

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 240

[Release No. 34-44845; File No. S7-14-01]

RIN 3235-A123

Request for Comment on the Effects of Decimal Trading in Subpennies; Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; extension of comment period.

SUMMARY: The Securities and Exchange Commission ("Commission") published in the **Federal Register** on July 24, 2001 (66 FR 38390) a concept release seeking comment on the impact on fair and orderly markets and investor protection of trading and potentially quoting securities in an increment of less than a penny. The original comment period ended September 24, 2001. The new deadline for submitting public comments is November 23, 2001.

DATES: Comments must be received on or before November 23, 2001.

ADDRESSES: Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-14-01. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).¹

¹ Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submission. Submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001: James Brigagliano, Jo Anne Swindler, Gregory Dumark, or Kevin Campion at (202) 942-0772; Alton Harvey, Patrick Joyce, or John Roeser at (202) 942-0154.

SUPPLEMENTARY INFORMATION: On July 24, 2001, the Commission published in the **Federal Register** a concept release seeking comment on the effects of subpenny prices on market transparency, on the operation and effectiveness of Commission and self-regulatory organizations rules that are dependent on trading or quoting price differentials, and on automated systems.² The deadline for submitting public comments established by the concept release was September 24, 2001. In view of the market disruption caused by the attacks of September 11, 2001, and in response to requests from commenters for more time to address the issues raised in the concept release, the Commission believes that it is appropriate to extend the comment period to November 23, 2001.³

By the Commission.

Dated: September 25, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-24470 Filed 9-28-01; 8:45 am]

BILLING CODE 8020-01-P

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.

² Securities Exchange Act Release No. 44568 (July 17, 2001), 66 FR 38390 (July 24, 2001).

³ Commenters may wish to review the reports on decimal implementation recently filed with the Commission by the Exchanges and the NASD, which provide some data and discussion of subpenny market activity. The reports are in File No. 4-430.

ACTION: Notice of proposed rulemaking.

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). We are of the opinion that these regulations must apply in some manner to single-hull tank vessels. Within this notice of proposed rulemaking, we present eight proposed regulatory options and regulatory text for each option regarding minimum standards for the performance and use of these devices on single-hull tank ships and single-hull tank barges carrying oil as cargo. Due to the extreme variance in impact to the classes of tank vessels subject to this proposed rule, and, taking into account the cost-effectiveness ratio relative to the other significant OPA 90 regulations, we are also soliciting comments on financial, energy, safety, and environmental considerations. The Coast Guard is seeking information from commenters in order to select the best alternative for the final rule. In accordance with the Administrative Procedure Act, once we receive and evaluate the public comments from this notice, we intend to implement this statutory mandate through some form of these proposed regulations as the final rule. However, in view of the cost-effectiveness ratios of the alternatives, as well as the numerous requirements throughout OPA 90 to report back to Congress on the impacts of this legislation, Coast Guard will share with Congress any information provided by the public that addresses the reasonableness of implementing the statute.

DATES: Comments and related material must reach the Docket Management Facility on or before November 30, 2001.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2001-9046), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400

Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 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 general questions on this proposed rule, call Lieutenant Commander Glen Mine, Project Manager, Standards Evaluations and Analysis Division (G-MSR-1), Coast Guard, telephone 202-267-1303. For technical questions concerning the performance standards for TLPM devices call Dolores Mercier, Project Manager, Engineering Systems Division (G-MSE-3), Coast Guard, telephone 202-267-0658. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG-2001-9046), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or

envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

A public meeting will be held from 9 a.m. to 4 p.m. on November 6, 2001 in room 6200-6204, U.S. Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001. This meeting may close early if all business is finished.

Persons who are unable to attend the public meeting are encouraged to send written comments to Docket Management Facility as directed under **ADDRESSES** during the comment period.

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. 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 TLPMs 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 it in 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 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. For TLPM devices submitted for review, we would have evaluated the device to ensure that it met the performance standards required by the temporary rule and would have assessed the costs and benefits associated with the device to consider implementing use requirements. When 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.

