

finalizing the interim final rule, without change, as published in the **Federal Register** (67 FR 41811, June 20, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 955

Onions, Marketing agreements, Reporting and recordkeeping requirements.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim final rule amending 7 CFR part 955 which was published at 67 FR 41811 on June 20, 2002, is adopted as a final rule without change.

Dated: September 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 156

46 CFR Part 32

[USCG-2001-9046]

RIN 2115-AG10

Tank Level or Pressure Monitoring Devices

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In December of 2000, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Coast Guard must promulgate a regulation for tank vessels to use tank level or pressure monitoring (TLPM) devices as mandated by the Oil Pollution Act of 1990 (OPA 90). The Coast Guard is implementing regulations to include minimum standards for the performance and use of TLPM devices on single-hull tank ships and single-hull tank barges carrying oil or oil residue as cargo.

DATES: This final rule is effective October 17, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2001-9046 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Martin L. Jackson, Project Manager, Standards Evaluations and Analysis Division (G-MSR-1), Coast Guard, at 202-267-1140. For technical questions concerning the performance standards for TLPM devices call Dolores Mercier, Technical Program Manager, Engineering Systems Division (G-MSE-3), Coast Guard, telephone 202-267-0658. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202-366-5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Oil Pollution Act of 1990 (OPA 90) Public Law 101-380, directed the Coast Guard to promulgate a number of regulations, including a variety of standards for the design and operation of equipment to reduce the number and severity of tank vessel oil spill incidents. Section 4110 of OPA 90 mandates that the Coast Guard: (1) Establish standards for devices that measure oil levels in cargo tanks or devices that monitor cargo tank pressure level, and (2) issue regulations establishing requirements concerning the use of these devices on tank vessels carrying oil or oil residue as cargo. Functionally, these tank level or pressure monitoring (TLPM) devices measure changes in cargo volume, thereby detecting possible oil leaks into the marine environment.

In May of 1991, the Coast Guard published in the **Federal Register** an Advance Notice of Proposed Rulemaking (ANPRM) (56 FR 21116) that solicited public comments relating to TLPM devices on tank vessels carrying oil. We received 20 comments.

In August of 1992, the Volpe National Transportation Systems Center completed a feasibility study (Volpe study) on TLPM devices. Then, in January of the following year, we made this study available to the public for comment by publishing a notice of availability (58 FR 7292).

As announced in a notice of public meeting (59 FR 58810), we held a public meeting at Coast Guard Headquarters in December of 1994 to discuss this rulemaking. This meeting gave the public an opportunity to provide further input into the development of the proposed regulations. As a result of the public meeting nine comments were received.

In 1995, we proposed a regulation that set minimum standards for leak detection devices (60 FR 43427). Upon review of the Volpe study and the risks of oil spills, we determined that the minimum detection threshold for such devices should be the lesser of either 0.5 percent below the quantity to which the tank was loaded or 1,000 gallons, which matched the criteria for an inland medium and coastal minor oil spill. This notice of proposed rulemaking received 10 comments.

In 1997, we published a temporary rule [62 FR 14828 (March 28, 1997)] establishing the minimum standards for TLPM devices. In the temporary rule, we requested the submission of TLPM devices that could meet the performance standard set out in the rule. The Coast Guard would have evaluated the submitted TLPM devices to ensure that they met the performance standards required by the temporary rule. We would have assessed the costs and benefits associated with any devices that met this performance standard to support decisions regarding implementing use requirements. At the time the rule expired in April 1999, no devices had been submitted to us for evaluation.

In 1999, Bluewater Network and Ocean Advocates brought suit in the U.S. Court of Appeals for the District of Columbia Circuit. In their suit, the petitioners asked the Court for a Writ of Mandamus ordering us to promulgate TLPM regulations. In December of 2000, the Court agreed with the petitioners on this item and directed the Coast Guard to promptly promulgate regulations setting TLPM standards and requiring use of TLPM on tank vessels.

On October 1, 2001, we published a notice of proposed rulemaking (NPRM) entitled Tank Level or Pressure Monitoring Devices in the **Federal Register** (66 FR 49877). Within that notice of proposed rulemaking, we presented a minimum performance standard and eight proposed regulatory options, and corresponding regulatory text for each option, regarding the use of TLPM devices on single-hull tank ships and single-hull tank barges carrying oil as cargo. A public meeting was held on November 6, 2001, in Washington, DC. As a result of the notice and public meeting, we received 129 letters commenting on the proposal.

Background and Purpose

The purpose of TLPM 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. In the NPRM [October 1, 2001 (66 FR 49877)], the Coast Guard

proposed removing the temporary regulations of Subpart 32.22T—Tank Level or Pressure Monitoring Devices found in 46 CFR part 32. We proposed removing this subpart because the effective period of the standard has passed. We also proposed adding new, permanent performance and use standards for tank level or pressure monitoring devices in 33 CFR parts 155 and 156. The new standards we proposed included regulating the installation and operation of TLPM devices on cargo tanks on U.S. and foreign-flag single-hull tank ships and tank barges carrying oil or oil residue as cargo. Section 4110(b) of OPA 90 (Pub. L. 101–380) authorizes the Coast Guard to require the use of TLPM devices on U.S. and foreign-flag vessels constructed or adapted to carry oil in bulk as cargo or cargo residue on the United States navigable waters or exclusive economic zone.

We did not propose requiring the use of TLPM devices on double-hull vessels. These TLPM devices are intended to warn the operators of possible loss of cargo oil into the water due to leaks they might otherwise not notice from cargo tanks. As stated in previous notices, double-hull vessels are intrinsically designed to prevent this type of discharge, having a redundant tank boundary. Therefore, the proposal exempted double-hull tank vessels.

