared to MMCs with a Restricted Tankerman-PIC endorsement.

*Response:* We concur that LOD requirements are detailed, and that the operator or agent of the vessel must certify that the holder has received sufficient formal instruction to safely and adequately carry out these detailed requirements. While this formal instruction is received from the operator or agent of the vessel(s) identified in the LOD, the detailed requirements in 33 CFR 156.120 and 156.150 are standardized for any PIC engaged in fuel oil transfers.

*2. LODs allow for vessel-specific training focused on fuel oil transfers:* One commenter noted that the LOD option creates important regulatory relief, allows for increased flexibility, and broadens the scope of available mariners to serve as a PIC for fuel oil transfers on inspected vessels. The commenter stated that it allows for a focus on vessel-specific training regarding fuel oil transfers, which can vary widely across the diverse nationwide marine fleet, and views this specialization in training as a positive addition, going above and beyond the requirements of a more general endorsement. Another commenter noted that a feature of the LOD is that it keeps scrutiny of training and oversight at the vessel level and that the commenter’s company issues vessel specific LODs.

*Response:* The Coast Guard concurs that the LOD option tends to focus training on fuel oil transfers for a specific vessel or a fleet of vessels that

the LOD holder will be authorized to serve on as a PIC. The requirements in § 155.715 specify that formal instruction is provided by the operator or agent of the vessel or vessels identified in the LOD.

#### B. Safety and Environmental Concerns and Restricted-Endorsement Policy Letter

*1. Some warn that restricted endorsement may increase risk level while some want endorsement continued:* One commenter noted the cost burden<sup>9</sup> to unlicensed deckhands of obtaining an endorsement for a Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels created by Policy Letter 01–17, but warned that this restricted endorsement may increase risk levels. This commenter wrote that Policy Letter 01–17 waives training requirements (for approved firefighting and tankship course), while allowing uncredentialed deckhands with LODs<sup>10</sup> to become credentialed mariners who may demand higher pay rates. The commenter observed that once a person uses a vessel-specific LOD to qualify for an MMC with an endorsement for Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels, as allowed by Policy Letter 01–17, they are free to work as a PIC on other towing vessels even if that vessel is quite different from the vessel for which they held an LOD.

Another commenter requested that we retain the option for mariners to obtain and renew endorsements as Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels. They viewed this option as providing equivalent levels of safety and environmental stewardship as the LOD option and stated that keeping the restricted endorsement option would allow maximum flexibility for mariners and their employers. They also noted that mariners who have obtained an MMC with the restricted Tankerman-PIC endorsement may wish to maintain that credential for professional development reasons.

*Response:* With respect to concerns about Policy Letter 01–17, this rule

<sup>9</sup> The evaluation (\$95) and issuance (\$45) fees are described in 46 CFR 10.219, in the Table 1 to § 10.219(a) row for MMC with rating endorsement: Original endorsement for qualified rating.

<sup>10</sup> The commenter is correct that the policy letter does not require applicants to have previously held mariner credentials. Applicants must be at least 18 years old and hold a valid Transportation Worker Identification Card (TWIC) or have enrolled for one. An alternative to holding an LOD, would be to “provide evidence of participation, under the supervision of someone designated as PIC of a fuel transfer, in at least five fuel transfers on Towing Vessels during the preceding 5 years.”

provides more complete relief from the existing § 155.710(e) requirement than Policy Letter 01–17 does, and it does so without waiving any training requirements for obtaining an MMC PIC endorsement. With this rule's addition of an LOD option, there are now two avenues to qualify as a PIC for the transfer of fuel oil: (1) Hold a valid MMC with either an officer or Tankerman-PIC endorsement; or (2) use the new option for inspected vessels of designating a PIC with an LOD as described in 33 CFR 155.715. Therefore, we are cancelling Policy Letter 01–17 effective May 27, 2020. The Coast Guard supports mariners pursuing professional development but, for the reason stated above, we are cancelling Policy Letter 01–17 upon publication of this rule.

2. *Perceived decline in both safety and protection of the environment:* One commenter opposed the proposed rule and stated that he sees too many accidents and spills from untrained crews that go unreported. The commenter stated that as a crew member he has seen a serious decline in safety and an increase in small accidents in the last few years, including 14-hour-work days in violation of STCW<sup>11</sup> watch hours. The commenter said that companies offer low wages and are not willing to pay a meaningful wage to trained and competent workers. The commenter did not directly attribute the reduced level of safety to LODs.

Another commenter wrote that easing PIC requirements was “caving to pressure from industry” and unfair to those who have already completed approved training to obtain a Tankerman-PIC endorsement. The commenter stated there is no substitute for loading-and-discharging training service requirements and recommended a PIC-Fueling endorsement for those who bunker and transfer aboard smaller, previously uninspected vessels. Additionally, the commenter stated that there has been a rise in accidents in the inland industry in the last few years. In suggesting a caving-to-industry trend, the commenter referenced recently issued gap-closure<sup>12</sup> training

requirements and indicated they disadvantaged U.S. mariners compared to foreign mariners. The commenter referenced the Deepwater Horizon accident as an example of why cutting costs to industry by lowering standards that provided safety to mariners and protection for the environment is dangerous.

*Response:* The requirements for an MMC endorsement and a LOD have remained unchanged for many years, so the requisite training has not changed. We see no correlation, therefore, between the commenters' reference to either an increase in accidents in recent years or a reduced level of safety, and the requirements regulating personnel permitted to serve as a PIC of fuel oil transfers on an inspected vessel. To the extent the commenter may be concerned about the endorsement for a Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels introduced in 2017, effective May 27, 2020 we are cancelling the CG–MMC Policy Letter 01–17 enabling that restricted endorsement.

Personnel designated as PICs through the use of an LOD are required to receive formal instruction from the operator or agent of the vessel, sufficient to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC.<sup>13</sup> These duties include understanding discharge (spill) reporting procedures.<sup>14</sup> Any individual who witnesses a spill or other reportable marine casualty should report that casualty to the Coast Guard. Enforcement of casualty reporting and applicable STCW requirements will continue independent of this regulatory initiative. The influence of market forces on how much is paid to those with a Tankerman-PIC endorsement or that have received sufficient formal instruction to obtain an LOD is beyond the scope of this rulemaking.

As for the second commenter, this rule, which is supported by recommendations of the MERPAC and the TSAC, does not change the requirements for having a designated PIC as described in 33 CFR 155.700, the process for obtaining a Tankerman-PIC endorsement in 46 CFR part 13, subpart B, or the requirements for an LOD in 33 CFR 155.715. To qualify for a Tankerman-PIC endorsement, applicants must present evidence of supervised participation in at least five cargo loadings and five cargo discharges. While experience with cargo

2010 amendments to the STCW Convention. Mariners had to complete this training before January 1, 2017, to maintain the validity of their STCW endorsements.

