

regulations that will have a significant impact on a substantial number of small entities. The Department does not believe that this rule will have a significant economic impact on a substantial number of small entities, as the rule relieves the additional burden imposed upon labor organizations through the rescission of the regulations published on January 21, 2009.

Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Secretary has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

#### *Unfunded Mandates Reform*

This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of \$100 million or more, or in increased expenditures by the private sector of \$100 million or more.

#### *Paperwork Reduction Act*

This rule contains no new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). If the January 21 rule had gone into effect, it would have increased the burden of reporting under OMB No. 1215-0188. Under the January 21 rule, the total burden hours per Form LM-2 respondent would have increased by approximately 60.06 hours, and the total burden hours would have increased by 274,539. The average cost per Form LM-2 respondent would have been increased by \$1,939 and the total cost would have increased by \$8,863,038. Since this rule rescinds the January 21 rule, the increases in reporting burden under OMB No. 1215-0188 will not occur. The Department will seek OMB approval of any revisions of the existing information collection requirements, in accordance with the PRA.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **List of Subjects in 29 CFR Part 403**

Labor unions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Final Rule published January 21, 2009 amending 29 CFR parts 403 and 408 (74 FR 3678), for which the effective date was delayed on February 20, 2009 (74 FR 7814) and April 21, 2009 (74 FR 18132) is withdrawn.

Signed in Washington, DC, this 7th day of October 2009.

**Shelby Hallmark,**

*Acting Assistant Secretary for Employment Standards.*

**John Lund,**

*Deputy Assistant Secretary for Labor-Management Programs.*

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Parts 155 and 157; 46 CFR Part 162**

[Docket No. USCG-2004-18939]

**RIN 1625-AA90**

#### **Pollution Prevention Equipment**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is finalizing its January 16, 2009, interim rule establishing oil pollution prevention equipment requirements with one minor amendment to the rule's effective date for vessels with equipment installed on or after January 1, 2005. The rule harmonizes Coast Guard regulations with new International Maritime Organization (IMO) guidelines and specifications issued under the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I. It implements these MARPOL Annex I regulations and, ultimately, is intended to reduce the amount of oil discharged from vessels and eliminate the use of ozone-depleting solvents in equipment tests. All vessels replacing or installing oily-water separators and bilge alarms must install equipment that meets these revised standards. Newly constructed vessels carrying oil in bulk must install monitoring systems that meet the revised standards.

**DATES:** This final rule is effective November 12, 2009, except that paragraphs 33 CFR 155.350(a)(3), 155.360(a)(2), and 155.370(a)(4) are

effective October 13, 2009. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on November 12, 2009.

**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-2004-18939 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2004-18939 in the "Keyword" box, and then clicking "Search."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Wayne Lundy, Systems Engineering Division (CG-5213), Office of Design and Engineering Standards, U.S. Coast Guard, telephone 202-372-1379, e-mail [Wayne.M.Lundy@uscg.mil](mailto:Wayne.M.Lundy@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

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##### **I. Abbreviations**

- CFR Code of Federal Regulations
- DHS Department of Homeland Security
- FR Federal Register
- IMO International Maritime Organization
- IOPP International Oil Pollution Prevention
- ISO International Organization for Standardization
- MARPOL International Convention for the Prevention of Pollution from Ships
- MEPC Marine Environment Protection Committee
- NEPA National Environmental Policy Act
- NPRM Notice of Proposed Rulemaking
- NTTAA National Technology Transfer and Advancement Act

OMB Office of Management and Budget  
 OWS Oily-Water Separator  
 PPM Parts Per Million  
 § Section symbol  
 U.S.C. United States Code

## II. Regulatory History

On November 3, 2005, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Pollution Prevention Equipment" in the **Federal Register** (70 FR 67066).<sup>1</sup> We received 17 letters containing 80 comments on the proposed rule. The comments did not request a public meeting and none was held.

On January 16, 2009, the Coast Guard published an interim rule (74 FR 3364) that updated references for the international standard for pollution prevention equipment from the International Maritime Organization's Marine Environment Protection Committee resolution, MEPC.60(33) to the new international standard in MEPC.107(49) and addressed the 80 comments on the NPRM. With the interim rule we also sought comment on three paragraphs: 33 CFR 155.350(a)(3), 155.360(a)(2), and 155.370(a)(4), which proposed requiring any pollution prevention equipment installed on or after January 1, 2005, that does not comply with MEPC.107(49), which became an international requirement on January 1, 2005, to be replaced with pollution prevention equipment that does comply with the MEPC.107(49) standard. These three paragraphs were not included in the NPRM, and we solicited public comment on them in the interim rule. We received five comments, which are discussed below in *IV. Discussion of Comments and Changes*.