During the development of the proposal, we examined the impact of this rule on single-hull tank ships and single-hull tank barges. The regulatory analysis for this rule showed that of all single-hull tank vessels, barges caused most of the oil spills where TLPM devices would have been effective on single-hull tank vessels. In fact, out of the 27 oil spill incident cases, 20 incidents were from tank barges, with only seven from tank ships. In these 27 cases tank barges contributed 75 percent of the amount of actual oil spilled. Additionally, a majority of current tank barges will be in existence for much longer than will tank ships. Approximately 91 percent of the single-hull tank barges will be allowed to operate after 2010, compared to 54 percent of the tank ships. (All single-hull tank vessels will be phased-out by 2015.) Furthermore, section 4110 of OPA 90, which requires the installation and use of TLPM devices, was added in part as a result of an oil spill from a barge resulting in the spill of 4,000 barrels of oil during a night transit in the Chesapeake Bay.

Even though the 27 oil spill incident cases revealed that tank barges spilled more oil than tank ships, tank ships, on the other hand, present a greater potential for leaking great quantities should a leak occur. A one percent leak from a typical tank ship translates to approximately 36,078 gallons (859

barrels). In comparison, a one percent leak from an average tank barge is 4,536 gallons (108 barrels).

To allow for the maximum flexibility to meet the regulatory and statutory intent, we proposed in the NPRM eight regulatory options that reflect all the reasonable approaches we have examined in developing this proposed regulation. The eight options were designed to be performance based. In developing them, we assumed that this rulemaking will apply only to single-hull tank vessels with a TLPM device that will detect a one percent change in cargo volume.

Each of the eight options was categorized under one of four alternatives (two options per alternative). The alternatives indicated the possible affected vessels. The options indicated either a three-year or a five-year phase-in period for the affected vessels. Any earlier period would place undue financial and logistical burden on industry. Any period beyond five years would reduce benefits in protecting the environment from oil spills before the single-hull tank vessels are phased out. Therefore, the options were characterized by the affected single-hull tank vessel type and the installation phase-in of TLPM devices with the one percent performance standard.

The following table outlines the eight proposed options.

	What type of single-hull tank vessel is affected by this rule?	How long do the affected vessels have to comply with TLPM regulations?
Alternative One		
Option One	Tank Ships	3 years.
Option Two	Tank Ships	5 years.
Alternative Two		
Option One	Tank Barges	3 years.
Option Two	Tank Barges	5 years.
Alternative Three		
Option One	Tank Vessels	3 years.
Option Two	Tank Vessels	5 years.
Alternative Four		
Option One	Tank Ships	3 years.
	Tank Barges	5 years.
Option Two	Tank Ships	5 years.
	Tank Barges	3 years.

Note: Alternatives indicate the possible affected vessels. Options indicate the possible phase-in dates for the affected vessels

The one percent performance standard required TLPM devices to alarm when the quantity of the cargo oil increases or decreases by one percent. With this standard in place, we would be able to detect oil spills of approximately 859 barrels and 108 barrels from a typical tank ship and tank barge, respectively.

As previously stated in this final rule, the Coast Guard received several comment letters addressing our prior NPRM. None of the comments received address our proposal to remove the temporary regulations of Subpart 32.22T—Tank Level or Pressure Monitoring Devices found in 46 CFR part 32. We are removing the temporary

regulations of Subpart 32.22T. After consideration of all the comments received, we have elected to implement Alternative Three, Option Two (all single-hull tank vessels, 5-year implementation).

Preface to Discussion of Comments and Changes

From the comments we received from the NPRM and the lack of the response from the manufacturers during the affective period of the temporary rule, the Coast Guard acknowledges that there are no TLPM devices being marketed. However, as discussed in the regulatory analysis, devices capable of measuring cargo levels are being manufactured. Properly modified, these devices would be able to meet the requirements established by this rulemaking. The actual type of system designed and installed is dependent on the manufacturer of the system and the vessel operator.

Discussion of Comments and Changes

The Coast Guard received 129 letters commenting on the NPRM [October 1, 2001 (66 FR 49877)]. Seventy-two of those letters were copies of the same form letter. Also, some comments were iterated or similarly addressed in other comment letters. When considering all of the comments submitted, we gave each comment received the same degree of consideration. Comments that were submitted in multiple do not receive priority over a comment that was submitted only once. We present the following responses to each comment that addressed our proposed rule.

The majority of the comments express support for adding permanent performance and use standards for tank level or pressure monitoring devices in 33 CFR parts 155 and 156. The comments have been grouped in specific topics related to this rulemaking.

Vessels Required To Install and Use TLPM Devices

The applicability requirements of this rule were addressed within 96 of the comment letters. We received comments stating that we should expand our applicability requirements to include vessels with double hulls, while other comments supported exempting them from the TLPM requirements. One argument cited in several comments interpreted "tank vessels" as used in section 4110(b) of the Oil Pollution Act of 1990 as including both single-hull and double-hull vessels. The Coast Guard disagrees. Although there is legislative history to support the proposition that not all tank vessels must be equipped with the device, there is nothing in the law and legislative history describing that double-hull tank vessels were intended to have the device. These TLPM devices are intended to warn the operators of

possible loss of cargo oil from cargo tanks due to leaks they might otherwise not notice. As stated earlier, double-hull vessels are intrinsically designed to prevent this type of discharge. Therefore, this final rule will apply only to single-hull tank vessels, exempting double-hull tank vessels.

One comment requested that vessels with type-2 and type-1 location requirements that have a Certificate of Fitness be exempt from this rule. The Coast Guard disagrees. Type-2 and type-1 vessels are not considered double-hull vessels, nor would they offer the same level of protection. Therefore, type-2 and type-1 vessels are subject to TLPM requirements.

We received two comments concerning the applicability of the rulemaking based on the vessel's flag-state. One commenter believes that this rulemaking should be incorporated into our "good neighbor policy" toward other nations that are subject to pollution from ships registered in the United States. The other comment states that the proposed rule was not specific enough as to whether this rule applies to foreign-flag vessels all of the time or only when it is in the navigable waters of the U.S.