<sup>13</sup> 33 CFR 155.715.

<sup>14</sup> 33 CFR 156.120(w)(10).

transfers is not required for an LOD, formal instruction is required. The holder of an LOD is required to receive sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC described in 33 CFR 156.120 (requirements for transfer) and 156.150 (Declaration of inspection).

The recommendation for a PIC-Fueling endorsement for those who bunker and transfer aboard smaller, previously uninspected vessels warrants future consideration, but that recommendation is beyond the scope of this rulemaking.

### C. Miscellaneous

1. *Make changes proposed by NPRM effective faster by issuing a policy letter:* One commenter, who referenced a method for training new deckhands so they can qualify for their vessel-specific LOD, recommended that we implement the LOD option via a policy letter pending the effective date of this rule.

*Response:* We appreciate the concern and another commenter's concern about making the LOD option available as soon as possible, and we are making this rule effective upon publication. After we publish a rule, normally there is a 30-day waiting period before we can make it effective, but under 5 U.S.C. 553(d)(1) this waiting period does not apply to rules that relieve a restriction. Starting May 27, 2020, this rule will begin relieving a restriction by allowing an LOD to be used to designate a PIC on an inspected vessel.

2. *Let Tankerman-Engineer endorsement serve to satisfy § 155.710(e) requirements:* One commenter noted that the commenter's employer requires all officers, even engineers with no involvement in cargo transfers (on a tankship), to maintain a Tankerman-PIC endorsement. Even though 33 CFR 155.710(e) permits engineering officers to serve as PICs, the commenter suggests that we specifically add the Tankerman-Engineer endorsement as an option in addition to the Tankerman-PIC endorsement to satisfy the requirement in § 155.710(e). Observing that not all vessels subject to PIC requirements are oil tankers—making it difficult or impossible to satisfy tankship or self-propelled-tank-vessel-loading-and-discharging service requirements to obtain a Tankerman-PIC endorsement—the commenter wants the Coast Guard to ensure that the classroom requirements for the Tankerman-Engineer endorsement focus on fuel and bunker transfers. Finally, the commenter stated that if a PIC on a

<sup>11</sup> STCW stands for the International Convention of Standards of Training Certification and Watchkeeping for Seafarers.

<sup>12</sup> Gap-closing training refers to requirements in 46 CFR 11.305 to 11.321 and 11.325 to 11.335, included in a 2013 final rule entitled “Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 [STCW Convention], and Changes to National Endorsements” (78 FR 77795, 77805, December 24, 2013). These training requirements were implemented to ensure mariners with existing STCW endorsements met the requirements of the

ship is required to have a Tankerman endorsement (PIC or Engineer) to maintain responsibility for the transfer, the person working aboard the transferring barge should also be endorsed and educated to the same level of care.

*Response:* The suggestion to modify the training requirements for the Tankerman-Engineer endorsement to focus on fuel and bunker transfers—and to add the Tankerman-Engineer as a means to satisfy § 155.710(e)—warrants future consideration but is beyond the scope of this rulemaking. The LOD option that this rule makes available, however, enables those who are not able to satisfy Tankerman-PIC endorsement service requirements to obtain formal instructions on fuel oil transfers so they may serve as a PIC on the vessel(s) identified in the LOD.

Regarding transfers from bunker barges, they are considered cargo transfers and the PIC on a tank barge required to be inspected under 46 U.S.C. 3703, would need to meet requirements in 33 CFR 155.710(b). Those requirements include the option of having a Tankerman-PIC (Barge) endorsement in order to serve as the PIC of a cargo transfer. The requirements for a Tankerman-PIC (Barge) endorsement include experience on tank vessels.

*3. Request to extend use of LODs to drilling fluids and other offshore-supply-vessel cargos:* Two commenters requested that the Coast Guard extend the use of the LOD for fuel transfers to transfers of drilling fluids and other cargos for Offshore Supply Vessels (OSVs). They stated that offshore oil and gas industry is serviced by a fleet of OSVs that not only routinely load and offload excess fuel, but also supply drilling fluids. They viewed the cargo systems of OSVs as no more complicated or dangerous than its fuel oil systems and stated that harmful nature of drilling fluids did not measure up to the harmful nature of fuel oil.

*Response:* Extending the use of an LOD to non-fuel-oil transfers is beyond the scope of this rulemaking. The NPRM was clear regarding the scope of this rulemaking. We are amending 33 CFR 155.710(e), which only applies to fuel oil transfers. Drilling fluids are categorized as cargo, and therefore, would not qualify as a fuel oil transfer. Moreover, drilling fluids<sup>15</sup> may contain oil and under 46 CFR 125.110(e) we treat such fluids the same as oil cargo.

<sup>15</sup> As defined in 40 CFR 435.11(l), drilling fluid is the circulating fluid used in the rotary drilling of wells.

#### *D. No Changes to Regulatory Text*

We did not make any changes from the proposed rule based on the comments we received on the NPRM. The regulatory text of the final rule is the same as what we proposed in the NPRM.

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

This final rule amends 33 CFR 155.710(e), which sets forth the provisions for the qualifications of the PIC of any fuel oil transfer requiring a Declaration of Inspection. This rule does not change the existing requirements for the PIC on uninspected vessels, and the requirements for vessels transferring cargo also remains unchanged. This rule provides inspected vessels two options for meeting requirements to serve as the PIC of a fuel oil transfer. Vessel operators may comply with the current inspected vessel requirement of having a PIC with a valid MMC with either an officer or Tankerman-PIC endorsement or use the new option for inspected vessels of designating a PIC with an LOD as described in 33 CFR 155.715.

##### *A. Amendments to § 155.710(e)*

This rule revises the text of 33 CFR 155.710(e)(1) so that requirements for inspected and uninspected vessels are combined in that paragraph. Paragraph (e)(1)(i) presents the MMC endorsement options and paragraph (e)(1)(ii) presents the LOD option. This rule also redesignates the remaining paragraphs in that section and amends a reference in the redesignated paragraph regarding tank barges to reflect our removal of paragraph (e)(2).

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

##### *B. Amendments to § 155.715*

In § 155.715, this rule changes the reference to § 155.710(e)(2) so that it refers to § 155.710(e)(1) instead. This change reflects our amendments to § 155.710(e). Also, to remove a long-standing conflict of referring to the same letter as both “letter of instruction” and “letter of designation,” this rule amends the reference to a letter of instruction by simply referring to it as “the letter referenced in § 155.710(e)(1).”