The interim rule, with the exception of the three paragraphs, became effective on March 17, 2009. Under the interim rule, the three paragraphs regarding equipment installed on or after January 1, 2005, were set to become effective on October 13, 2009. Under this final rule, however, the three paragraphs as amended by the final rule are effective October 13, 2009. The Coast Guard is making these paragraphs effective less than 30 days after publication in the **Federal Register** in accordance with 5 U.S.C. 553(d)(1) and (3) because the three paragraphs relieve a restriction otherwise imposed by the interim rule that would take effect

within 30 days of publication of this final rule. Specifically, the three paragraphs relieve the burden on ship owners with equipment installed on or after January 1, 2005, from having to comply with the rule's requirements by October 13, 2009, and instead add a compliance date tied to the vessel's drydock or vessel survey schedule, as applicable. Requiring ship owners to comply with these requirements on October 13, 2009, until an effective date thirty days after the publication of this final rule would cause unnecessary burdens and confusion and, therefore, would be impracticable and contrary to the public interest. As such, the Coast Guard has determined that it has good cause for immediate implementation of these three paragraphs. The remaining provisions of this final rule become effective 30 days after publication in the **Federal Register**.

## III. Background and Purpose

The discussion of the background that follows largely repeats the discussion of the background and purpose set forth in the interim rule.

This final rule will implement international standards for oil pollution prevention equipment designed for ships and oil tankers. These standards address the testing, certification, and approval for oil pollution prevention equipment, including discharge monitors, which will help prevent oily discharges from a ship into the water.

### A. Types of Equipment

There are three types of equipment involved in this rulemaking that deal with oil, water, and other substances:

A *bilge separator* (also referred to as oily-water separator), is designed to produce an effluent from the bilge of ships with oil content of 15 parts per million (ppm) or less; and

A *bilge alarm* is designed to activate an automatic stopping device when the oil content concentration of an effluent exceeds 15 ppm, and thus stop any discharge overboard of oily mixtures with an oil content exceeding 15 ppm.

An *oil content meter* (hereinafter "meter") is a piece of equipment in an oil discharge monitoring and control system (hereinafter "monitoring system") on an oil tanker. The system processes oil-tanker ballast and tank-washing water and monitors the discharge into the sea of oily ballast or other oil-contaminated water effluent from the cargo tank areas. The meter measures the oil content of the effluent in ppm.

### B. Authority

Under the Act to Prevent Pollution from Ships, Public Law 96-478, sections 2 and 4, 94 Stat. 2297, 2298 (Oct. 21, 1980), 33 U.S.C. 1901 and 1903, the Secretary of the Department in which the Coast Guard is operating is authorized to prescribe any necessary or desired regulations to carry out the provisions of the Act and of Annex I (Regulations for the prevention of pollution by oil) of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention (MARPOL 73/78). Under the Act of August 26, 1983, Public Law 98-89, 97 Stat. 500, 504, 522, subtitle II of title 46 of the U.S. Code (46 U.S.C.), specifically 46 U.S.C. 3703, the Secretary of the Department in which the Coast Guard is operating is authorized to issue equipment regulations, and related maintenance and training regulations for vessels carrying liquid bulk dangerous cargo, including oil. Authority under both of these acts has been delegated to the Coast Guard under Department of Homeland Security Delegation No. 0170.1 II(77) and (92)(b).

### C. International Standards Being Implemented

This rulemaking implements revisions to the international oil pollution prevention standards for ships in MARPOL Annex I, specifically regulations 14, 18, and 31. Under Article 38 of the Convention on the International Maritime Organization (IMO), the IMO Marine Environment Protection Committee (Committee) is designated to consider IMO matters involving the prevention and control of marine pollution from ships.

In 1992, during its 33rd session, the Committee adopted a resolution, MEPC.60(33), containing guidelines and specifications for pollution prevention equipment for machinery space bilges of ships. In 2003, recognizing the advancement of technology since 1992, the Committee adopted resolution MEPC.107(49), which contained new guidelines and specifications that superseded those adopted in 1992.