These regulations apply to tank vessels that operate in the navigable waters of the United States and the exclusive economic zone, consistent with international law. The TLPM requirements apply to U.S. single-hull tank ships and tank barges carrying oil or oil residue as cargo no matter the location. Foreign-flag single-hull tank vessels carrying oil or oil residue as cargo are required to meet the TLPM requirements whenever they are operating in the waters set forth above when bound for a port or place within the jurisdiction of the United States.

One comment recommended that bitumen carriers be exempt from these requirements. Bitumen is a mixture of tar-like hydrocarbons derived from petroleum. Black or brown, it varies from viscous to solid; the solid form is usually called asphalt. As detailed in 33 CFR 155.490(d), asphalt carriers are exempt from this requirement.

We received comments arguing that retrofitting TLPM devices on oceangoing vessels costs less than retrofitting the devices on inland tank vessels. Because of the retrofitting cost differential between these tank vessel types, the commenters recommended that we develop cost effective performance standards for inland tank vessels. The Coast Guard disagrees. An inland oil spill will potentially have a greater environmental impact than out at sea. Relaxing the requirement for inland

tank vessels will not provide the same level of protection as ocean-going tank vessels. Case analysis revealed that most spills for which TLPMs would have been effective were inland spills.

Installation Date

We received 82 letters addressing the phase-in period for vessels required to install TLPM devices. Half of the commenters specifically recommended codifying proposed Alternative Three, Option One, meaning all single-hull tank vessels installing TLPM device within a three-year phase-in period. The remainder of commenters promoted a five-year phase-in period to provide the necessary flexibility for a vessel to integrate scheduling installation of the devices during the vessel's normal shipyard cycle.

This rulemaking sets the installation date at five years from the effective date of this rule. Currently, no devices meet the performance standards established by this rulemaking. The rationale of the five-year phase-in period is to provide industry manufacturers time to test a device that will meet the performance standards of this rule in a dynamic sea state and to give each owner of single-hull tank vessels time to schedule installation of the TLPM device during normal shipyard cycles.

Justification for Requiring the Installation and Use of TLPM Devices on All Single-Hull Tank Vessels

We received 86 comments requesting the Coast Guard to qualify its authority and reasoning for requiring single-hull tank vessels to equip each tank on the vessel with a TLPM device. Commenters pointed out that if a tank ship were involved in a collision, allision, or hard grounding and as a result of the casualty the vessel's cargo was flowing out of a damaged tank, the TLPM devices will not provide the crew with any additional information about the tank and its cargo. Another commenter stated that a TLPM device would not prevent cargo from leaking out of a vessel's tank. We agree with both comments. The purpose of TLPM devices is not to stop a leak, but to inform the crew of a cargo leak from a tank otherwise not noticed, and so that spill abatement procedures can be initiated. The requirement is for an alarm to actuate when the cargo tank level has increased or decreased by one percent. Large flow rate spills are not likely to be helped by the use of the TLPM equipment. Requiring the use of a TLPM device does not replace the standard practices associated with tank vessels or the good seamanship practices. It is up to the vessel's master

to deem which actions are appropriate responses to the alarm's actuation.

Commenters acknowledged that the Coast Guard has been ordered by the U.S. Court of Appeals to promptly satisfy the statutory mandates of section 4110 of the Oil Pollution Act of 1990. While they support the ideas of requiring leak detection of cargo tanks on tank vessels, the respondents believe that both the IMO and the Coast Guard have already promulgated rules addressing the statute. The Coast Guard disagrees. Both the U.S. Court of Appeals and Section 4110 are clear on the specific requirements the Coast Guard shall implement. Currently there are no other regulations or rules regulating TLPM devices, even though there are rules and regulations concerning overflow devices, high level alarms and cargo gauging systems, however, none of these provide the functionality of a TLPM device.

Additional commenters questioned the Coast Guard's interpretation of the statute. The statute says that the Coast Guard is to issue regulations establishing requirements concerning the use of devices that measure oil levels in cargo tanks or devices that monitor cargo tank pressure level. The respondents addressed the wording of the statute by saying that it does not say "require the use" or "require the installation of". The respondents believe that because the statute mandates the development of regulations "concerning the use" of a TLPM device, the Congress did not intend to require the installation and use of these devices. The Coast Guard disagrees. There is nothing in the act itself or the legislative history that would support such interpretation. In fact, the legislative history is to the contrary, supporting the installation of TLPM devices on tank vessels.

Performance Standards

We also received 107 comments addressing the performance standards. Several of the commenters pointed out their inability to locate a monitoring device that will satisfy the requirements of this rule. The comments continued by stating that the leak detection standard should be written in a way that would help to avoid false alarms. One comment suggested requiring an alarm to sound if the level in any cargo tank drops three percent over a period of 30 minutes. The respondent believes that this requirement would help to prevent false alarms. Another comment recommended developing a monitoring standard that is not based solely on measuring the percentage of the cargo in the cargo tank. The respondent believes

that this type of measurement lends to false alarms. One comment detailed scenarios, such as draft restrictions en route to the discharge port or specific gravity of product, limiting the amount of cargo loaded into any tank, resulting in the need to reset or recalibrate each tank loaded. The respondent argues that this would be time consuming and has the potential of creating errors. Another comment stated the unlikelihood of obtaining the required accuracy by averaging liquid level data with computer software. The respondent believes that such a system would be dependent upon perfectly tight tanks, because even the slightest leak would compromise the effectiveness of the system.

Since no TLPM device currently exists that meets our standards the actual type of system designed and installed is dependent on the manufacturer of the system and the vessel operator. We believe that the various concerns expressed in the comment letters, such as false alarms, cargo tank re-calibration, and accuracy requirements can be addressed through the system design.