This letter has become known by the title we gave it in the § 155.715 heading, “letter of designation.” Section 155.715 requires the letter to designate the

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

##### *C. This Rule Only Addresses Fuel Oil Transfers, Not LNG Fuel Transfers*

This rule does not apply to liquefied natural gas (LNG) fuel transfers. Both §§ 155.710(e) and 155.715 apply solely to the transfer of “fuel oil.” *Fuel oil* means any oil used to fuel the propulsion and auxiliary machinery of the ship carrying the fuel.<sup>16</sup>

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. The regulatory text of this rule is unchanged, and the analysis for it is not substantially changed from what we proposed in the NPRM. We updated three figures used in the analysis to reflect changes realized after we published the NPRM. We update the number of towing vessel inspections completed to reflect inspections conducted from July through October 2019. We updated the total population of towing vessels to reflect knowledge gained from recent inspections. We also revised the assumed turnover rate of 30 percent following additional analysis of data we obtained from the National Maritime Center.

##### *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 and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules,

<sup>16</sup> As provided in § 155.110, this 33 CFR 151.05 definition of “fuel oil” applies to §§ 155.710 and 155.715.

and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. DHS considers this rule to be an Executive Order 13771 deregulatory action. See the OMB Memorandum titled “Guidance Implementing

Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). Details on the estimated cost savings of this rule can be found in the rule’s regulatory analysis (RA) that follows.

We received no public comments on the estimated unit costs of the proposed rule, so we retained these estimates for this analysis; however, because our estimated population changed due to a revised turnover rate, the total estimated cost savings changed from the NPRM. We received additional data to update estimates in our assessment of the proposed rule. Updating estimates with new data does not alter the methodology demonstrated in the preliminary regulatory analysis; therefore, we adopt

the methodology of the preliminary analysis for the proposed rule as final.

This final rule is necessary to provide a less burdensome method of designating who may serve as the PIC of a fuel oil transfer on an inspected vessel by extending the LOD option to inspected vessels. The individuals expected to take advantage of this deregulatory action are the same individuals currently qualified as a PIC with an LOD on an uninspected towing vessel once the vessel receives its Certificate of Inspection. We estimate the total cost savings of the final rule over a 10-year period of analysis to be about \$266,767,725, discounted at 7 percent. We estimate the annualized cost savings to be about \$37,981,722, discounted at 7 percent.

TABLE 1—SUMMARY OF IMPACTS OF THE FINAL RULE

Category	Summary
Applicability .....	Extend the LOD option described in 33 CFR 155.710(e)(2) to inspected vessels for fuel oil transfers. This will allow PIC designation to be fulfilled by an LOD rather than an MMC with an officer or Tankerman-PIC endorsement.
Affected Population .....	The 11,540 individuals on 5,770 vessels that transfer fuel oil and that have a capacity to carry at least 250 barrels or that receive fuel oil from a vessel with a capacity to carry at least 250 barrels.
Cost Savings (2018 \$ Discounted at 7%) .....	10-year period of analysis: \$266,767,725. Annualized: \$37,981,722.
Cost Savings (2016 \$ Discounted at 7% and discounted back to 2016).	Perpetual period of analysis: \$26,323,316.

Affected Population

(1) Vessel Population.

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

The total population is subject to change while inspections are ongoing. In the time since the analysis described in the NPRM, another 194 COIs were issued to towing vessels.<sup>17</sup> Table 2 shows the effect of the increased number of COIs. Through information

gathered during ongoing inspections, TVNCOE revised the total population of inspected towing vessels expected to qualify under subchapter M by the end of the inspection period, adding 30 vessels and increasing the expected total from 5,740 to 5,770 vessels.<sup>18</sup>

TABLE 2—PROJECTION OF SUBCHAPTER M VESSELS OBTAINING A COI

Year	New COIs	Total subchapter M inspected vessels
2018 .....	253	253
2019 .....	1,177	1,430
2020 .....	2,031	3,461
2021 .....	1,236	4,697
2022 .....	1,073	5,770

(2) Individual Population.

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

hour period.<sup>19</sup> From the population of 5,770 vessels, each carrying two PICs, we obtain an affected population of individuals equal to 11,540. The population of 5,770 becomes constant in Year 3 of the analysis period or in 2022 and thereafter, once all affected vessels are inspected.

In the proposed rule, we assumed an individual turnover rate of 30 percent from an approved collection of information.<sup>20</sup> In the interim, we were able to obtain more recent data that indicates a current turnover rate of 32.55 percent. For this analysis, we used data from the National Maritime Center (NMC) for individuals obtaining MMCs with issue dates from April 2009 to March 2020 and expiration dates from August 2009 to March 2025<sup>21</sup> to update

<sup>19</sup> Information collection request (ICR), “Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping” OMB control number 1625–0072.

<sup>20</sup> See page 84 FR 40335 of NPRM and page 4 of supporting statement for ICR 1625–0072.

<sup>21</sup> As per 46 CFR 10.205. An MMC is valid for a period of 5 years. The issue date of a renewal can be postdated by up to 8 months from the time of application to allow for maximum time on the renewed MMC. A future issue date (for example, March 2020) indicates that a mariner renewed an

<sup>17</sup> Monthly numbers of inspections completed from July 2018 through October 2019 provided on October 21, 2019 by the National Towing Vessel Coordinator of the Office of Commercial Vessel Compliance.

<sup>18</sup> The Towing Vessel National Center of Expertise (TVNCOE) estimated the increase of 30 vessels after discovering and correcting pervasive errors in which vessels are classified as Subchapter M vessels in the Marine Information for Safety and Law Enforcement (MISLE) database.

the turnover rate. In the data from NMC, every MMC issued and every mariner has a unique identifying number such that sorting by mariner reference number shows all the MMCs for that mariner.

After cleaning the data for duplicates and printing errors (where the NMC issued a second credential with a new ID number within the same validity period), we applied a formula that marks each MMC as either renewed, not renewed, or ineligible to renew. We marked any MMC with an expiration

date after July 18, 2019 (when the data was downloaded) as ineligible to renew. Otherwise, we assumed an MMC is renewed if the issue date is within 2,190 days of the previous MMC's issue date.<sup>22</sup> The period of 2,190 days is equivalent to 6 years (6 years × 365 days in a standard calendar year), which represents the validity period of 5 years plus a year-long grace period wherein a mariner cannot use the expiring MMC but could renew that MMC without having to retake the required formal training from the beginning. For

example, an MMC issued in April 2009 would be eligible for renewal in March 2014. If there is no new MMC issued by March 2015, we assume that the mariner left the marine industry or otherwise no longer requires an MMC (turned over) in 2015. We then tabulate how many MMCs in each calendar year were eligible to renew, how many of those eligible were renewed, and how many of those eligible were not renewed to produce a turnover percentage as shown below in Table 3.