The MEPC.107(49) changed the fluids used to test pollution prevention equipment so they would more closely represent the bilge wastes encountered on vessels. Emulsified oil in water, surfactants (for example, detergents), and other contaminants are typically found in bilge water. Under MEPC.107(49), the bilge separator must be capable of separating the oil from the

<sup>1</sup> On December 15, 2005, the Coast Guard published a correction notice in the **Federal Register** (70 FR 74259). The NPRM, as published, contained the phrase "must be limited" at two points, once in the preamble and once in the regulatory text. We deleted that phrase because it was inserted by error and could have confused readers.

emulsion to produce an effluent with an oil content not exceeding 15 ppm.

The MEPC.107(49) also changed the method by which oil content is measured in effluent samples during the approval process. Past methods permitted the use of ozone-depleting solvents, specifically carbon tetrachloride and Freon 113 (CFC 113). Both an international treaty and United States laws call for phasing out the use of these solvents. See the Montreal Protocol on Substances that Deplete the Ozone Layer, ("Montreal Protocol"), Sept. 16, 1987, 26 I.L.M. 1550, and Title VI of the Clean Air Act, 42 U.S.C. 7671–7671q. Accordingly, MEPC.107(49) specifies a different test method that does not use ozone-depleting solvents.

The MEPC.107(49) guidelines and specifications were incorporated into Annex I after the 2004 adoption of resolution MEPC.117(52), which led to the revision of MARPOL Annex I. On January 1, 2007, the revised Annex I came into force. Resolution MEPC.107(49) is incorporated into Regulation 14 (Oil filtering equipment) of the revised Annex I.

Additionally, in 2003, the Committee also adopted resolution MEPC.108(49), which revised guidelines and specifications for oil discharge monitoring and control systems for oil tankers constructed after 2004. These new guidelines and specifications were incorporated into Regulations 18 (Segregated Ballast Tanks) and 31 (Oil discharge monitoring and control system) of the revised Annex I and apply to oil content meters as part of oil discharge monitoring and control systems installed on tankers constructed after 2004.

The new MEPC.108(49) guidelines and specifications call for:

- Only one category of a monitoring system to apply to all tankers of 150 gross tonnage and above;
- The monitoring system to be able to record position (latitude and longitude) from a vessel-position indicating device, allowing more accurate input of speed parameters;
- Greater control of oil mixture discharges by tightening the accuracy requirements for both the oil content meter and the flow meter; and
- A more objective specification for identifying crude oils: simply by number and assigned characteristics and parameters—such as density, viscosity, and cloud point—rather than geographical denominations used in Resolution A.586(14). See IMO Subcommittee on Ship Design and Equipment Report to the Maritime Safety Committee, DE 46/32 at 12 & 13 (April 4, 2003).

#### IV. Discussion of Comments and Changes

In response to our request for comments on the three paragraphs—33 CFR 155.350(a)(3), 155.360(a)(2), and 155.370(a)(4)—in the interim rule, we received five comments from three commenters. One comment was submitted jointly by two commenters who generally agree with the interim rule, but suggest that the Coast Guard adopt a pollution standard stricter than the 15 ppm set forth in MARPOL Annex I. While the Coast Guard appreciates the support for the interim rule, the commenters' suggestion to adopt a maximum oil discharge limit lower than 15 ppm is outside the jurisdiction of the Coast Guard.

The four remaining comments came from a manufacturer, and one of his comments specifically addressed 33 CFR 155.350(a)(3), one of the three delayed-effective date paragraphs on which we sought public comment in the interim rule. The three other comments sought clarification to other aspects of the interim rule. The Coast Guard provided the below responses to these four comments in direct communications to the manufacturer, unless noted otherwise. A summary and the substance of those communications are available in the docket where indicated under **ADDRESSES**.

Regarding 33 CFR 155.350(a)(3), the commenter asked for clarification on when ship owners would have to comply with the requirement set forth in paragraph (a)(3), which will become effective on October 13, 2009. The commenter noted that it appears this paragraph requires all equipment installed after 2004 to be supplied or upgraded to satisfy these new international standards in MEPC.107(49), and asked if this needs to be accomplished by October 13. The Coast Guard's initial response in a direct communication to the manufacturer, which is included in the docket, deferred addressing this comment until the close of the comment period.