In the NPRM we proposed that the TLPM device must be able to properly function in a heavy sea state. We received comments addressing this standard. One comment recommended that we define "heavy seas". Another comment asked us to develop a test case for operation in heavy seas. Commenters urged that the leak detection device must be able to make calculative adjustments for operating conditions and tank environments, such as cargo sloshing, changes in barometric pressure, and vapor space temperature. One of the respondents suggested basing the software used to detect these changes on the Finite Element Method modeling and study.

The Coast Guard agrees that "heavy seas" is not an explicit sea condition. To clarify the intent of our standard, we have replaced the phrase "heavy seas" with "sea state 5" as defined in The American Practical Navigator, commonly known as Bowditch. We will also add to our regulations a definition for sea state 5 so that the sea condition by which a TLPM must properly operate is clearly understandable.

We received comments addressing the proposed requirements for audible and visual alarm indicators that must be distinctly identifiable as cargo tank level or pressure monitoring alarms that can be seen and heard on the navigation bridge of the tank ship or towing vessel as well as on the cargo deck area. One comment suggested that the alarm for inland tank barges should be a simple

visual strobe light that can be seen from the bridge of the towing vessel. The comment also recommended that the visual strobe light alarm should be powered by replaceable batteries, possible using a wireless system. Another comment recommended that inland tank barges without a normal source of power be allowed to use an alarm for all tanks on the barge and allowed to use a common shore alarm receptacle.

We also received comments requesting guidance on how a signal from a tank barge will be transmitted to the vessel towing the barge. One comment urged the Coast Guard to develop a communication standard from existing standards. Another comment suggested a radio signal as a possible method of an unmanned barge to communicate with the alarm on the towing vessel. Still another comment acknowledged the possible use of cable connections. This respondent also pointed out that it would be extremely difficult to ensure a reliable dry connection that will remain connected through out the entire voyage.

Another comment urged the Coast Guard to develop training requirements for crewmembers on a towing vessel. The comment stated that during a single voyage it is common practice for a barge to be towed by several different towing vessels. The respondent argues that not all of the crew of those different towing vessels will be trained to operate the various components of each TLPM manufactured, nor will all of the devices be compatible with one another.

The requirement remains the same as stated in the NPRM. An audible and visual alarm indicators must be distinctly identifiable as cargo tank level or pressure monitoring alarms. The alarms must be seen and heard on the navigation bridge of the tank ship or towing vessel as well as on the cargo deck area. The requirement is to have an alarm to indicate to the vessel's master that there is the potential cargo tank leak. The basic design of this indicator and its system are to be determined by the manufacturer of the device and the vessel operator. Enhancements or variations to the system, such as its ability to be compatible with multiple leak detection indicators and others cited above, are left to the discretion of the manufacturer of the device or the operator of the vessel.

One comment urged the Coast Guard to set testing standards by which the operator of a vessel can test the TLPM device and the alarm system to ensure that it is properly working. The respondent also urged that we set procedures for the operator of the vessel

to follow when responding to the actuation of a leak detection alarm. We disagree with the suggestions. The master will deem which actions are appropriate to perform whenever an alarm is actuated, using standard practices of good seamanship.

Safety Concerns When Responding to Alarms

We received 21 comments expressing concerns for the safety of a towing vessel and its crew when responding to an alarm that had been activated by a TLPM device on a tank barge being towed by the vessel. One issue raised was the risk to navigational safety posed by a distracted wheelman trying to navigate bridges or narrow channels while attempting to monitor as many as 100 leak detection indicators warning of the potential cargo tank leak. Another issue raised was the risk of collision and injury when maneuvering the towing vessel alongside a barge in order to place a crewmember on board the barge to check for the presence of a leak. A third comment plainly stated that no company should risk the lives of its crew by placing a repair team or investigation team on board a barge.

The alarm requirement remains the same as stated in the NPRM. The Coast Guard agrees that the safety of a vessel's crew should always come first when evaluating how to best respond to any alarm. An audible and visual alarm indicator must be distinctly identifiable as cargo tank level or pressure monitoring alarm. The alarm must be seen and heard on the navigation bridge of the tank ship or towing vessel as well as on the cargo deck area. The requirement is to have an alarm to indicate to the vessel's master that there is the potential cargo tank leak. Once the alarm is actuated, it is up to the vessel's master to deem which actions are an appropriate response.

We received a comment concerned about the numerous risks associated with supplying power to a tank barge. Since no TLPM device currently exists that meets our standards, the actual system designed and installed is dependent on the manufacturer of the system and the vessel operator. In the NPRM, we assumed that these devices on a barge to be battery powered, such as the batteries used to provide power for navigation lights. However, we did not mandate that power come from a battery.

Costs and Benefits Presented in the Regulatory Analysis of the NPRM

We received 249 comments addressing the costs and benefits detailed in the regulatory analysis of

this rulemaking. One comment disagreed with the analysis including economic costs for foreign vessels. The respondent believes by including these costs the cost-effectiveness contains inflated values. The respondent recommended that the cost assumptions and cost-effectiveness criteria be revised.

Within the same comment letter, the respondent urged that we include the benefits of reducing oil spillage from foreign ships in the U.S. waters. The respondent recommended including the benefits in the cost-effectiveness data, despite their prior recommendation to delete the foreign-flag vessel data. The respondent plainly recommended that the methodology used to calculate the cost-effectiveness be corrected.

The purpose of the regulatory analysis is to estimate the impact of the rule on society. It is reasonable to assume that the costs incurred by foreign-flag vessels operating in U.S. water will eventually be passed on to consumers in the U.S. through the price of goods brought to our ports on a foreign-flag vessel. Regarding the benefits, this rule will be enforced on international vessels while transiting U.S. waters, and it is reasonable to expect a reduction of oil spilled into our waters by foreign-flag vessels.

