

paragraphs (a) and (b) of this section and not published in the Postal Bulletin as provided in paragraph (c) are not deemed final under the provisions of this part 111.

(f) For references to amendments to the Domestic Mail Manual adopted under paragraph (b) of this section after issuance of the most recent transmittal letter (termed Summary of Changes in the Domestic Mail Manual) listed below, see § 111.3 in the List of CFR Sections affected at the end of this volume.

\* \* \* \* \*

Transmittal letter for issue	Dated	FEDERAL REGISTER publication
* * *	* * *	* * *
44 .....	September 20, 1992.	61 FR 67218
45 .....	December 20, 1992.	61 FR 67218
46 .....	July 1, 1993 ..	61 FR 67218
47 .....	April 10, 1994	61 FR 67218
48 .....	January 1, 1995.	61 FR 67218
49 .....	September 1, 1995.	61 FR 67218
50 .....	July 1, 1996 ..	61 FR 60190
51 .....	January 1, 1997.	61 FR 64618

\* \* \* \* \*

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 97-7862 Filed 3-27-97; 8:45 am]

BILLING CODE 7710-12-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 32

[CGD 90-071]

RIN 2115-AD69

#### Tank Level or Pressure Monitoring Devices

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard establishes minimum performance standards for tank level or pressure monitoring devices for single-hull tank vessels that carry oil in bulk as cargo. The purpose of these devices is to reduce the size and impact of an oil spill by alerting the tank vessel operator that a level or pressure change has occurred in a cargo tank. The Coast Guard will evaluate the performance and cost effectiveness of any device which meets the standards set in this rule, if that device is submitted to the Coast Guard during the effective period of this rule.

**DATES:** This rule is effective on April 28, 1997 and expires on April 28, 1999.

**ADDRESSES:** The Executive Secretary, Marine Safety Council (G-LRA/3406) [CGD 90-071], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, maintains the public docket for this rulemaking. The telephone number is (202) 267-1477. The public docket is available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Laura L. Hamman, Project Manager, Office of Design and Engineering Standards (G-MSE), (202) 267-2206.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On May 7, 1991, the Coast Guard published an advanced notice of proposed rulemaking (ANPRM) to solicit comments on minimum standards for leak detection devices and their use (56 FR 21116). The Coast Guard received 20 comments to the ANPRM.

On December 9, 1994, a public meeting was held. This meeting gave the public an opportunity to provide further input into the development of proposed regulations. As a result of the public meeting nine comments were received.

On August 21, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Tank Level or Pressure Monitoring Devices" (60 FR 43427). The NPRM proposed performance standards of 0.5 percent of tank volume or 1,000 gallons, whichever is less. As a result of the NPRM, 10 comments were received.

This temporary rule addresses comments to the NPRM, and presents the Coast Guard's temporary rule on Tank Level or Pressure Monitoring Devices.

##### Background and Purpose

Section 4110 of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380) requires the Secretary of Transportation to set, by regulation, minimum standards for tank level or pressure monitoring devices. Tank level or pressure monitoring devices detect changes in the level of oil in a cargo tank or changes in the pressure within a cargo tank. Section 4110 of OPA 90 applies to the carriage of oil in bulk as cargo aboard tank vessels. Section 4110 also requires issuance of regulations requiring the use of tank level or pressure monitoring devices. The purpose of the devices is to inform the person in charge of a tank vessel that

there is a change in tank level or pressure so that, if required, the Coast Guard can be notified as required by 33 CFR 153.203 and appropriate response actions can be initiated.

Two specific incidents highlighted the possible need for the development of tank level or pressure monitoring devices. The first incident was the loss of cargo aboard Tank Barge 565. While under tow in August 1988, this 37-year-old barge started losing cargo during the night. The loss was not discovered until the morning light reflected off the oil sheen on the water. The barge spilled 4,000 barrels of petroleum into the Chesapeake Bay. The lack of appropriate devices to indicate the loss of cargo during the night prompted Congress to add section 4110 to OPA 90.

The second was in September 1988, when a tankship carrying cargo of carbon black feedstock oil struck a submerged object and lost over 4,000 metric tons of cargo. The loss was not discovered until an estimated 30 minutes passed. During this time, the vessel developed a port list which continued to worsen until it reached 8 degrees. At this point, the master ordered the cargo tanks sounded, and the loss of cargo was discovered. Again, cargo was lost without anyone on board being aware of the loss.

##### Technical Feasibility Study

The Coast Guard commissioned a technical feasibility study entitled "Tank Level Detection Devices for the Carriage of Oil," which was made available to the public on February 5, 1993 (58 FR 7292).

The study found that a wide variety of liquid level sensing systems exist for both marine and shore-side applications. Several of these systems include the following components: hydrostatic gauges, radar gauging devices, resistance tapes, floats, ultrasonic systems, fiber optics, capacitance-actuated devices, and the electromagnetic level indication (EMLI) system. The study concluded that the performance of these sensing systems is affected by the severity of their operating environment. Operating environment factors include cargo sloshing, foaming, and expansion and contraction of the cargo due to temperature changes.