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.

We published a temporary rule (62 FR 14828), which expired in 1999, requesting TLPM devices that alarm once a detection of a spill of the lesser of 1,000 gallons or 0.5 percent below the level to which the tank was loaded to be submitted to the Coast Guard for evaluation. However, no devices were submitted that could potentially meet this requirement. Based on a review of the devices currently available, there do not appear to be any devices that can be independently verified as meeting this standard. In this notice we present eight options with different categories of tank vessel types, which establish TLPM requirements with different standards and use requirements from the temporary rule.

In developing our eight options we closely examined the type of tank vessel to which this rule would apply, the performance standard for TLPM

devices, and the phase-in period of the rule.

We first examined to which tank vessels this rule should apply based on the hull type (single-hull or double-hull). These TLPM devices are intended to warn the operators of possible loss of cargo oil due to leaks they might otherwise not notice from cargo tanks into the water. Double-hull vessels are intrinsically designed to prevent this type of discharge. Therefore, this proposed rule will apply only to single-hull tank vessels.

Another criteria we examined when applying this rule was based on the gross tonnage of the tank vessel. In the 1997 temporary rule, we proposed that TLPM devices be installed on single-hull tank vessels greater than or equal to 5,000 gross tons. After examining the single-hull tank vessel population, we found that 92 percent of tank ships are greater or equal to 5,000 gross tons and 88 percent of the barges are less than 5,000 gross tons. We believe that rather than using the gross tonnage criteria, it is less confusing and more practical to use the vessel type criteria. A barge greater than 5,000 gross tons will encounter the same TLPM installation and operational challenges as a smaller barge. For these reasons, a gross tonnage criterion is not used for this proposed rule. Instead, tank vessels for this proposed rule are classified by vessel type, whether it is a ship or barge.

Next 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 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 and seven from tank ships. In these incidents tank barges contribute 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.) Also, section 4110(b) of OPA 90, which requires the installation of TLPM devices, was added in part because 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 a massive spill when a leak occurs. 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).

In developing the TLPM performance standards, we applied the 1992 Volpe study. The study surveyed a wide variety of liquid level gauging devices for marine and shoreside applications. Liquid cargo accountability during cargo custody transfer has been the primary use of tank level devices in the oil tanker industry. These devices are primarily meant for gauging during cargo loading and unloading operations, and their use as a TLPM device in a dynamic underway environment is beyond their current design. As such, we know of no TLPM devices installed on board existing vessels.

We considered having tank vessels use their existing onboard liquid level gauging device to meet the requirement of section 4110 of OPA 90. As noted above and in the Volpe study, these devices are not designed for continuous monitoring or to be used as a TLPM device without modifications. These modifications may include, but are not limited to, provisions for detection of a change in tank level beyond the threshold established and provisions for an alarm for watchstanders. Furthermore, the use of existing onboard liquid level gauging devices without any modification may not provide for this ability to compensate for internal and external uncertainties, such as, temperature changes, cargo movement, and tank deformations, which will result in decreased accuracy in dynamic underway conditions, thus, increasing the amount of leakage that would occur prior to detection or causing false leak indications.

We feel that false leak indications from unmodified liquid level gauging devices set to alarm at the proposed one percent standard may present a safety risk for the vessel and crew. The repetitive false alarms may become distracting to the crew, taking them away from their normal navigational, engineering, and maintenance duties onboard. These distractions may cause inattention to the performance of their duties leading to marine casualties such as groundings, collisions, and allisions. To deal with the extra duty of monitoring cargo levels and responding to the frequent false alarms from an unmodified liquid level gauging device, additional changes to the vessel's manning requirements may be required, increasing the cost of operating the vessel. The Volpe study did not thoroughly address the safety issues associated with the operation of TLPM

devices or unmodified liquid level gauging devices used as TLPM devices on board tank vessels. We are seeking public comment on these and other safety risks of unmodified liquid level gauging devices being used as TLPM devices and TLPM devices on board tank vessels.