Another comment addressed assumptions made about foreign-flag vessels. The respondent believed that the analysis should not use labor rates of the U.S. to calculate cost for a foreign-flag tank vessel to install a TLPM device. We disagree. Labor rates of other countries vary too greatly to suggest a global labor rate. We used the labor rates of the U.S. as the best proxy available. We consider this assumption to be reasonable.

We received comments objecting to what one respondent called "devastating real-world impacts" on the single-hull tank vessels and their companies. One commenter said he could not accept the cost of installing a TLPM device on his fleet, which is scheduled for retirement from service. He believes that these costs will not be recovered from the companies expected earnings before his fleet is retired.

Our regulatory analysis shows that this rule is costly to the maritime industry. As mandated by the Court and section 4110(b) of OPA 90, we must establish regulations concerning the installation and use of TLPM devices.

Some commenters were more specific with their cost estimates for this rulemaking on the single-hull tank vessel owner. One commenter believes that the costs would be \$20,000 per cargo tank for the device, equipment,

and installation. Other commenters believed that the cost estimates generated in the regulatory analysis for the device, equipment, and installation were too low, whereas still other commenters believed that our cost estimates were accurate.

Of all the cargo level measuring devices that could meet the requirements of this rule when properly modified, we priced each device then disregarded the most and least expensive devices. We developed our cost estimate by identifying the mean cost of the remaining devices. Therefore, our cost estimate fell in the center of the price range of the devices.

One comment stated the higher one (1) percent accuracy standard for each TLPM device equates to more expensive equipment. The comment went further by stating the higher accuracy standard also increases the chances of false alarms. The comment recommended that a 1 percent standard be imposed on tank ships and a three (3) percent standard be imposed on tank barges.

The Coast Guard disagrees with this comment. In our analysis we found that the costs of TLPM devices that could meet the requirements of this rule with an accuracy of 3 percent versus 1 percent to be essentially equal. Specifically, the cost to a tank barge for purchasing the device and equipment and having it installed will not differ if the device has an accuracy standard of either 3 or 1 percent. We elected to require the 1 percent standard due to the added benefits this standard brings to the environment. As far as the potential for the 1 percent standard to cause a greater number of false alarms, no such device exists to our knowledge. Therefore, the design of the device and its effectiveness is to be determined by the vessel operator and the manufacturer of the TLPM device. Such concerns could and should be taken into consideration during the development of such devices.

We received three comments requesting that additional analysis be incorporated into the regulatory evaluation of this rulemaking. The first comment wished to include in our benefits the oil spills that may be prevented in a worst-case scenario where a captain's unawareness of a leak on board his vessel may cause the loss of the entire vessel, cargo and crew. We disagree with the comment. The purpose of this rulemaking is to provide early detection of leaks coming from single-hull tank vessels. Installing and using a TLPM device will not prevent worst-case casualties. Having an alarm will not provide new information to the crew of a vessel suffering a catastrophic

casualty. Therefore, the benefits of this rule can only be estimated for cases where TLPM devices provide early indications of potential cargo leaks that lead to a reduction of oil spilled.

One of the comments wanted the costs of this rule to be viewed in a context of the costs of all rules mandated by OPA 90 as a whole. We agree that this comparison should be part of the regulatory analysis. The comparison can already be found in the "Regulatory Evaluations" sections of the NPRM and in this final rule.

The third comment requested the cost associated with equipping or configuring an electrical power supply on tank barges be included in the analysis. We agree that these costs should be included in the cost and benefit analysis of this rulemaking, which is why we included them in our analysis. These costs can be found in the analysis for the proposed rule, which is part of the docket for this rulemaking. The data will also be placed in the final regulatory analysis for this final rule and will also appear in the DMS docket for review.

One commenter believed that a computer would have to be installed as a component of the TLPM device for this rulemaking to be successful. The commenter said that a computer would be able to detect all variables and conditions both on and off of the vessel to accurately calculate the contents of the tank. The commenter believed this is the only way to succeed, and that we should adjust our analysis to include the costs for a computing component in each TLPM device. The Coast Guard disagrees with this comment; designing TLPM devices with computers may not be the only design. Seeing that no TLPM device that meets our standards currently exists, the actual type of system designed and installed is dependent on the manufacturer of the system and the vessel operator.

In addition, we are not revising our analysis to include the cost for a computer component on all TLPM devices. Our analysis looks at the costs of several sensors that could be modified with "off the shelf components" to meet the requirements of this rulemaking. We disregarded the most expensive and the less expensive device assuming that consumers would not purchase either of them. We averaged the costs of the remaining devices and performed our analysis using the device closest in cost to the mean cost of the devices as a basis. The device we used as a basis did not have a computer component.

General

We received a few comments that touch on issues not directly related to the requirements and analysis proposed in the NPRM. One comment requested that we set a moratorium on our proposed rule and allow the industry to prepare for the replacement of single-hull tank vessels with double-hull tank vessel by 2015. Two comments explained that retrofitting TLPM devices on single-hull tank vessels that are scheduled for retirement might result in earlier retirements of the vessels. Early retirement, says one of the commenters, would create a tonnage shortage that may impact the nation's commerce and its security. The commenter presented data from the Shipbuilders Council of America. The data claims that by the year 2004, 28 percent of existing tank vessel capacity, and 45 percent of all large ocean-going tank barge capacity will be lost.

We considered these comments, but are constrained by the Court to establish regulations concerning the installation and use of TLPM devices. The data attributed to the Shipbuilders Council of America is based on Maritime Administration (MARAD) data that reflects a subset of the population that this rulemaking will affect. In particular, that data only includes tank vessels over 10,000 dead weight tons (DWT). Our phase-out data includes tank vessels of all sizes.

We received a comment noting that our summarization of the Intertanko decision from the Supreme Court, found in the Federalism section in the NPRM preamble, omitted discussion of the savings clause regarding liability requirements under OPA 90. We note that this was omitted merely because it is inapplicable to the subject matter of this rule.