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

environmental noise substantially degraded performance. However, the greatest obstacle to obtaining an accurate level reading was found to be the disturbance of the cargo surface caused by ship or barge motion. Sloshing occurs in all tank vessels to varying degrees, depending on such factors as vessel types, weather conditions, and loading configurations. The effects of such motion must be considered in determining the attainable accuracy of level sensing devices.

In addition to sloshing, another result of ship motion was found to be the formation of foam, which can reduce the accuracy of any type of electronic surface level sensing system. Disturbance of the surface was also found to cause pocketing of air, resulting in loss of measurement accuracy.

Despite these problems, the study found that "attainable accuracy," defined as the limit outside of which false level change indications may be ruled out, is within 2 percent of the actual cargo level.

#### Discussion of Comments

The Coast Guard received 10 comment letters to the NPRM. Seven comments expressed concerns about the lack of current technology available to measure the quantity (0.5 percent or 1,000 gallons) specified by the proposed standards in the NPRM. Three comments expressed concerns about the development and implementation costs of the device due to the lack of available technology. Two comments expressed concerns about the new technological developments. These comments raised concerns that testing should be required prior to the implementation of these devices. The Coast Guard has reviewed the technical feasibility issue and has concluded that current technology cannot meet the sensitivity requirements proposed in the NPRM and finalized in this rule. The Coast Guard will not accept a tank level or pressure monitoring device until it meets the standards in this temporary rule. The Coast Guard will address testing of devices, if devices meeting the standards in this temporary rule are developed and submitted to the Coast Guard within the effective period of this rule. In addition to a technical evaluation of sensitivity requirements, a comprehensive cost and benefit analysis must be performed by the Coast Guard before any decisions can be made on requiring use of a device.

Two comments expressed concerns about the potential difficulties that would be encountered if the monitoring devices were required in tanks carrying

asphalt. The Coast Guard agrees with these concerns and carriage of asphalt is not addressed by the standard in this temporary rule.

Three comments raised concerns on using the words "leak detection." Two other comments noted that there is not an International Maritime Organization (IMO) equivalent requirement for leak detection. The Coast Guard agrees with these concerns and has removed references to leak detection.

Two comments noted that a tank level or pressure monitoring device would be impractical for use on tank barges because they do not routinely operate machinery to generate electricity needed to operate the device while underway. The Coast Guard agrees that the issue of power source would need to be addressed for any device used aboard barges. The Coast Guard will consider power sources as part of its technical evaluation on any device which meets the standards set forth in this rule.

Two comments noted that these devices would need to be capable of withstanding harsh and changing marine environments. The Coast Guard agrees and requires that any tank level or pressure monitoring devices developed using these standards be operable without degradation in heavy seas, moisture, and varying weather conditions.

One comment noted that tank level or pressure monitoring devices should only be required on vessels without double hulls. The Coast Guard agrees with this view. If a device is developed in the future that meets the standards set forth in this regulation and it is determined to be cost effective, the Coast Guard intends to only require its use on single-hull tank vessels.

One comment addressed the issue of distance from a barge's deck house to the towing vessel's bridge, and the need to allow for portable alarms and indicating devices. The Coast Guard agrees with this concern and would allow the use of portable equipment as long as that equipment meets the requirements in this regulation.

#### Discussion of Rules

This temporary rule sets forth standards for tank level or pressure monitoring devices intended for installation on the cargo tanks of vessels over 5,000 gross tons carrying oil in bulk as cargo. The Coast Guard expects that additional development and research would be necessary to produce tank level or pressure monitoring devices that meet the standards set forth in this regulation. Any person who develops a tank level or pressure monitoring device that meets the

minimum standards set forth in this regulation, within the effective period of this regulation, should inform the Coast Guard by contacting the person listed under the section entitled **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will evaluate the device to ensure that it meets the performance standards required by this temporary rule and will assess the costs and benefits associated with the device before implementing any installation requirements. In any case, the public will have an opportunity to comment on any rules proposing the installation of the tank level or pressure monitoring device.

Since these devices are intended to warn the operators of possible loss of cargo due to the discharge from tanks into the water, and double-hull vessels are intrinsically designed to prevent this type of discharge, this regulation applies only to single-hull vessels.

The Coast Guard anticipates an 8.5 percent per year decrease in the number of U.S. single-hull tank vessels, based on OPA 90 phaseout schedules. The need for tank level or pressure monitoring devices is in direct proportion to the number of single-hull vessels. The Coast Guard believes that, unless a tank level or pressure monitoring device is developed within 2 years from the effective date of this temporary rule, it may not be economically feasible to require installation of such a device considering phaseout schedules. Similarly, the Coast Guard anticipates the number of single-hull foreign tank vessels to decrease. Therefore, this temporary rule will only be in effect for 2 years from the effective date.

This temporary rule establishes a standard that requires these devices be able to compensate for changes in cargo volume and that they continue to operate in varying weather conditions. This temporary rule also requires that tank level or pressure monitoring devices have both audible and visible alarms to indicate loss of cargo from the cargo tank.