The Volpe study concluded that the attainable accuracy, defined as the limit outside of which false leak indications may be ruled out, is expected to be one to two percent. Even though the study acknowledged the claims of some manufacturers that their device(s) could achieve accuracy levels of 0.1 percent, Volpe concluded that one percent is the best attainable tank level accuracy achievable in the wide variety of sea conditions and that any claims made by manufacturers "must be viewed skeptically until proven."

Modifications to existing onboard liquid level gauging devices may include installation of stilling wells and computers that monitor and compensate for constant changes in the tank level readings due to temperature variations, hull structural deformations, and ullage conditions. Modifications also include alarm thresholds for each device. The Volpe study did not evaluate the degree of accuracy that could be afforded in dynamic underway conditions, ruling out false indications, by TLPM devices and existing onboard liquid level gauging devices with or without modifications less than those necessary to fully attain a one to two percent accuracy standard. We are seeking public input as to the attainable accuracy of unmodified liquid level gauging devices.

In selecting the standard, we considered two performance-based TLPM standards for the leak detection threshold. Applying the Volpe study and our survey of currently available technology as the basis, we examined three percent and one percent leak detection thresholds as the two possible standard designations.

Opting for the three percent standard would allow average tank ship spills of up to 2,577 barrels and tank barge spills of up to 324 barrels to go undetected.

The one percent performance standard requires 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.

We determined that modifications would have to be made to existing onboard liquid level gauging devices to meet a one or three percent standard,

and that the costs of the modifications would be the same regardless of what standard we proposed. The procurement cost of a typical TLPM device would be approximately \$6,000, and the cost of a liquid level gauging device is also approximately \$6,000. Furthermore, the cost of modifying liquid level gauging devices to meet the functional requirements of a TLPM device would also cost approximately \$6,000. The installation of a TLPM device or a modified or unmodified liquid level gauging devices is estimated to cost approximately \$9,000 per tank.

As noted above, we found the costs of TLPM devices or modifying existing onboard liquid level gauging devices with an accuracy level of three percent versus one percent to be essentially equal. For this reason, we propose the one percent TLPM performance standard.

Lastly, we examined a phase-in period for the installation and operation of the TLPM devices. We recognize that installing the devices requires costly gas-freeing of cargo tanks. As a result, the phase-in period will coordinate the installation of TLPM devices with the gas-freeing of tanks for other required purposes (either under Coast Guard regulations for U.S.-flag vessels or under the requirements of the flag administration for foreign-flag vessels). The phase-in period would also allow companies to spread out the installation costs over a number of years rather than have to absorb them immediately, greatly benefiting the tank vessel industry and especially small businesses. However, the phase-out date for single-hull tank vessels must also be considered when deciding an installation phase-in period. Owners may decide to take the vessel out of service early rather than installing the devices.

We have provided alternatives for either a three year or a five year phase-in period. 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.

Our eight regulatory options reflect all the reasonable approaches we have examined in developing this proposed regulation. These eight options are designed to be performance based, allowing maximum flexibility to meet the regulatory and statutory intent. In developing our eight options we assume that this rule will apply only to single-hull tank vessels with a TLPM device that will detect a one percent change in cargo volume.

Discussion of Proposed Rule

The Coast Guard proposes removing the temporary regulations of Subpart 32.22T-Tank Level or Pressure Monitoring Devices found in 46 CFR Part 32. We would remove this subpart because the effective period of the standard has passed. We also propose 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 propose for the TLPM devices are intended for installation and operation 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 (Public Law 101-380) authorizes the Coast Guard to require the use of TLPM devices on all 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.

The affected single-hull tank vessels are intended to comply with this rule

within either three or five years from the effective date of a final rule, depending upon which alternative is adopted. Any current devices on board meeting the performance standards will be accepted to meet these proposed regulations.

