Grossetti, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Helen Boutrous, Project Council, Office of Chief Counsel.

Background and Purpose

On November 21, 1988, the Coast Guard, along with other agencies of the Department of Transportation (DOT), adopted regulations requiring pre-employment, post-accident, reasonable cause, periodic, and random drug testing. The drug testing required by the rule applies to some persons located outside of the United States. However, the rules provided that they would not apply outside the United States in any situation in which application of the rules violated foreign local laws or policies.

At the same time, the Coast Guard stated that the DOT and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The Coast Guard stated that if, as a result of those discussions, it was found that amendments to the rule were necessary, timely amendments would be issued. A series of amendments have been issued to delay the application of the requirements to persons onboard U.S. vessels in waters subject to the jurisdiction of a foreign government. Those amendments delayed application to January 2, 1992 (54 FR 53286); January 2, 1993 (56 FR 18982); January 2, 1995 (57 FR 31274); and January 2, 1996 (59 FR 65500).

During the past few years, discussions with other countries have been held, and the difficulty of achieving effective bilateral agreements has become clear. Although the Coast Guard could allow its regulations to take effect in foreign waters, the Coast Guard continues to recognize that it would be difficult for U.S. carriers to effectively implement the regulations without cooperation from foreign governments, and that, in response, foreign governments could impose restrictions on U.S. operations.

Discussion of Proposed Rules

For the above stated reasons, the Coast Guard is proposing not to apply the requirements of part 16 to operations in waters subject to the jurisdiction of a foreign government. This proposal will ensure there is no conflict with foreign law or policy. This proposal imposes no additional burdens on the regulated industry, and, in fact, would ensure the status quo of the foreign applicability since the chemical testing regulations were implemented in 1988.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. The economic impact of these proposed changes is so minimal that further evaluation is not necessary. A full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed rule would expressly make drug testing regulations inapplicable within waters subject to the jurisdiction of a foreign government. It does not change the basic regulatory structure of the chemical testing regulations. The proposed revision would result in no additional costs to the regulated industry.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider the economic impact on small entities of a rule which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This proposal would place no additional costs on the public. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no new collection-of-information requirements under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The authority to require programs for chemical drug and alcohol testing of commercial vessel personnel has been committed to the Coast Guard by Federal statutes. The Coast Guard does not expect this proposal to raise any preemption issues, however, the Coast Guard does intend to preempt State and local actions on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2.e(34)(c) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. The proposal involves the applicability of drug testing requirements for maritime personnel and clearly has no environmental impact.

List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 16 as follows:

PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301 and 7701; 49 CFR 1.46.

2. In § 16.207, paragraph (b) is revised to read as follows:

§ 16.207 Conflict with foreign laws.

* * * * *

(b) This part does not apply in waters that are subject to the jurisdiction of a foreign government.

Dated: February 10, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–20617 Filed 8–18–95; 8:45 am]

BILLING CODE 4910–14–M

46 CFR Part 32

[CGD 90–071]

RIN 2115–AD69

Tank Level or Pressure Monitoring Devices

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes minimum standards for tank level or pressure monitoring devices to be used on tank vessels. The purpose of the devices is to reduce the size and impact of oil spills by alerting the tank vessel operator that an accidental discharge of cargo oil is occurring. Requirements for the installation and use of the devices will be proposed separately.

DATES: Comments must be received by November 20, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 90–071), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection and copying at room 3406, U.S. Coast Guard Headquarters between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Randall N. Crenwelge, Project Manager, Oil Pollution Act Staff (G–MS), (202) 267–6220.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 90–071) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Background and Purpose

Section 4110 of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380), found as a statutory note following 46 U.S.C. 3703, addresses two regulatory initiatives concerning tank level or pressure monitoring devices. The first requires the establishment of minimum standards for tank level or pressure monitoring devices. The second initiative calls for requirements concerning the use of the devices on tank vessels.

Tank level or pressure monitoring devices detect leaks in cargo tanks. The purpose of leak detection devices is to inform a person in charge of a tank vessel that a leak is occurring so that the Coast Guard can be notified as required by 33 CFR 153.203, and appropriate response actions can be initiated.