TABLE 3—ESTIMATION OF TURNOVER RATE

Year	MMCs eligible to renew A	MMCs renewed B	MMCs not renewed C	Rate of turnover = ((C/A) × 100)
2016 .....	1,111	754	357	32.13%
2017 .....	1,069	721	348	32.55%
2018 .....	998	669	329	32.97%
Average .....	.....	.....	.....	32.55%

We use a three-year average of turnover rates from the last three full calendar years to mirror the methodology used in the periodic renewal of a collection of information. As in the NPRM, the resulting rate of 32.55 percent turnover assumes that any mariner lost to turnover in a given year is replaced by a mariner with an original MMC in order to maintain a stable population of mariners able to serve the total population of vessels. Apart from this updated turnover rate, we retained the methodology for calculating renewals from the NPRM. All

calculations using the turnover rate use the unrounded figure for accuracy, any replications using a rounded turnover rate will slightly differ from the calculations shown with the unrounded turnover rate.

In table 4 below, we calculated renewals by multiplying the total number of original MMCs in a given starting year by the probability that an individual would still be employed as a PIC after five years. Where  $[(1 - 0.3255)^{(5 - 1)} = (0.6745^4)]$  is the approximate probability of remaining, (0.6745) given a turnover rate of 0.3255,

compounded for each year after the first year of having the MMC in the 5 years before renewal. We show the application of the calculation below in Table 4. For Year 4, this is equivalent to  $105 = [506 \times (0.6745^4)]$ . For Year 5, this is equivalent to  $521 = [2,519 \times (0.6745^4)]$ . For Year 6, this is equivalent to  $1,033 = [4,993 \times (0.6745^4)]$ . For Year 7, this is equivalent to  $978 = [4,725 \times (0.6745^4)]$ . For Year 8, this is equivalent to  $1,077 = [5,204 \times (0.6745^4)]$ . For Year 9 and all subsequent years, renewals become  $777 = [3,756 \times (0.6745^4)]$ .

TABLE 4—SUMMARY OF AFFECTED POPULATION

Calendar year	Effective year	Total affected vessels	MMCs needed	New COIs	Original MMCs from new COIs	Original MMCs from Turnover	Total original MMCs	Renewals
2018 .....	.....	253	506	253	506	0	506	0
2019 .....	.....	1,430	2,860	1,177	2,354	165	2,519	0
2020 .....	Year 1 .....	3,461	6,922	2,031	4,062	931	4,993	0
2021 .....	Year 2 .....	4,697	9,394	1,236	2,472	2,253	4,725	0
2022 .....	Year 3 .....	5,770	11,540	1,073	2,146	3,058	5,204	0
2023 .....	Year 4 .....	5,770	11,540	0	0	3,756	3,756	105
2024 .....	Year 5 .....	5,770	11,540	0	0	3,756	3,756	521
2025 .....	Year 6 .....	5,770	11,540	0	0	3,756	3,756	1,033
2026 .....	Year 7 .....	5,770	11,540	0	0	3,756	3,756	978
2027 .....	Year 8 .....	5,770	11,540	0	0	3,756	3,756	1,077
2028 .....	Year 9 .....	5,770	11,540	0	0	3,756	3,756	777
2029 .....	Year 10 .....	5,770	11,540	0	0	3,756	3,756	777

**Note:** We rounded the numbers in the table for readability, but we did not round the turnover rate in our calculations. Additionally, the values in each column are not additive.

MMC before it expired so the date was set for a period not exceeding 8 months closest to the

expiration of the current MMC to maximize the validity period.

<sup>22</sup> {If[prior issue date <= [issues date + (365 × 6)], "Renewed", "Not"], "Not"}

While we do not count cost savings for original MMCs obtained before 2020, we counted cost savings for avoided renewals of those MMCs since the renewal would occur after the effective year of the final rule, 2020.

**Cost Savings to Industry**

Cost savings from this rule come from the avoided cost of obtaining an MMC for individuals that are able to use an LOD to qualify as a PIC rather than obtaining an MMC. All of the components of the average cost are unchanged and include tuition for Basic Fire Fighting and Dangerous Liquids, application fees, security screening fee, travel, and the opportunity cost of the time to attend training for an applicant.

The renewal cost of \$220 is also unchanged from the NPRM and includes application fees and security screening fee. As a result, the total average cost for an individual to obtain an original MMC is \$8,958, which is the same estimate we used in the NPRM. Below is the analysis for estimating this total cost as it appeared in the NPRM.

As of May 2019, the average cost of a Basic Fire Fighting course is \$731.31 and ranges in length from 2 to 5 days depending on whether it is offered as a separate module or as part of the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers Basic Training. We assume an average course length of 27 hours, which would require

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

**TABLE 5—AVERAGE COURSE COSTS**

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

In addition, 46 CFR 10.219 prescribes the fees for obtaining an MMC with a Tankerman-PIC endorsement. This includes an evaluation fee of \$95 and an issuance fee of \$45. Every 5 years there is a cost to renew the credential with the endorsement, which includes a \$50 evaluation fee and a \$45 issuance fee.<sup>23</sup> For the original issuance and renewal,

there is a security screening expense of \$125.25.<sup>24</sup>

The Coast Guard assumes varying modes of travel for mariners getting to and from approved training based on the distribution of travel modes derived in the Vessel Security Officer (VSO) Interim Rule.<sup>25</sup> The percentages below in table 6 reflect the same percentages

from the VSO rule.<sup>26</sup> In further analysis, we use the average cost per mariner weighted by the distribution of travel type.<sup>27</sup> We estimate the total travel cost of the mariners to be about \$103,374,546, undiscounted. We estimate the average travel cost for a mariner to be about \$8,958, undiscounted.