We recognize that there may be technical challenges of processing, transmitting, and receiving signals from TLPM devices located on tank barges being towed or pushed by a single tugboat. We are seeking public comment on this issue, whether there should be a standard to address signal uniformity or compatibility among TLPM devices, and any other alternative methods that may notify the operator of a leak.

To maximize public involvement, we propose eight options for comment. The eight options proposed vary by applicable vessel types and by phase-in dates for those vessels. We request public comments addressing the safety, environmental, financial, and energy impacts of these devices on the proposed options. This approach will allow a fair and balanced evaluation in selecting the final rule.

Based on the consideration of all the previously discussed information, we propose these eight options. After evaluating our regulatory analysis and all of the comments we will receive addressing this notice of proposed rulemaking, we will publish a final rule based on all or part of the proposed options. This proposed action will amend part 155 by adding Section 155.490, Tank Level or Pressure Monitoring Device.

The eight options are 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

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

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

Alternative One, Option One would require single-hull tank ships to install and use TLPM devices meeting the one percent performance standard within three years. Option Two would affect the same vessels as Option One (single-hull tank ships), though it would require those vessels to comply with the TLPM requirements within five years.

Alternative Two, Option One would require single-hull tank barges to install and use TLPM devices meeting the one percent performance standard within three years. Option Two would affect the same vessels as Option One (single-hull tank barges), though it would require those vessels to comply with the TLPM requirements within five years.

Alternative Three, Option One would require all single-hull tank vessels to install and use TLPM devices meeting the one percent performance standard within three years. Option Two would affect the all vessels as Option One (single-hull tank vessels), though it would require those vessels to comply with the TLPM requirements within five years.

Alternative Four, Option One would require single-hull tank ships to install TLPM devices meeting the one percent performance standard within three years, and would require single-hull tank barges to install TLPM devices meeting the one percent performance standard within five years. Option Two would require single-hull tank ships to install TLPM devices meeting the one percent performance standard within five years, and would require single-hull tank barges to install TLPM devices meeting the one percent performance standard within three years.

OPA 90 defined "oil" to mean oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. We are applying this definition of "oil" for this section.

The Edible Oil Regulatory Reform Act [Public Law 104-55, 109 Stat. 546-547 (1995)] requires federal agencies to

differentiate between classes of oils and consider different treatment of these classes, if appropriate. We have considered the difference in the physical, chemical, biological, and other properties and environmental effects of non-petroleum oils including those of animal, marine and vegetable origin. We have determined that bulk spills of all oils are damaging to the environment. Therefore, being consistent with OPA 90, single-hull tank vessels carrying these products must comply with this proposed rule.

Due to the properties and difficulties in measuring the cargo quantity of asphalt, asphalt-only tank vessels are exempt from this rule. The dense properties of asphalt do not allow leaks from cargo tanks detectable by TLPM devices.

The Coast Guard proposes to add a new paragraph (ee) to § 156.120, requiring that TLPM devices be activated and monitored whenever the tank is not actively being subjected to cargo transfer operations. Even though the original temporary rule did not address the issue of overfill, a review of oil spill cases found eight spills that were due to overfill of cargo tanks that were not actively being subjected to cargo operations because of faulty or misaligned cargo transfer valves. TLPM devices can detect such changes that may indicate not only leaks, but possible overfill situations during cargo transfer operations. Because of this added benefit with little or no additional costs, we are proposing to require the activation of TLPM devices on cargo tanks that are not being actively filled.

Even though 46 CFR 155.480 requires overfill devices on tank vessels and 46 CFR 156.120(bb) requires these devices to be operating when loading oil, this TLPM rule differs by alerting the operator of overfills during internal cargo transfers and inadvertent filling of a cargo tank due to faulty or misaligned valves. This can happen when the connecting valve between cargo tanks is

not completely secured or faulty allowing oil to inadvertently overfill an unintended cargo tank.