The Coast Guard recognizes that it may not be feasible for ship owners to comply with the requirements in § 155.350(a)(3) by October 13, and in response to this comment, we are adding an implementation period to allow ship owners to budget and plan for the work required to comply. Under revised paragraph (a)(3), a vessel owner must install equipment meeting the new requirements in MEPC.107(49) by one of two dates, as set forth in new paragraphs (a)(3)(i) and (a)(3)(ii): either the date of the vessel's first drydock following October 13, 2009, or for those

vessels going into international service for the first time since January 2005, the date of its first survey prior to receiving its International Oil Pollution Prevention (IOPP) certificate. The Coast Guard is making the same change to paragraphs 155.360(a)(2) and 155.370(a)(4).

The manufacturer's second comment requested clarification on the interim rule's affect on his backlog of equipment that complies with the older international standard, MEPC.60(33), and is ordered but not yet installed. The commenter noted that the interim rule may preclude the installation of any MEPC.60(33) equipment after March 17, 2009.

The Coast Guard's response to this comment is that equipment that has not been physically installed must comply with the current regulations, i.e., the MEPC.107(49) standard.

The commenter's third comment asked for clarification of whether, under the interim rule, bilge alarms replaced after March 17, 2009, on separators installed prior to January 1, 2005, must be replaced with bilge alarms complying with the revised 46 CFR 162.050 specifications. The Coast Guard notes this comment concerns what is meant by the term "good working order."

After March 17, 2009, if a bilge alarm approved to MEPC.60(33) needs to be replaced, then it may be replaced by a bilge alarm approved to MEPC.60(33), but only for separators approved to MEPC.60(33) that were installed on the ship prior to January 1, 2005. This is allowed in recognition of the need for compatibility between the separator and bilge alarm, as well the relative ease to replace a bilge alarm. Separators approved to MEPC.60(33) that were installed on the ship prior to January 1, 2005, may continue to be used as long as they are maintained in good working order, which includes basic or routine maintenance and repair of such separators as well as replacement of components and consumables. If, however, a separator approved to MEPC.60(33) needs to be replaced, regardless of when it was installed on the ship, then it must be replaced with a separator approved to MEPC.107(49). In this case, the separator approved to MEPC.107(49) must also have a bilge alarm approved to MEPC.107(49).

Finally, the commenter's fourth comment sought confirmation that the definition of the term "expired" as used in the preamble to the interim rule (74 FR 3375) has the same meaning as "expired" on the United States Coast Guard Maritime Information Exchange Web site, Approved Equipment

Definitions. <http://cgmix.uscg.mil/Equipment/Definitions.aspx>.<sup>2</sup>

The Coast Guard response to this comment is that a bilge alarm or separator installed on a ship on or after January 1, 2005, but not having approval under MEPC.107(49), is subject to the requirements of 33 CFR 155.350, 155.360, and 155.370, (see 74 FR 3363 and 74 FR 6358), namely the requirement to be replaced by equipment approved under MEPC.107(49) unless it is determined to be unreasonable or impracticable. Bilge alarms and separators installed prior to January 1, 2005, having a Certificate of Approval issued by the Coast Guard, can remain installed on the ship as long as they are maintained in good working order. Please note: A Certificate of Approval is issued by the Coast Guard to a manufacturer usually for a period of five years. This five-year period primarily affects the manufacturer and not the ship. Equipment of a type approved by the Coast Guard that is manufactured during this five year period in accordance with the terms of the certificate may be installed on a ship in order to meet the applicable requirements for approved equipment. There is no requirement, however, that equipment be removed when the Certificate of Approval expires.

#### *Discussion of Final Rule*

This rule finalizes the amendments set forth in the interim rule. A full discussion of the provisions of this rule may be found in the "Discussion of Interim Rule" section of the interim rule. 74 FR 3364, at 3375. We are making only one minor change to the interim rule in the final rule by adding implementation periods in 33 CFR 155.350(a)(3), 155.360(a)(2), and 155.370(a)(4), as discussed above.

#### **V. Incorporation by Reference**

The Director of the Federal Register has approved the material in 33 CFR 157.02 and 46 CFR 162.050–4 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in 33 CFR 157.02 and 46 CFR 162.050–4.

#### **VI. Regulatory Analyses**

We developed this final rule after considering numerous statutes and executive orders related to rulemaking.

Below we summarize our analyses based on 13 of these statutes or executive orders.

##### *A. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Public comments on the interim rule are summarized in Part IV of this preamble. The Coast Guard received no public comments, and have made no changes, that would alter our assessment of impacts in the interim rule. We have found no additional data or information that would change our findings in the interim rule. We have adopted the assessment in the interim rule as final. A summary follows.

We estimated 176 existing vessels and 46 new vessels annually will be affected by this rule and incur additional costs for installing OWS and bilge alarms.