We received a comment from a mariner who has installed video cameras to monitor the respondent's fleet and facilities for security. The respondent asked if this monitoring system would satisfy our TLPM requirement. While this may be good practice, the monitoring system described would not satisfy our requirements because it presents many of the same visibility problems that occur by just looking out at the wake of the vessel. TLPM devices, however, would not be faced with problems of visibility.

Regulatory Evaluation

Assessment

This rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and

Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Transportation [44 FR 11040, (February 26, 1979)]. A final Assessment is available in the docket as indicated under **ADDRESSES**. A summary of the Assessment follows:

When fully implemented, the measures outlined in this notice should reduce environmental and property damages resulting from oil pollution. The net cost-effectiveness of the rule is approximately \$190,000 per barrel of pollution avoided. This means that it will cost society approximately \$190,000 to keep each barrel of oil out of the water.

The present value of the total cost over the 12-year period of analysis (2003–2014) is approximately \$166.4 million. All the costs will be incurred during the five-year phase-in period. We realize that there may be incidental costs incurred after the phase-in period, but we consider these to be *de minimis*.

Over the 12-year period of analysis, we estimate that TLPMS would help reduce the amount of oil spilled in U.S. waters. The benefits derived for this rule is 874 barrels of oil not spilled.

Comparison With Other OPA 90 Rulemakings

It is useful to compare the cost, benefit, and cost effectiveness of this rule with other rulemakings mandated by the Oil Pollution Act of 1990. The Coast Guard published over 40 rules in the 1990s under OPA 90. Once the majority of these rules were in place, the Coast Guard conducted a Programmatic Regulatory Assessment (PRA) to analyze the multiple effects of these rules on marine safety and the environment. We selected a "core group" of 11 of the most important and significant OPA 90 rules to serve as a proxy for the entire suite of rules. The PRA assessed cost effectiveness of the core group by accounting for the overlapping effects of these rules. Without addressing these overlapping effects, we would have double-counted the true benefit and effect of these 11 significant rules. As with this rule, benefit was estimated as the barrels of oil not spilled or spilled and recovered from the marine environment.

The cost (Present Value \$1996), benefit (PV barrels), and cost-effectiveness (PV \$/barrel) of the 11 core group rules is presented in the table below:

Rule	PV cost (1996 \$billions)	PV benefit (1996 barrels)	Cost effec- tiveness (\$/barrel)
All 11 core group rules	\$10.600	1,221,000	\$8,700
Financial responsibility*	-0.106	525,000	-200
Lightering of single hull vessels	0.007	6,000	1,200
Facility response plans	0.179	59,000	3,000
Spill source control and containment	0.200	57,000	3,500
Operational measures for single hulls	0.102	28,000	3,700
Licenses, certificates, documents	0.062	14,000	4,500
Overfill devices	0.183	6,000	29,100
Deck spill control	0.013	<1,000	31,100
Vessel response plans	3.252	50,000	64,600
Double hulls	6.411	94,000	68,100
Equipment and personnel in Prince William Sound, AK	0.325	3,000	108,900

*Cost and cost effectiveness was negative for this rule because avoided cost (value of avoided injuries, deaths, and cargo loss) exceeded the capital and labor cost.

When compared to the other major OPA 90 rulemakings, this rule is less cost-effective. The overall cost effectiveness of the 11 core group rules in OPA 90 is approximately \$8,700 per barrel not spilled. The cost effectiveness of this rule is \$190,000 per barrel in 2002 dollars (\$168,330 per barrel expressed in 1996 dollars). We estimate that the amount of oil prevented from entering the environment due to the 11 major OPA 90 rulemakings is 1,221,000 barrels over the period of analysis (1996–2025). The amount of oil we estimate that will be prevented from entering the environment due to this rule is 874 barrels over the period of the analysis. In percentage terms, the pollution that will be averted due to this rule represents less than one tenth of one percent of the total pollution averted from the 11 major OPA 90 rulemakings.

When comparing this rule to the cost and benefit estimates above, caveats should be noted. The assessment period for the OPA 90 PRA was 1996–2025, while the assessment period for this rule is 2003–2014. This is not overly problematic because after 1 January 2015, the rule will no longer affect single-hull vessels because they are scheduled to be phased-out by 2015. The cost and benefit of the rule after 2015, therefore, is expected to be zero. Extending the assessment period for the proposed rule to 2025 to align with the OPA 90 PRA would not noticeably change the results. Finally, the cost, benefit, and cost effectiveness estimates presented above represent an entire system of overlapping rulemakings. The cost effectiveness of each core group rule is the effectiveness when analyzed concurrently with all the other core group rules to assure benefit is not double-counted. For this reason, the overall benefit of the rule does not equal the sum of the benefits from all the rules because the amount of the overlapping

benefit is not included in the individual benefit of the individual rule. The proposed rule is a stand-alone rulemaking and is analyzed as such.

A copy of the OPA 90 PRA is available in the docket [US Coast Guard, 2001. *OPA 90 Programmatic Regulatory Assessment (PRA): Benefit, Cost, and Cost Effectiveness of Eleven Major Rulemakings of the Oil Pollution Act of 1990*. Volpe National Transportation Center, May 2001.]

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.

From our analysis (copy available in the docket), we conclude that requiring TLPM devices to be installed on single-hull tank vessels may have a significant economic impact on a substantial number of small entities. Consequently, by establishing a five-year phase-in period for the systems, we provide flexibility and accommodation for small entities affected. This gives small entities the time needed to explore markets, plan, and schedule installations during normal downtimes.

We estimate that 181 entities will be affected by this rule, 124 of which we consider to be small entities. Approximately 26 percent of the affected entities are in either petroleum wholesale or navigational services to shipping. The respective North American Industry Classification System codes are 422720 and 488330. We estimate that 55 percent of the small entities will have more than a 5 percent

reduction in annual revenues during the installation of TLPM devices.