Regulatory Evaluation

This proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has reviewed it under that Order. It is "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket as indicated under **ADDRESSES**. A summary of the evaluation 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 eight options in the proposed rulemaking would range approximately from \$111,000 to \$315,000 per barrel of pollution avoided. This means that it will cost society from \$111,000 to \$315,000 to keep each barrel of oil out of the water.

The present value of the total cost of the eight options in this proposed rule over the 13-year period of analysis (2002-2014) would range from \$64 million to \$211 million. All the costs will be incurred during the three-year or 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 13-year period of analysis, we estimate that TLPMS would help reduce the amount of oil spilled in U.S. waters. The benefits derived from the eight options in this proposed rule have a range of 211 barrels to 1,425 barrels. The costs and benefits of each option are summarized in the table below:

Alternative/Option	Vessels	Phase-in period	PV barrels not spilled	PV cost of rule	Cost effectiveness
Alternative 1:					
Option One	Tank Ships	3 years	259.02	\$81,549,724	\$314,839
Option Two	Tank Ships	5 years	210.71	64,354,236	305,416
Alternative 2:					
Option One	Tank Barges	3 years	1,165.92	129,197,083	110,811
Option Two	Tank Barges	5 years	1,002.76	118,226,280	117,901
Alternative 3:					
Option One	Tank Vessels	3 years	1,424.92	210,746,807	147,901
Option Two	Tank Vessels	5 years	1,213.46	182,580,516	150,463
Alternative 4:					
Option One	Tank Ships/Tank Barges	3 years/5 years	1,261.76	199,776,004	158,331
Option Two	Tank Ships/Tank Barges	5 years/3 years	1,376.62	193,551,319	140,599

Comparison With Other OPA 90 Rulemakings

It is useful to compare the cost, benefit, and cost effectiveness of the proposed 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 the proposed 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 effectiveness (\$/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, the proposed alternatives are 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 the alternatives discussed for this proposed rule range from \$110,811 to \$314,839 per barrel in 2001 dollars (\$97,670 to \$277,520 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 the proposed rulemaking ranges from 210 to 1,425 barrels depending on the selected alternative. In percentage terms, the pollution that would be averted due to

the proposed rule represents approximately one tenth of one percent of the total pollution averted from the 11 major OPA 90 rulemakings.

When comparing the proposed 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 the proposed rule is 2001–2015. This is not overly problematic because after 2015, the proposed 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 change the results noticeably. 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.

The Coast Guard is interested in receiving comments discussing the benefits and costs of the alternatives contained in the proposed rulemaking with the benefits and costs associated with the other significant OPA 90 rules. Also, the Coast Guard is interested in receiving comments discussing the technologies required to implement the different alternatives contained in this

proposed rulemaking with the technologies needed to implement the other significant OPA 90 rules.

A copy of the OPA 90 PRA is available in the docket for further review and comparison [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 proposed 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 TLPD devices to be installed on single-hull tank vessels might have a significant economic impact on a substantial number of small entities. Consequently, by establishing a phase-in period for the systems, we would provide flexibility and accommodation for small entities affected. This would give small entities the time needed to explore markets, plan, and schedule installations during normal downtimes.

We are considering eight regulatory options for the proposed rule. The impacts of these options on small businesses are discussed in the Initial Regulatory Flexibility Analysis. As stated above, the Oil Pollution Act states that TLPD requirements must be established for tank vessels. As a result, we do not believe we 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 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Glen Mine, (202) 267–1303.

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 would call 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 proposed rule on the performance standards and use of TLPD 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 regulatory actions not specifically required by law. 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 proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Consultation and Coordination With Indian Tribal Governments

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

Civil Justice Reform

This proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Environment

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this might be classified as a “significant energy action” under that order because it is a “significant regulatory action” under Executive Order 12866 and might have a significant adverse effect on the supply,

distribution, or use of energy. The Coast Guard is establishing either a three year or a five year phase-in period for this proposed rule, and we do not anticipate adverse energy consequences during that time. After this initial three year or five year phase in period, we can not conclusively rule out the possibility that this regulation would have a national impact on energy supply, distribution, or use. We are seeking comments from the public in order to assist us in making that determination. An example of how this regulation may adversely affect oil distribution is that it may impact the OPA 90 phase-out schedule. A company may make the business decision to phase out a tank vessel earlier than scheduled instead of incurring the costs of complying with this regulation. If vessel owners made the decision to phase out their vessels early instead of incurring the necessary compliance costs, tank vessel shortages are possible.