This temporary rule requires that a tank level or pressure monitoring device must sound an alarm before the content of the cargo tank declines to a level 0.5 percent below the level to which the tank was loaded, or 1,000 gallons of cargo, whichever is less.

The 1,000 gallon threshold was chosen because a discharge of less than 1,000 gallons on the inland waterways is defined as a "minor discharge" in accordance with the National Contingency Plan, dated September 15, 1994 (59 FR 47384). A loss of 1,000 or more gallons in virtually all

environments poses appreciable risk to the marine environment.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Costs associated with tank level or pressure monitoring devices are dependent on installation requirements. This regulation establishes no installation requirements and therefore imposes no costs. If a device meeting the requirements of this regulation was developed during the effective period of this temporary rule, the Coast Guard would consider the costs and benefits of requiring installation of such a device. Such an analysis would be based upon the smaller single-hull tank vessel fleet in existence at the time. This analysis would also take into account the OPA 90-mandated regulations already in force in 33 CFR part 157 and 46 CFR parts 31 and 35. These regulations address operational measures to reduce oil spills from existing tank vessels without double hulls and include requirements for enhanced surveys of these vessels. These enhanced surveys reduce the chance of unnoticed structural damage thereby significantly reducing the chance of an oil spill. Thus, the benefits of a tank level or pressure monitoring device would further decrease.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether or not this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies that this regulation would not have a significant economic impact on a substantial number of small entities because this rule imposes no costs on any entities. If

a tank level or pressure monitoring device meeting the requirements of this rule was developed, the potential impact on small businesses required to install the device would have to be determined. At that time, the Coast Guard would analyze whether imposition of installation requirements would impose a significant economic impact on a substantial number of small entities. The Coast Guard has chosen to make this rule temporary because of the phaseout period for single-hull vessels. Because many research and development companies may be small entities, the Coast Guard is fully explaining the nature of the shrinking population of single-hull vessels which might be required to install a device. The Coast Guard hopes that this will help those small entities determine whether to pursue development of a product to exploit this market.

### Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard will provide assistance to small entities to determine how this rule applies to them. If you are a small entity and need assistance understanding the provisions of this rule, please contact the Project Manager, Ms. Laura Hamman at (202) 267-2206.

### Collection of Information

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

### Federalism

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

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.(34)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This temporary rule establishes standards for tank level or pressure monitoring devices which would mitigate the impacts of oil spills. This temporary rule does not require installation or use of these devices.

This rulemaking is, therefore, administrative in nature and has no direct impact on the environment and is

categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 46 CFR Part 32

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

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

### PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

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

**Authority:** 46 U.S.C. 2103, 3306, 3703; E.O. 12234 3 CFR 1980 Comp., p. 277; 49 CFR 1.46; Section 32.22T-5 and Subpart 32.59 are also issued under 46 U.S.C. 3703 note.

2. Subpart 32.22T is added to read as follows:

#### Subpart 32.22T—Tank Level or Pressure Monitoring Devices

Sec.

32.22T-1 Scope and applicability.

32.22T-5 Performance standards for tank level or pressure monitoring devices.

#### Subpart 32.22T—Tank Level or Pressure Monitoring Devices

##### § 32.22T-1 Scope and applicability.

(a) *Effective period.* This subpart is effective for 2 years from April 28, 1997.

(b) *Applicability.* The standards set forth in this subpart apply to tank level or pressure monitoring devices developed for use on single-hull tank vessels over 5,000 gross tons carrying oil in bulk as cargo.

(c) *Scope.* This subpart sets performance standards for tank level or pressure monitoring devices. If a device meeting these standards is developed during the effective period of this subpart, the Coast Guard will address installation requirements separately. During the effective period of this subpart no owner or operator is required to install any tank level or pressure monitoring device meeting the performance standards of this subpart unless required by the Coast Guard in a separate regulation.

##### § 32.22T-5 Performance standards for tank level or pressure monitoring devices.

(a) A tank level or pressure monitoring device shall determine the level of the liquid in a cargo tank without opening ullage holes, cargo hatches, or butterworth plates.

(b) A tank level or pressure monitoring device shall meet the following standards:

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

(2) Meet the requirements in § 111.105 of this chapter when used in hazardous locations.

(3) 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.

(4) Alarm before cargo in the cargo tank declines to a level of 0.5 percent below the quantity to which it was loaded, or 1,000 gallons of cargo, whichever is less.

(5) Operate without degradation in heavy seas, moisture, and varying weather conditions.

(6) Not alarm when loading or off loading cargo.

(7) Have audible and visible alarm indicators that can be seen and heard on

the navigation bridge of the vessel, or towing vessel for non-self-propelled vessels, which are distinctly identifiable as cargo tank level or pressure monitoring alarms.

Dated: March 21, 1997.

**J.C. Card,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 97-7917 Filed 3-27-97; 8:45 am]

BILLING CODE 4910-14-P