**TABLE 6—DISTRIBUTION OF TRAINING COSTS BY MODE OF TRANSPORTATION**

Mode of transport	Distribution (%)	Affected mariner population	Cost (2018 USD)
Commute .....	26.50	3,058	\$27,214,180
Drive/Lodge .....	16.70	1,927	\$15,672,417
Fly/Lodge .....	56.80	6,555	\$60,487,949
Total .....	100	11,540	\$103,374,546
Average Cost per Mariner .....			\$8,958

**Note:** Totals may not sum due to independent rounding.

In table 7, we show the unit costs that comprise the total costs to individuals in table 9. Each method of travel has a

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

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

<sup>23</sup> From 46 CFR 10.219(a), Table 1—Fees. Using column “Evaluation then the fee is . . .” and rows “Original endorsement for ratings other than qualified ratings” and “Renewal endorsement for ratings other than qualified ratings.”

<sup>24</sup> Transportation Security Administration 30-Day notice. [Docket No. TSA–2006–24191] Revision of Agency Information Collection Activity Under OMB Review: Transportation Worker Identification Credential (TWIC®) Program (82 FR 14521, March 21, 2017).

<sup>25</sup> 73 FR 29060, May 20, 2008, “Implementation of Vessel Security Officer Training and Certification Requirements-International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended” rule corrected June 17, 2008 (73 FR 34190).

<sup>26</sup> See Table 4.—TOTAL NATIONAL SHARE OR PERCENTAGE OF—Total National Share of Percentage of VSOs THAT WILL COMMUTE, DRIVE/LODGE, AND FLY/LODGE That Will

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

<sup>27</sup> We use the average cost because the distribution in travel does not change in any given year. If the actual locations of individuals used to develop the baseline was known, then we could base the distribution on actual travel. However, this information is not known and could not be known for every individual in each year.

variable, we obtained the most recent cost figures for travel and lodging, available from either 2017 or 2018, as described in the source reference column.

TABLE 7—UNIT TRAVEL COST ESTIMATES (ADJUSTED TO 2018 USD)

Item	Unit cost	Source reference
Opportunity cost of applicant time ..	\$60.66 .....	The total opportunity cost of time is the base wage multiplied by the loaded wage factor to obtain total compensation including non-wage benefits. \$39.61 is the mean wage estimate from the 2019 National Occupation Employment and Wage Statistics for Captains, Mates, and Pilots of Water Vessels (53–5021) <a href="https://www.bls.gov/oes/2018/may/oes535021.htm">https://www.bls.gov/oes/2018/may/oes535021.htm</a> . The loaded wage factor of (33.11/21.62) is obtained by dividing the total compensation by wages and salaries for full-time transportation workers. These are annual averages of quarterly data series CMU2010000520610D and CMU2020000520610D respectively, obtained from BLS Employer Cost for Employee Compensation <a href="https://www.bls.gov/data/">https://www.bls.gov/data/</a> .
Driving Mileage (rate per mile) .....	\$0.58 .....	“Privately Owned Vehicle Mileage Reimbursement Rates” from GSA tables published on January 1, 2019 <a href="https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates">https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates</a> .
Non-Commuting Driving Time .....	100 mile/27.08 mph commuting speed.	For a mariner who would drive/lodge to the school 100 miles round trip, we divide 100 miles by the average commuting speed of 27.08 miles per hour (mph). We obtained 27.08 mph from the Federal Highway Administration’s Summary of Travel Trends, 2017. <a href="https://www.fhwa.dot.gov/policyinformation/documents/2017_nhts_summary_travel_trends.pdf">https://www.fhwa.dot.gov/policyinformation/documents/2017_nhts_summary_travel_trends.pdf</a> page 79
Round-trip Air-Fare .....	\$346 .....	From the U.S Department of Transportation, Bureau of Transportation Statistics. Average price of a round-trip airfare for 2018 in unadjusted dollars. <a href="https://www.bts.gov/sites/bts.dot.gov/files/Annual%20Fares%201995–2018.xlsx">https://www.bts.gov/sites/bts.dot.gov/files/Annual%20Fares%201995–2018.xlsx</a> .
Round-trip Airport Transfer .....	\$61.28 .....	We used the cost of a round-trip airport transfer from a Coast Guard interim rule, “Validation of Merchant Mariners’ Vital Information and Issuance of Coast Guard Merchant Mariner’s Licenses and Certificates of Registry”, published on January 13, 2006 (71 FR 2154). Figure found in table 4, page 2,160. A later figure could not be found so this figure was adjusted for inflation using the GDP deflator factor of 1.23 times the original cost of \$50. The round-trip airport transfer cost is based on research of the average private and public transfer costs, including taxi or car rental costs associated with U.S. airports and regional destinations. It is not a mathematical or rigorous estimate, but an average transfer cost based on information available from associations and trade groups, airports, transit authorities, and governments.
Flying Excursion Time .....	16 hours .....	A mariner that would fly/lodge in order to attend a training course or school would incur an opportunity cost of flying. We assume the total air excursion time of 16 hours, equivalent to two days of travel.
Incidentals and Meals (per diem) ...	\$64.57 .....	Obtained from the Composite of General Services Administration’s domestic per diem rates for meals/incidentals ( <a href="https://www.gsa.gov/travel/plan-book/per-diem-rates">https://www.gsa.gov/travel/plan-book/per-diem-rates</a> ) in training site and REC cities for January 2018. Taxes ARE included in the M&IE rate per FAQ #12 <a href="https://www.gsa.gov/travel/plan-book/per-diem-rates/frequently-asked-questions-per-diem#12">https://www.gsa.gov/travel/plan-book/per-diem-rates/frequently-asked-questions-per-diem#12</a> .
Lodging (per night) .....	\$142.16 .....	Obtained from the Composite of General Services Administration’s domestic per diem rates for lodging ( <a href="https://www.gsa.gov/travel/plan-book/per-diem-rates">https://www.gsa.gov/travel/plan-book/per-diem-rates</a> ) training site, and REC cities for January 2018. Taxes are not automatically included, so lodging taxes and state sales taxes were added to the lodging per diem.

Table 8, “MMC Costs for Mariners,” shows how the above unit costs for travel and tuition contribute to the total average cost per mariner. The average cost of \$8,957.93 is for each mariner expected to obtain an original MMC.

<sup>28</sup> See 46 CFR 13.120 Renewal of tankerman endorsement.



Tuition costs and travel costs do not apply for renewal if a mariner served at least 90 days of service during the preceding 5 years.<sup>28</sup> If a mariner cannot fulfill that service requirement, we assume that they turnover and must complete the requirements for an

original MMC. The Coast Guard estimates the average travel cost for a mariner that commutes to approved training is about \$8,899.05. The average travel cost for a mariner that drives and stays overnight for approved training is about \$8,132.31. Finally, we estimate

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

TABLE 8—MMC COSTS FOR MARINERS

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

We estimate the cost to individuals to generate a present-value discounted cost savings of about \$265,559,822 over a 10-year period of analysis, in 2018 dollars

using a 7-percent discount rate. We estimate annualized cost savings to be about \$37,809,744, using a 7-percent discount rate. In table 9, we show how

the individual costs apply to the affected population, reflected in the number of original MMCs and renewals, to generate the total cost savings.