More details about the impacts of this rule on small businesses are discussed in the Final Regulatory Flexibility Analysis. As stated above, the Oil Pollution Act states that TLPM requirements must be established for tank vessels. As a result, we do not have the discretion to exempt small business tank vessel owners from the requirements of this proposed rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The NPRM provided small businesses, organizations or governmental jurisdictions a Coast Guard contact to ask questions concerning this rule’s provisions or options for compliance.

After the effective date of this rule, a small entity compliance guide will be made available in the public docket for this rulemaking project. The compliance guide will explain the required action of small businesses to comply with this final rule.

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).

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S. Ct. 1135 (March 6, 2000).) This rule on the performance standards and use of TLPM devices fall into the category of vessel equipment and operation. Because the States may not regulate within these categories, preemption under Executive Order 13132 is not an issue.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

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.

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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

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. Although it is a “significant regulatory action” under Executive Order 12866, this rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

The distribution of petroleum in the U.S. is an efficient, but complex, system involving the movement of crude oil into U.S. refineries from domestic and foreign sources and the movement of product out of refineries, primarily by pipeline and tank vessels. In order to explain this critical issue, it is helpful to discuss the specific segments that comprise the national waterborne distribution system of petroleum.

The Maritime Administration describes the U.S. waterborne petroleum trade as five distinct and interrelated market segments: Domestic product tankers, coastal tank barges, domestic crude carriers, foreign tankers (imports), and inland tank barges.

Domestic product tankers compete with tank barges in medium haul (500–1,500 mile) coastal trades; product tankers supplement crude carriers in West Coast crude oil trades; and product tankers and tank barges lighter (transfer) cargoes from crude carriers to oil terminals. While tank barges compete with domestic product tankers in

medium haul trades, they complement tankers and pipelines by transshipping products in short-haul trades.

Foreign product tankers compete indirectly with domestic product tankers through import trades, and provide product shipments to Middle Atlantic and Northeast states directly from a foreign port rather than from another domestic port. The Jones Act, which reserves U.S. coastwise shipments for U.S.-flag vessels, should not be viewed, therefore, as absolute protection for domestic product tankers.

Over the period 1994 to 1999, the role of pipelines, foreign tankers and coastal tank barges has grown significantly in U.S. petroleum trades. Based on recent pipeline upgrades, year-end 2000 newbuilding orders and OPA 90 phase-out schedules, these trends should continue over the next five years.

Domestic Product Tankers

The primary domestic product tanker trades—U.S. Gulf/Atlantic, U.S. Gulf/West Coast, and intra West Coast have declined over the period 1994 to 1999. The declines can be attributed to a decline in Alaska crude oil production, increases in pipeline shipments, increases in product imports, increases in local refinery production of reformulated gas, and increases in medium-haul (500–1,500 mile) tank barge shipments. These trends are expected to continue over the next five years.

Product tanker freight markets have been efficient in allocating capacity to U.S. domestic and import trades. To meet their distribution requirements, oil companies have used foreign product tankers (imports) and/or domestic tank barges in lieu of domestic product tankers. The domestic product tanker fleet will continue to decline over the next five years reflecting an aging fleet, OPA 90 phase-out requirements, and high newbuilding prices/operating costs relative to charter rates.

Coastal Tank Barges

The market for coastal tank barge services can be divided into two broad segments: Short-haul trades (< 500 miles), in which tank barge services complement tanker and pipeline services; and 500+ mile trades in which tank barge services substitute for tanker services. In 1999, long-haul ton-miles were about 3.5 times short-haul ton-miles.

Coastal tank barge traffic (ton-miles) will continue recent trends and grow at 2–3 percent per year over the next five years, reflecting fleet productivity increases and the substitution of large tank barges (10,000+ DWT) for product

tankers in the 500+ mile coastal petroleum products trades.

The coastal tank barge fleet will not be significantly affected by OPA 90 double-hull requirements until 2005, when there will be a substantial impact (a decrease of 0.5 million DWT capacity) on the 10,000+ DWT fleet.

As of year-end 2000 there were nine large coastal tank barges (0.2 million DWT) on order for delivery in 2001 and 2002. For tank barges, the order book does not show deliveries beyond the next 2 years. There are, however, pending contracts for seven additional newbuildings and eight retrofits.

Domestic Crude Carriers

The Alaska crude oil trades are the primary source of demand for U.S. crude carriers. These trades are examples of "Industrial Shipping" in which shippers (oil companies) bear market risks by owning or time chartering tankers. In 1999, ninety-nine percent of the Alaska crude oil trades were controlled by oil companies or oil company affiliates. As a result, Alaska crude oil production, U.S. crude carrier capacity, and coastal crude oil traffic tend to move together over time.

Based on the Energy Information Agency's forecast for Alaska crude oil production, Alaska/U.S. West Coast crude oil trades will fall from 85 billion ton-miles in 1999 to 64 billion ton-miles in 2005, reducing crude carrier demand by about 500 thousand DWT or four 125,000 DWT tankers.

As of year-end 2000, there were eight newbuilding double-hull crude carriers (1.2 million DWT) on order, 0.2 million DWT more than the capacity scheduled to be phased-out under OPA-90 double-hull requirements by 2005. However, owners have typically retired crude carriers well before their OPA 90 phase-out dates. The average age of the 22 U.S. crude carriers removed from service in the last five years was 21-years, or an average of 4 years before their OPA 90 phase out dates. As of year-end 2000, 17 of the 21 active U.S. crude carriers were older than 21 years. Thus, it is reasonable to expect that owners will retire redundant crude carriers as newbuildings enter service.