We estimated the annual costs of the OWS and bilge alarms combined range from \$9,000 to \$19,000, depending on vessel type and size for both existing and new vessels: \$9,000 for vessels below 400 gross tons; \$13,000 for vessels 400 gross tons or more and less than 10,000 gross tons; and, \$19,000 for vessels 10,000 gross tons and over.

We estimated non-discounted annual costs for existing vessels at approximately \$2.3 million and approximately \$550,000 for new vessels, or about \$2.9 million combined. We estimated the total 10-year present value cost of the rule to be \$21 million or \$25 million based on a seven or three percent discount rate (all values rounded).

The benefits of this rule are improved environmental conditions from the use of PPE, which meets higher standards of pollution prevention. The new OWS equipment will better handle the separation of emulsified oils, surfactants, and contaminants from water. These pollutants will no longer be released into the environment because of these standards. See the assessments in the interim rule and the NPRM for additional details.

##### *B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule has 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.

In the interim rule, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. We have found no additional data or information that would change our findings in the interim rule. We have adopted the certification in the interim rule for this final rule. See the "Small Entity" sections of the interim rule and the NPRM for additional details.

Therefore, the Coast Guard certifies, under 5 U.S.C. 605(b), that this final rule does not have a significant economic impact on a substantial number of small entities.

##### *C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (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. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Wayne Lundy, Office of Systems Engineering (CG–5213), Office of Design and Engineering Standards, U.S. Coast Guard, telephone 202–372–1379, e-mail [Wayne.M.Lundy@uscg.mil](mailto:Wayne.M.Lundy@uscg.mil). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

##### *D. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The paperwork burden associated with the manufacture, laboratory testing, approval tests, and marking of pollution prevention equipment is addressed in the existing collection of information, OMB #1625–0035, entitled "Title 46 CFR Subchapter Q: Lifesaving, Electrical and Engineering Equipment; Construction and Materials." The Office of Management and Budget renewed its approval of this collection of information on May 27, 2009. It will expire after the 3-year approval period ends on May 31, 2012, unless renewed again.

##### *E. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

<sup>2</sup> "EXPIRED—Product's approval has expired, and the approval holder has not notified us whether it should be extended or terminated. Pending resolution of its status, the product is no longer approved for production. Items manufactured prior to expiration of the approval are considered APPROVED."

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).)

The pollution prevention equipment regulations promulgated in this rule are within the field foreclosed from regulation by the States, and therefore preemption under E.O. 13132 is not an issue.

#### *F. Unfunded Mandates Reform Act*

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

#### *G. Taking of Private Property*

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

#### *H. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *I. Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to

health or risk to safety that may disproportionately affect children.

#### *J. Indian Tribal Governments*

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

#### *K. Energy Effects*

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### *L. Technical Standards*

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

This final rule uses the following consensus standards that are not voluntary standards:

- IMO Assembly Resolution A.393(X)—Recommendation on International Performance and Test Specifications for Oily-Water Separating Equipment and Oil Content Meters;
- IMO Assembly Resolution A.496(XII)—Guidelines and Specifications for Oil Discharge Monitoring and Control Systems for Oil Tankers;
- IMO Assembly Resolution A.586(14)—Revised Guidelines and

Specifications for Oil Discharge Monitoring and Control Systems for Oil Tankers;

- IMO Marine Environment Protection Committee Resolution MEPC.13(19)—Guidelines for Plan Approval and Installation Survey of Oil Discharge Monitoring and Control Systems for Oil Tankers and Environmental Testing of Control Sections Thereof;
- IMO Marine Environment Protection Committee Resolution MEPC.108(49)—Revised Guidelines and Specifications for Oil Discharge Monitoring and Control Systems for Oil Tankers;
- International Organization for Standardization Standard ISO 8217 (2005) Petroleum products—Fuels (class F)—Specification of marine fuels;
- International Organization for Standardization Standard ISO 9377–2 (2000), Water Quality—Determination of hydrocarbon oil index—Part 2: Method Using solvent extraction and Gas Chromatography.

They are used because the United States is party to MARPOL Annex I and we must use these standards to effectively implement MARPOL Annex I regulations. The sections that reference these standards and the locations where these standards are available are listed in 33 CFR 157.02 and 46 CFR 162.050–4.