TABLE 9—ESTIMATED COST SAVINGS TO INDIVIDUALS

Calendar year	Original MMCs	Total cost of original MMC	Renewals	Renewal fee + security screening	Total annual cost of new MMCs	Total annual cost of renewals	Grand total annual cost	Grand total annual cost discounted 7%	Grand total annual cost discounted 3%
2018 .....	506								
2019 .....	2,519								
2020 .....	4,993	\$8,958			\$44,726,583		\$44,726,583	\$41,800,544	\$43,423,867
2021 .....	4,725	8,958			42,327,834		42,327,834	36,970,769	39,898,043
2022 .....	5,204	8,958			46,615,639		46,615,639	38,052,248	42,659,914
2023 .....	3,756	8,958	105	\$220	33,649,426	\$23,066	33,672,491	25,688,582	29,917,572
2024 .....	3,756	8,958	521	220	33,649,426	114,814	33,764,240	24,073,436	29,125,330
2025 .....	3,756	8,958	1,033	220	33,649,426	227,602	33,877,028	22,573,694	28,371,477
2026 .....	3,756	8,958	978	220	33,649,426	215,396	33,864,821	21,089,309	27,535,199
2027 .....	3,756	8,958	1,077	220	33,649,426	237,215	33,886,641	19,722,333	26,750,427
2028 .....	3,756	8,958	777	220	33,649,426	171,233	33,820,659	18,396,198	25,920,719
2029 .....	3,756	8,958	777	220	33,649,426	171,233	33,820,659	17,192,708	25,165,747
Total .....							370,376,595	265,559,822	318,768,294
Annualized .....								37,809,744	37,369,369

Note: Totals may not sum due to independent rounding; we do not round the turnover rate in our calculations, which carries throughout the table.

Cost Incurred To Prepare Letter of Designation

While the use of an LOD saves the individual approved training costs, the actual letter of designation still takes

time to prepare. Using the time estimate from the existing collection of information for PICs, we assume the preparation of a letter takes approximately 10 minutes at a loaded

hourly wage of \$53.39 for a cost of about \$8.92.<sup>29</sup> Over a 10-year period of analysis, we estimate the total discounted cost of writing LODs to be about \$263,603 in 2018 dollars, using a

<sup>28</sup> See 46 CFR 13.120 Renewal of tankerman endorsement.

<sup>29</sup> From OMB Control Number 1625-0072 (ICR 201803-1625-007) – 0.167 hours equals approximately 10 minutes from Table 12.3 in Appendix A of ICR 201803-1625-007 (OMB

Control Number 1625-0072) last updated in 2018. \$34.86 is the mean hourly wage estimate from the 2018 National Occupational Employment and Wage Statistics for Compliance Officers (13-1041) <https://www.bls.gov/oes/2018/may/oes131041.htm>. The loaded wage factor of (\$33.11/\$21.62) is obtained by dividing the total compensation by wages and

salaries for full-time transportation workers. These are annual averages of quarterly data series CMU201000520610D and CMU2020000520610D respectively, obtained from BLS Employer Cost for Employee Compensation (<https://www.bls.gov/data/>).

7 percent discount rate. We estimate the annualized cost to be about \$37,531, using a 7 percent discount rate.

TABLE 10—ESTIMATED COSTS INCURRED TO PREPARE LETTER OF DESIGNATION

Year	Individuals needing a new LOD	Cost of preparing LOD per Mariner	Total annual cost of preparing LOD	Grand total annual cost discounted 7%	Grand total annual cost discounted 3%
1	4,993	\$8.92	\$44,515	\$41,603	\$43,218
2	4,725	8.92	42,127	36,796	39,709
3	5,204	8.92	46,395	37,872	42,458
4	3,756	8.92	33,490	25,549	29,756
5	3,756	8.92	33,490	23,878	28,889
6	3,756	8.92	33,490	22,316	28,047
7	3,756	8.92	33,490	20,856	27,231
8	3,756	8.92	33,490	19,492	26,437
9	3,756	8.92	33,490	18,216	25,667
10	3,756	8.92	33,490	17,025	24,920
Total			367,468	263,603	316,333
Annualized				37,531	37,084

Note: Totals may not sum due to independent rounding; we do not round the turnover rate in our calculations, which carries throughout the table.

Cost Savings to Government

Without this deregulatory action, the Coast Guard would need to evaluate the MMC applications that would be submitted if an MMC with a Tankerman PIC endorsement were still required to

serve as a PIC for fuel oil transfers. The avoided cost per MMC application is 55 minutes of review by a GS-8 employee for an avoided cost of about \$44.92. As shown in table 11, over a 10-year period of analysis, we estimate the Coast Guard

would save a discounted amount of about \$1,471,506 in 2018 dollars, using a 7 percent discount rate. We estimate the annualized savings amount to be about \$209,509, using a 7 percent discount rate.

TABLE 11—ESTIMATED COST SAVINGS TO COAST GUARD OF THE FINAL RULE

Effective year	Original MMC applications	Cost of reviewing original MMC	Renewals	Cost of reviewing renewed MMC	Grand total annual cost	Grand total annual cost discounted 7%	Grand total annual cost discounted 3%
1	4,993	\$44.92			\$224,267	\$209,595	\$217,735
2	4,725	44.92			212,239	185,378	200,056
3	5,204	44.92			233,739	190,801	213,904
4	3,756	44.92	105	44.92	173,428	132,307	154,089
5	3,756	44.92	521	44.92	192,139	136,992	165,741
6	3,756	44.92	1,033	44.92	215,140	143,357	180,177
7	3,756	44.92	978	44.92	212,651	132,428	172,905
8	3,756	44.92	1,077	44.92	217,101	126,355	171,381
9	3,756	44.92	777	44.92	203,645	110,769	156,077
10	3,756	44.92	777	44.92	203,645	103,523	151,531
Total					2,087,993	1,471,506	1,783,594
Annualized						209,509	209,092

Note: Totals may not sum due to independent rounding; we do not round the turnover rate in our calculations, which carries throughout the table.