The Coast Guard previously published an advance notice of proposed rulemaking (ANPRM) to solicit comment on minimum standards for leak detection devices and their use (56 FR 21116; May 7, 1991).

The Coast Guard received twenty comments to the ANPRM. Fourteen comments were from tank vessel operators, environmental groups, and industry organizations. Four comments were submitted by tank level or pressure monitoring device manufacturers. Two comments were received from marine consultants.

The Coast Guard also commissioned a study regarding the technical feasibility and accuracy of the devices. A notice of the availability of the study was published on February 5, 1993 (58 FR 7292).

Technical Feasibility Study

The Coast Guard's technical feasibility study, ''Tank Level Detection Devices for the Carriage of Oil,'' examined a wide variety of liquid level sensing systems for application as leak detection devices including hydrostatic gauges, radar gauging measures, resistance tape, floats, ultrasonic systems, fiber optics, capacitance-actuated devices, and the Electromagnetic level indication (EMLI) system.

In addition to discussing the wide variety of currently available liquid level detectors, the study evaluated the performance of these sensors using both ideal conditions and simulated conditions (environmental noise, ship motion, etc.). The effects of these conditions varied depending on the system. In some circumstances, environmental noise was found to substantially degrade performance.

The study found that the greatest obstacle to obtaining an accurate level reading is the disturbance of the cargo surface caused by ship or barge motion. The study indicated that sloshing occurs in all tank vessels to varying degrees, depending on such factors as vessel type, weather conditions, and loading configurations. The effects of such motion must be considered in determining the attainable accuracy of level sensing for use in leak detection.

The study found that another result of ship motion is the formation of foam, which can reduce the accuracy of any type of electronic surface level sensing. Disturbance of the surface can also cause pocketing of air, which also results in a loss of measurement accuracy.

A third effect of vessel motion discussed by the study is vertical acceleration of the liquid in the cargo tanks, caused by surging rolling, and pitching. This vertical acceleration is extremely dynamic and can cause wide variations in the hydrostatic data produced by the pressure sensors. Appreciable acceleration of the cargo also occurs at lower sea states and significantly degrades the accuracy of a hydrostatic measuring system. In these conditions, the liquid measurement by currently available devices may degrade up to 10 percent.

The study concluded that, under good conditions, a change of cargo level of at least one to two percent is necessary before current devices can be expected to detect the change.

The Coast Guard announced in the November 15, 1994 **Federal Register** (59 FR 58810) that it would hold a public meeting to seek additional comments with regard to standards for and the use of tank level or pressure monitoring devices. The meeting was held on December 9, 1994. The meeting gave the public the opportunity to provide further input into the development of proposed regulations.

The Coast Guard received nine comments at the public meeting. Seven came from tank vessel owners and operators, and two came from industry organizations.

Discussion of Comments

The comments to the ANPRM and at the public meeting discussed a variety of topics including the scope of statutory authority, applicability, types of appropriate devices, factors affecting performance, sensitivity of available devices, and research and development efforts. Because this notice of proposed rulemaking (NPRM) covers standards for tank detection devices and not requirements for installation and use, only comments submitted regarding standards are addressed here. Other comments concerning the use of the devices on particular vessels will be addressed in a subsequent rulemaking.

Several comments to the ANPRM requested that the Coast Guard list the types of devices which it considered in drafting the ANPRM. The devices included hydrostatic gauges, radar, resistance tape, floats, ultrasonic systems, fiber optics, capacitance-actuated devices, and the EMLI system. All of these devices were discussed in the technical feasibility study commissioned by the Coast Guard and made available to the public. The results of the study are discussed earlier in the NPRM under the heading ''Technical Feasibility Study.''

One comment suggested a device which relies on the electrical conductivity of water on its dielectric properties to measure the water level in the bottom of a crude carrier. Currently, this technology has not been proven in shipboard applications. As described later, the Coast Guard is proposing a standard that would not be limited to a specific technology.

Another comment noted that one device might meet standards for both leak detection and overfill warning. The Coast Guard would permit such a device if it could meet all requirements. Requirements for overfill devices also were issued under the authority of section 4110 of OPA 90 (59 FR 53286; October 21, 1994) and are found at 33 CFR 155.750.