#### *M. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(d) of the Instruction and under section 6(b) of the “Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy,” (67 FR 48243, July 23, 2002), from further environmental documentation. This regulation fits within these categorical exclusions because it concerns equipment approval and carriage requirements and implements regulations designed to protect the environment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects****33 CFR Part 155**

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

**33 CFR Part 157**

Cargo vessels, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

**46 CFR Part 162**

Fire prevention, Incorporation by reference, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule amending 33 CFR parts 155 and 157 and 46 CFR part 162, which was published at 74 FR 3377 on January 16, 2009, as amended by the correction published at 74 FR 6358 on February 9, 2009, is adopted as a final rule with the following changes:

**TITLE 33—NAVIGATION AND NAVIGABLE WATERS****PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS**

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

**Authority:** 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Sections 155.100 through 155.130, 150.350 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). Section 155.490 also issued under section 4110(b) of Public Law 101–380. Sections 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

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

■ 2. In § 155.350, revise paragraph (a)(3) to read as follows:

**§ 155.350 Oily mixture (bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons.**

(a) \* \* \*

(3) For equipment installed after 2004 to be approved under paragraph (a)(2) of this section, it must meet current standards in 46 CFR part 162, subpart 162.050 by the date set forth in paragraphs (a)(3)(i) and (a)(3)(ii) of this section, unless the equipment is installed on a ship constructed before 2005 and it would be unreasonable or impracticable to meet those current standards.

(i) A ship entering international service for the first time since 2004, must comply with the requirements of paragraph (a)(3) of this section by the date of its initial survey prior to receiving its International Oil Pollution Prevention (IOPP) certificate.

(ii) Any ship, other than a ship described in paragraph (a)(3)(i) of this section, must comply with the requirements of paragraph (a)(3) of this section by the date of the ship's first drydock after October 13, 2009.

\* \* \* \* \*

■ 3. In § 155.360, revise paragraph (a)(2) to read as follows:

**§ 155.360 Oily mixture (bilge slops) discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks.**

(a) \* \* \*

(2) For equipment installed after 2004 to be approved under paragraph (a)(1) of this section, it must meet current standards in 46 CFR part 162, subpart 162.050 by the date set forth in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, unless the equipment is installed on a ship constructed before 2005 and it would be unreasonable or impracticable to meet those current standards.

(i) A ship entering international service for the first time since 2004, must comply with the requirements of paragraph (a)(2) of this section by the date of its initial survey prior to receiving its International Oil Pollution Prevention (IOPP) certificate.

(ii) Any ship, other than a ship described in paragraph (a)(2)(i) of this section, must comply with the requirements of paragraph (a)(2) of this section by the date of the ship's first drydock after October 13, 2009.

\* \* \* \* \*

■ 4. In § 155.370, revise paragraph (a)(4) to read as follows:

**§ 155.370 Oily mixture (bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks.**

(a) \* \* \*

(4) For equipment installed after 2004 to be approved under paragraph (a) of this section, it must meet current standards in 46 CFR part 162, subpart 162.050 by the date set forth in paragraphs (a)(4)(i) and (a)(4)(ii) of this section, unless the equipment is installed on a ship constructed before 2005 and it would be unreasonable or impracticable to meet those current standards.

(i) A ship entering international service for the first time since 2004, must comply with the requirements of paragraph (a)(4) of this section by the date of its initial survey prior to receiving its International Oil Pollution Prevention (IOPP) certificate.

(ii) Any ship, other than a ship described in paragraph (a)(4)(i) of this section, must comply with the requirements of paragraph (4) of this section by the date of the ship's first drydock after October 13, 2009.

\* \* \* \* \*

Dated: October 7, 2009.

**J.G. Lantz,**

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

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**LIBRARY OF CONGRESS****Copyright Royalty Board****37 CFR Part 370**

[Docket No. RM 2008–7]

**Notice and Recordkeeping for Use of Sound Recordings Under Statutory License**

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges are issuing final regulations for the delivery and format of reports of use of sound recordings for the statutory licenses set forth in sections 112 and 114 of the Copyright Act.

**DATES:** *Effective Date:* November 12, 2009.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****I. Background**

On October 6, 2006, the Copyright Royalty Judges (“Judges”) issued interim regulations published in the **Federal Register** for the delivery and format of reports of use of sound recordings for the statutory licenses set forth in sections 112 and 114 of the Copyright Act. 71 FR 59010. The goal of those interim regulations was to establish format and delivery requirements for reports of use so that royalty payments to copyright owners pursuant to section 112 and 114 licenses could be made from April 1, 2004,