Net Cost Savings

Using a perpetual period of analysis, the Coast Guard estimates the total annualized cost savings of the final rule to be \$26,323,316 in 2016 dollars, using a 7 percent discount rate and

discounted back to 2016 assuming implementation begins in 2020. The total cost savings is the sum of the cost savings to individuals no longer obtaining MMCs, shown in table 9, and the time cost savings to the Coast Guard, shown in table 11, of no longer

reviewing MMCs. Net cost savings are the total cost savings minus the costs incurred, shown in table 12. We estimate the net cost savings of this final rule over a 10-year period of analysis to be about \$266,767,725 in 2018 dollars, using a 7 percent discount rate.

TABLE 12—ESTIMATED NET COST SAVINGS OF THE FINAL RULE

	Cost savings	Costs incurred	Net cost savings	Annualized cost savings
Grand Total	\$372,464,588	\$367,468	\$372,097,120	

TABLE 12—ESTIMATED NET COST SAVINGS OF THE FINAL RULE—Continued

	Cost savings	Costs incurred	Net cost savings	Annualized cost savings
Discounted, 7% .....	267,031,327	263,603	266,767,725	\$37,981,722
Discounted, 3% .....	320,551,888	316,333	320,235,556	37,541,376

### Alternatives

We considered three alternatives in this final rule, including the preferred alternative. The first alternative is to let the policy letter expire and continue to require formal training for Tankerman-PIC for any fuel oil transfer. The second alternative is to continue to issue limited endorsement MMCs with Tankerman-PIC Restricted to Fuel Oil Transfers on Towing Vessels. The third, and preferred, alternative is extend use of an LOD to qualify as a PIC for fuel oil transfers to inspected vessels.

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

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

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

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

Under this alternative the Coast Guard would continue to utilize the CG-MMC Policy Letter 01-17 to issue MMC endorsements for Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels. Under this continued action

alternative, the existing policy letter would continue to provide a means for individuals on towing vessels previously designated as PIC of a fuel oil transfer using an LOD to be issued a limited endorsement Tankerman-PIC restricted to Fuel Transfers.

Although one commenter on the NPRM requested that the limited endorsement be continued in addition to the use of the LOD, the Coast Guard rejected this alternative because while it achieves similar benefits as the preferred alternative, it provides neither a full solution nor an adequate long-term alternative for designating the PIC of a fuel oil transfer—and it is more costly than the preferred alternative. The policy letter only applies to one industry segment, and individuals who obtain an MMC according to the policy letter would still incur the cost of renewing their credential every 5 years.

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

Under this alternative, the Coast Guard would provide the option for inspected vessels to designate the PIC of a fuel oil transfer utilizing an LOD. Under a new regulatory action, the Coast Guard would provide flexibility to all inspected vessels in how they designate the PIC of a fuel oil transfer. This is the preferred alternative because it relieves a regulatory burden for individuals who would have to obtain and renew a credential while also providing flexibility to industries—and it tends to provide the benefit of vessel specific training.

### 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. We received no comments on the threshold

analysis of the proposed rule, therefore we adopt the preliminary analysis as final.

Our analysis of the impacts on small entities from the NPRM has not changed; we present this analysis for the final rule below.

In lieu of current revenue figures that may be distorted by ongoing inspections, for this analysis we use the small entity impact analysis of the 2016 Subchapter M rule, which we assume will be closely representative of revenues after the inspection period is over. The 2016 rule's small entity impact analysis used a sample of 304 vessels from the initially estimated population of 5,509.<sup>30</sup> Of the 304 vessels, about 59 percent were owned or operated by a small entity. We assume the same number of small entities would be impacted going forward but will know better once inspections are completed and all fleets resume active status. As this is a deregulatory action, most of the impact is cost savings to individuals, who do not qualify as small entities. The only impact to small entities is the cost imposed to industry as the time cost of preparing the LOD.

The Coast Guard found the average annual cost to be \$75.91 based on the known fleet sizes of all towing vessel entities. For this analysis, we make the most conservative assumption that entities would need to prepare LODs for their entire fleet every year and compare that to the revenue of the lowest earning fleet.

The average annual unit cost takes the number of vessels in a fleet—multiplied by the cost of preparing a letter, \$8.92, and multiplied by 2—to account for each of the two PICs needed per vessel. This average varies by the number of vessels in an entity's fleet, see the distribution below. Note that the number of vessels in a fleet does not correlate with company size; a small business may have a large fleet or a large business may have a small fleet. On average, the cost incurred per entity is \$75.91, which is on average 0.0152 percent of total annual revenues.<sup>31</sup>

<sup>30</sup> See 81 FR 40003, June 20, 2016.

<sup>31</sup> While fleet size is known for all 1,295 entities covering the entire affected population of vessels, revenues are known only for a sample of 183

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

the total annual revenues are known. “Average Cost as a % of Total revenue” is based only on entities for whom revenue is known.

TABLE 13—ESTIMATED AVERAGE COST OF THE FINAL RULE ON SMALL ENTITIES BY FLEET SIZE

Fleet size category	Description	Number of entities	Average cost	Average cost as % of total revenue
Small 1 .....	Entity with only one vessel .....	611	\$17.83	0.0011
Small 2–5 .....	Entity with 2 to 5 vessels .....	571	52.25	0.0037
Medium .....	Entity with 6 to 25 vessels .....	179	194.05	0.0292
Large .....	Entity with > 25 vessels .....	32	873.17	0.0072
Average .....	All fleet sizes .....		75.91	0.0152

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

revenues for the affected population—the cost imposed by this rule is still less than 1 percent of total revenues. In this conservative example, the entity’s estimated annual cost would be

approximately \$321 for a fleet of 18 vessels, 0.76 percent of their \$42,000 annual revenue amount.<sup>32</sup> On average, the cost incurred is less than a quarter of one percent of revenues.

TABLE 14—DISTRIBUTION OF REVENUE IMPACTS ON SMALL ENTITIES

Percent revenue impact	Average annual impact	Small entities with known revenue	Percentage of small entities with known revenue (%)
<1%	\$75.91	183	100
1–3%	75.91	0	0
>3%	75.91	0	0

Since the most conservative case shows that the impact of this rule would be less than 1 percent of total annual revenues, we assume that the impact will be less than 1 percent of total annual revenues for 100 percent of the small entities in our sample size. Therefore, the Coast Guard certifies 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 offer 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

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires the U.S. Coast Guard to consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3506(c)(1)(B)(iii)(V) and 5 CFR 1320.8(b)(3)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The collection of information under this final rule falls under the same collection of information already required for letters of designation described in OMB Control Number 1625–0072. This final rule does not change the content of responses, nor the estimated burden of each response, but does increase the number of annual respondents and responses from 190 to 3,756.

As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar

actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Waste Management Plans, Refuse Discharge Logs, and Letters of Designation<sup>33</sup> for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping.