Several comments challenged the need to set standards for detection devices to achieve the purpose of section 4110 of OPA 90. These comments indicated that the current industry standard requires surveillance whenever there is petroleum oil cargo aboard a tank barge. They further stated that when there is a custody transfer of a barge and its cargo, the material condition of the barge is checked to ensure that there are no leaks or other damage to the barge. The comments pointed out that there are many instances in day-to-day operations when barges are inspected. Industry representatives stated at the public meeting that inspections will detect leaks or other damage before significant harm is done to the environment. They also stated that during cargo transfers, independent surveyors and the cargo master are present to account for all cargo.

The Coast Guard notes the ongoing efforts of the owners and operators of tank barges, fleeting services, and terminals to reduce oil pollution through operational procedures. Compliance with existing requirements and voluntary industry efforts to improve performance greatly enhance the quality of the marine environment. However, the language and intent of section 4110 or OPA 90 does not address operational measures, but rather clearly directs the Coast Guard to develop standards for leak detection devices.

One comment asked the Coast Guard to approve specific devices. While this rulemaking only proposes standards, the Coast Guard recognizes that appropriate testing and approval of devices that meet final Coast Guard standards will be a necessary component of any subsequent requirements for use of the devices. The Coast Guard is in the process of converting its existing equipment approval program into an equipment acceptance program which is based on industry consensus standards. Accordingly, the Coast Guard will begin working with appropriate industry and third-party standards groups to implement an acceptance program for leak detection devices to be proposed later along with regulations for installation and use of these devices.

One comment noted that accurate cargo measurement is difficult when a vessel is in transit. The comment contrasted sloshing of liquid in cargo tanks while a vessel is moving in a seaway with the stability of liquids in stationary shore tanks. Another comment contended that tank level devices cannot detect leaks, just significant changes in level from catastrophic losses.

A third comment predicted that the average of levels sensed by a device would be lower than the actual level of liquid in the thank, as liquid moves from side to side in the tank. In contrast, four comments claimed that current devices may not be sensitive enough to detect leaks prior to a catastrophic spill. The Coast Guard agrees that currently available devices may not meet the proposed standards for meaningful and timely leak detection; however, establishing the standards may lead to development of devices which will provide appropriate leak detection.

One comment said that inconvenience and time spent in responding to false alarms would be offset by the early response to an actual leak. Other comments argued that persistent false alarms could result in the crew failing to respond in the event of an actual leak. One comment also asserted that persistent false alarms may present a significant nuisance to shipboard watchstanders causing them to turn off the system. The Coast Guard agrees that frequent false alarms would significantly degrade the value of warning devices.

Some comments noted that very few hull failures remain undetected. Since most hull failures are caused by groundings, collisions, and allisions, crews will notice these failures and respond quickly. The comments contained conflicting views as to whether tank level devices would be useful in the case of gross hull failures, such as that of Tank Barge 565 (discussed in the ANPRM). The Coast Guard agrees that some hull leaks may be detected by other means before a leak detection device signals an alarm. However, in some cases, a suitable device would signal a discharge of oil that would otherwise, as in the case of Tank Barge 565, go unnoticed by the crew.

Some comments discussed new technology, such as the use of thermal conductivity. A majority of the comments stated that the technology for tank level or pressure monitoring devices is not currently available in a useful form for shipboard applications, and that further research and development are needed. The Coast Guard expects that research and development will improve the devices in the near term. The Coast Guard encourages continued research, development, testing, and evaluation of devices to meet the proposed requirements.

The Coast Guard solicits comments on research and development efforts including current and future testing and evaluation of leak detection systems, components, algorithms, hardware, software, and devices. The Coast Guard also solicits comments on performance characteristics, limitations, suitability to different cargoes, design considerations, applicability, installation requirements, and costs.

Discussion of Proposed Rules

This NPRM proposes standards for leak detection devices intended for installation on the cargo tanks on vessels carrying oil in bulk as cargo.

The proposed regulations for leak detection devices would require both audible and visible alarms. The alarms would indicate that the liquid level within a cargo tank is dropping. The drop in level would mean that a probable leak is occurring.