Foreign Tankers

The U.S. relies on the foreign-flag segment of the international tanker fleet to deliver virtually all of its petroleum imports. At year-end 2000, the foreign-flag tanker fleet eligible to operate in U.S. trades was about 237 million DWT, or 80 percent of the international fleet. This tonnage was eligible to operate in U.S. petroleum trades either because it had a double hull or had not yet reached

its OPA 90 phase-out date. Over time, additional capacity will be reaching its OPA 90 phase-out date and dropping out of the U.S. petroleum trade. In the next five years, an additional 34 million DWT of foreign-flag capacity will become ineligible to operate in U.S. trades. There is no risk of any shortage of tankers available to serve U.S. import trades, however, because—

- Newbuilding deliveries have been about 20 million DWT per year in the late 1990s and should continue at about that rate over the next five years.
- Based on 2000 data, only 42 percent of the tanker capacity eligible for U.S. trades actually served U.S. trades. That is, there is a substantial pool of existing vessels that can move into U.S. trades; and
- Tankers calling at the LOOP (Louisiana Offshore Oil Port) and four Gulf of Mexico lightering areas are exempt from OPA 90 double-hull rules, though they would not be exempted from this rule. In 2000, 40 percent of the 150,000+ DWT foreign-flag tanker calls to the U.S. were at these five areas.

Inland Tank Barges

Inland tank barge capacity should decline by 1 to 2 percent per year over the next five years. The decline reflects an expected decline in inland tank barge traffic, fleet attrition, tank barge replacements tied to affreightment contracts (traffic), and fleet productivity increases (*i.e.*, new barges are more productive, require less maintenance/drydocking time) than those they replace.

The expected decline in inland tank barge traffic (0.5–1.0 percent per year) reflects a substitution of natural gas (shipped by pipeline) for fuel oils (shipped by barge) by electric utilities.

In 1999, charter rates for inland tank barges were generally above full-employment, newbuilding breakeven rates. Charter rates should remain above full-employment breakeven rates over the next five years, reflecting fleet attrition, industry consolidation, and fleet replacement tied to freight contracts (traffic).

Comments

The comments we received to the NPRM did not lead us to believe that this rule is likely to have a significant adverse effect on the supply, distribution or use of energy. For a summary of the comments and Coast Guard responses, please read the "Discussion of Comments and Changes" section in this rule.

We specifically requested comments regarding the effect of this rule on niche markets. We wanted to know of any

markets where there might be one small company serving the entire market, and what effect would be if that company dropped out of existence as a result of this rule. We did not receive comments addressing this concern. This along with our review of the distribution segments above, leads us to believe that this rule is not likely to have a significant adverse effect.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. This final rule is categorically excluded because it concerns equipping tank vessels with tank level or pressure monitoring devices. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

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

46 CFR Part 32

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

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR parts 155 and 156 and 46 CFR part 32 as follows:

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

1. The authority citation for 33 CFR part 155 and the note following citation are revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 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. In § 155.200, add the definition for "Sea state 5" in alphabetic order to read as follows:

§ 155.200 Definitions.

* * * * *

Sea state 5, the equivalent of Beaufort number or force 6, is a sea condition with winds speeds of 22 to 27 knots and classified as "strong breeze", and with waves measuring 2.5 to 4 meters in height and classified as "rough".

* * * * *

3. Add § 155.490 to read as follows:

§ 155.490 Tank level or pressure monitoring devices.

(a) *Applicability.* The tank level or pressure monitoring (TLPM) device requirements of this section apply to—

- (1) U.S.-flag single-hull tank vessels carrying oil or oil residue as cargo; and
- (2) Foreign-flag single-hull tank vessels carrying oil or oil residue as cargo when operating in the navigable waters of the United States and the exclusive economic zone (EEZ) when bound to or from a port or place in the United States.

(b) By October 17, 2007, each vessel required under paragraph (a) of this section to meet the requirements of this section, must have a tank level or pressure monitoring device that is permanently installed on each cargo tank and meets the requirements of this section.

(c) Each device must meet the following requirements:

- (1) Be intrinsically safe as per 46 CFR 111.105;
- (2) Indicate any loss of power or failure of the tank level or pressure monitoring device and monitor the condition of the alarm circuitry and sensor by an electronic self-testing feature;
- (3) Alarm at or before the cargo in the cargo tank either increases or decreases by a level of one percent from the cargo quantity in the tank after securing cargo transfer operations;
- (4) Operate in conditions up to sea state 5, moisture, and varying weather conditions; and
- (5) Have audible and visual alarm indicators which are distinctly identifiable as cargo tank level or pressure monitoring alarms that can be seen and heard on the navigation bridge of the tank ship or towing vessel and on the cargo deck area.

(d) Double-hull tank vessels are exempt from the requirements of this section.

(e) This section does not apply to tank vessels that carry asphalt as their only cargo.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

4. The authority citation for 33 CFR part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) and (ee) are also issued under 46 U.S.C. 3703.

5. In § 156.120 add paragraph (ee) as follows:

§ 156.120 Requirements for transfer.

* * * * *

(ee) Each tank level or pressure monitoring device required under 33 CFR 155.490 must be activated and monitored whenever the tank is not actively being subjected to cargo operations.

46 CFR

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

6. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–308, 104 Stat. 515.

§ 32.22T [Removed]

7. Remove subpart 32.22T.

Dated: September 11, 2002.

Thomas H. Collins,

Admiral, Coast Guard, Commandant.

[FR Doc. 02–23621 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–019]

RIN 2115–AA97

Security Zone; Naval Submarine Base San Diego, San Diego Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Submarine Base San Diego, California at the request of the U.S. Navy. The additional area created by this temporary rule will accommodate the Navy's placement of an anti-small boat barrier boom on the perimeter of the zone. Entry into this zone is prohibited unless authorized by

the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast.

DATES: This rule is effective from 12:01 a.m. on September 11, 2002 to 11:59 p.m. on February 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP San Diego 02–019, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has recently emphasized the need for the expanded use of anti-small boat barrier booms around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its web site has described the current nationwide threat level as "Elevated." According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM for this temporary rule and thereby delaying implementation of the expanded security zone would be against the public interest during this elevated state of alert.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States.