OMB Control Number: 1625–0072

Summary of the Collection of Information: The Letter of Designation, which is issued by the operator or agent of a vessel, designates the holder as the PIC for the transfer of fuel oil and documents that the holder has received sufficient formal instruction from the operator or agent of the vessel to meet the requirements of 33 CFR 155.715. As amended by this rule, § 155.710(e) will now permit LODs to be used on inspected vessels in addition to uninspected vessels.

Need for Information: This information is needed to ensure that: (1) Certain U.S. vessels develop and maintain a waste plan; (2) certain U.S. vessels maintain refuse discharge records; (3) certain individuals that act

<sup>32</sup> The value of \$42,000 comes from the original FRFA of 81 FR 40003, June 20, 2016.

<sup>33</sup> As stated in the Discussion of the Rule section, this rule is amending 33 CFR 155.715 to make it clear that the letter that has been referred to as both a “Letter of Instruction” and a “Letter of

Designation” should consistently be called a “Letter of Designation.” We are amending the title of this collection of information to reflect that change.

as fuel oil transfer PIC receive an LOD for both vessel safety and prevention of pollution; and (4) certain Great Lakes vessels conduct dry cargo residue recordkeeping.

*Use of Information:* To ensure that fuel oil transfer competency standards are met, all PICs on uninspected or inspected vessels must carry a Letter of Designation if they do not hold an MMC with either an officer endorsement or a Tankerman-PIC endorsement.

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

*Number of Respondents:* The currently OMB-approved number of respondents is 190, we are requesting an increase of 3,566 respondents for a total of 3,756. The reason for the increase is the number of PICs who choose the LOD option, or 11,540 PICs multiplied by the attrition rate of 0.3255, or PICs who leave the industry over a given period of time.

*Burden of Response:* 0.167 hours per response.

*Estimate of Total Annual Burden:* The currently OMB-approved burden hours is 32, we are requesting an increase of 595 hours (11,540 PICs  $\times$  0.3255  $\times$  0.167 hours, the time it takes for a PIC to create a letter of instruction) for a total of 627 hours. The reason for the increase is due to the increase in the number of PICs who choose the LOD option.

As required by 44 U.S.C. 3507(d), we will submit a copy of this rule to OMB for its review of the collection of information. You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

We received no comments on this collection of information, so we are updating the population numbers as necessary and are adopting the collection of information from the NPRM as final.

#### E. Federalism

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

It is well settled that States may not regulate in categories reserved for

regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. See the Supreme Court's decision in *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000). This rule, as promulgated under 46 U.S.C. 3306 and 3703, concerns personnel qualifications because it will amend requirements for who may serve as the PIC of fuel oil transfers on inspected vessels. Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

#### F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Although this rule will not result in such 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 Executive Order 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 Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

#### I. Protection of Children

We have analyzed this rule under Executive Order 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 Executive Order 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 Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### L. Technical Standards and Incorporation by Reference

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

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions

on locating the docket, see the **ADDRESSES** section of this preamble. This rule is categorically excluded under paragraph L56 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. Paragraph L56 pertains to the training, qualifying, licensing, and disciplining of maritime personnel. This rule involves letters of designation to assign PICs of fuel oil transfers on inspected vessels.

#### List of Subjects in 33 CFR Part 155

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

For the reasons discussed in the preamble, the Coast Guard amends part 155 as follows:

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

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

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

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

■ 2. Amend § 155.710 as follows:

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

■ b. Revise paragraph (e)(1);

■ c. Remove paragraph (e)(2);

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

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

The revision reads as follows:

#### § 155.710 Qualifications of person in charge.

\* \* \* \* \*

(e) \* \* \*

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

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

(ii) Carries a letter satisfying the requirements of § 155.715 and

designating him or her as a PIC, unless equivalent evidence is immediately available aboard the vessel or at his or her place of employment.

\* \* \* \* \*

#### § 155.715 [Amended]

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

Dated: May 21, 2020.

**R.V. Timme,**

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2020-11366 Filed 5-26-20; 8:45 am]

**BILLING CODE 9110-04-P**

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 17

#### RIN 2900-AQ97

#### Informed Consent and Advance Directives

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) amends its regulation regarding informed consent and advance directives. We amend the regulation by reorganizing it and amending language where necessary to enhance clarity. In addition, we amend the regulation to facilitate the informed consent process, the ability to communicate with patients or surrogates through available modalities of communication, and the execution and witness requirements for a VA Advance Directive.

#### DATES:

**Effective date:** This final rule is effective May 27, 2020.

**Comment date:** Comments must be received by VA on or before July 27, 2020.

**ADDRESSES:** Written comments may be submitted through [www.regulations.gov](http://www.regulations.gov); by mail or hand-delivery to the Director, Office of Regulation Policy and Management (OOREG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AQ97—Informed Consent and Advance Directives.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064,

between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Lucinda Potter, MSW, LSW, Ethics Policy Consultant, National Center for Ethics in Health Care (10E1E), Veterans Health Administration, 810 Vermont Ave. NW, Washington, DC 20420; 484-678-5150, [lucinda.potter@va.gov](mailto:lucinda.potter@va.gov). (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 7331 of title 38, United States Code (U.S.C.), requires, in relevant part, that the Secretary of Veterans Affairs, upon the recommendation of the Under Secretary for Health, prescribe regulations to ensure, to the maximum extent practicable, that all VA patient care be carried out only with the full and informed consent of the patient, or in appropriate cases, a representative thereof. Based on VA’s interpretation of this statute and our mandate in 38 U.S.C. 7301(b) to provide a complete medical and hospital service, we recognize that patients with decision-making capacity have the right to state their treatment preferences in a VA or other valid advance directive. VA’s use and recognition of advance directives is also consistent with practice in the health care industry at large; for instance, a condition of participation in the Medicare program requires providers to agree to abide by the requirements of the Patient Self-Determination Act of 1990 (codified at 42 U.S.C. 1395cc(f)), which, among other things, requires participating providers to inform patients of their rights under state law to indicate treatment preferences, including the right to accept or refuse medical or surgical treatment, in an advance directive.

VA regulations at 38 CFR 17.32 establish standards for obtaining informed consent from a patient for a medical treatment or a diagnostic or therapeutic procedure and standards for advance care planning; that is, the process by which a patient documents in an advance directive his or her future treatment preferences (encompassing medical, surgical, and mental health care) to be relied on in the event the patient loses the capacity to make health care decisions. We revise this section and publish it as an interim final rule to ensure that informed consent procedural and process changes are in