The Coast Guard proposes that a leak detection device must sound an alarm before the contents of the tank decline to a level 0.5 percent below the level at which the tank was loaded, or at the loss of 1,000 gallons of cargo, whichever is less. The device must perform to this standard, notwithstanding sloshing and cargo temperature change.

The 1,000 gallon threshold was chosen because a discharge of less than 1,000 gallons on the inland waterways is defined as a ''Minor Discharge'' in accordance with the National Contingency Plan, dated September 15, 1994 (59 FR 47384). A loss of 1,000 or more gallons in virtually all environments poses appreciable risk to the marine environment.

The Coast Guard requests comments concerning this ''attainable accuracy'' requirement, as it applies to both inland and oceangoing vessels, and under sloshing conditions.

Proposed Subpart 32.22–01 Performance Standards for Cargo Leak Detection Devices

This section would set standards for leak detection devices intended for installation in each cargo tank carrying oil. It requires the devices to be designed to automatically compensate for changes in cargo temperature; be intrinsically safe or explosion proof; indicate a power loss or failure of a circuit; monitor and self-test its circuitry; alarm before the contents of a tank drop more than 0.5 percent below the level at which the tank was loaded or 1,000 gallons, whichever is less; be able to operate accurately in heavy seas or weather; and have audible and visible alarms.

As noted under the discussion of comments, the Coast Guard will begin to develop a method for certifying that leak detection devices meet the standard proposed here as part of the process for developing follow-on regulations addressing installation and use of these devices. The Coast Guard expects that additional development and research will be necessary to produce devices that meet the standard proposed here.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Assessment under paragraph 10e of those policies is unnecessary. Costs associated with tank level or pressure monitoring devices are dependent on use requirements which will be established in a separate rulemaking.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) small governmental jurisdictions.

Because this proposal imposes no costs on any entities, including small entities, the Coast Guard certifies that this proposal would not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2e of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns only equipment approval. Approved equipment is expected to contribute to the reduction of the occurrence of ship-generated oil spills in the marine environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 32, as follows:

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

1. The authority citation for 46 CFR part 32 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subparts 32.22–1 and 32.59 are also issued under 46 U.S.C. 3703 note.

2. Subpart 32.22 is added to read as follows:

Subpart 32.22—Cargo Leak Detection

§ 32.22–1 Performance standards for cargo leak detection devices.

(a) A cargo leak deduction device is a tank level or pressure monitoring device used to detect leaks in cargo tanks. The purpose of a cargo leak detection device is to inform a person in charge of a tank vessel that a leak is occurring so that the Coast Guard can be notified as required by 33 CFR 153.203, and appropriate response actions can be initiated.

(b) A cargo leak detection device must meet the following standards:

(1) Automatically compensate for changes in cargo volume due to temperature;

(2) Be intrinsically safe in accordance with § 111.105–11 of this chapter, or explosion proof in accordance with section § 111.105–9 of this chapter;

(3) Indicate the event of a loss of power or failure of the leak detection circuit, and monitor the condition of the alarm circuitry and sensor by an electronic self-testing feature;

(4) Alarm before cargo in the cargo tank declines to a level of 0.5 percent below the level at which it was loaded or before the loss of more than 1000 gallons of cargo from the tank, whichever is less;

(5) Be designed to operate without degradation in heavy seas, moisture, and varying weather conditions; and

(6) Have audible and visible alarm indicators that can be remotely installed.

Dated: June 29, 1995.

G.N. Naccara,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–20619 Filed 8–18–95; 8:45 am]

BILLING CODE 4910–4–M

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM–207E, Notice No. 95–10]

RIN 2137–AC70

Hazardous Materials Pilot Ticketing Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: To streamline administrative procedures, cut costs, and reduce regulatory burdens on persons subject to hazardous materials transportation law, RSPA is proposing to implement a pilot program for ticketing of certain hazardous materials transportation violations. Under the program, RSPA would issue tickets for violations that do not have substantial impacts on safety. These violations may include, among others, operating under an expired exemption, failing to register, failing to maintain training records, and