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 facilitate meaningful public comment on 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 orderbook 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 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).

Niche Markets

In addition to seeking comments on the five previously discussed market segments, we suspect this regulation may have effects on small businesses that serve local niche markets. Our Initial Regulatory Flexibility Analysis indicates that many small businesses will be required to spend a substantial portion of their annual revenue to fit their tank vessels with TLPM devices. It is possible that many of these small businesses will be unable to comply with this regulation and will leave their respective markets. These companies that leave the market may be serving small niche markets where other sources of oil distribution are not readily available. For example, a small barge company may be the sole or primary source of transportation of fuel oil to an island. If that particular company leaves the market as a result of this rule, the island would be without a distributor until another means of oil transportation becomes available.

Comments

We are requesting comments to assist us in identifying any likely significant adverse effects our proposed rule may have on the supply, distribution, or use of energy. We do not expect any adverse impacts in the foreign tankers (imports) segment due to the large number of double hull tankers already operating in that trade. However, we cannot conclusively rule out the possibility that this proposed regulation would have a national impact on energy supply, distribution, or use in the four domestic market segments previously discussed. We are especially interested in comments considering the impact this proposed regulation might have on the OPA 90 phase-out schedule. If vessel owners made the decision to phase out their vessels early instead of incurring the necessary compliance costs, tank vessel shortages are possible. A shortage of tank vessels could lead to an adverse energy effect. In addition, we are interested in receiving comments that address how this proposed rule will affect the ability of the tank vessel owners and/or operators to meet their customers' requirements. We also seek comments on whether this rule should be modified if compliance would be economically infeasible for specific vessels or categories of vessels.

Our analysis also suggests a possibility of potential adverse effects in unidentified small, local areas. Submit these and any other comments on possible adverse energy effects that the proposed rule may have to one of the locations listed under **ADDRESSES**. We will analyze all comments and, if necessary, prepare a full Statement of Energy Effects with the Final Rule for this project.

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 proposes to amend 33 CFR Parts 155 and 156 and 46 CFR Part 32 as follows:

33 CFR Chapter I

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, 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). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703.

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

2. Add § 155.490 to subpart B to read as follows:

§ 155.490 Tank Level or Pressure Monitoring devices.

ALTERNATIVE ONE to paragraph (a)

(a) By [Either **OPTION ONE**, three years after effective date, or **OPTION TWO**, five years after the effective date], each U.S. and foreign-flag single-hull tank ship carrying oil or oil residue as cargo, must have a tank level or pressure monitoring device that is permanently installed on each cargo tank and meets the requirements of this section.

ALTERNATIVE TWO to paragraph (a)

(a) By [Either **OPTION ONE**, three years after effective date, or **OPTION TWO**, five years after the effective date], each U.S. and foreign-flag single-hull tank barge carrying oil or oil residue as cargo, must have a tank level or pressure monitoring device that is permanently installed on each cargo tank and meets the requirements of this section.

ALTERNATIVE THREE to paragraph (a)

(a) By [Either **OPTION ONE**, three years after effective date, or **OPTION TWO**, five years after the effective date], each U.S. and foreign-flag single-hull tank vessel carrying oil or oil residue as cargo, must have a tank level or pressure monitoring device that is permanently installed on each cargo tank and meets the requirements of this section.

ALTERNATIVE FOUR to paragraph (a)

(a) Each U.S. and foreign-flag single-hull tank ship carrying oil or oil residue as cargo must have a tank level or pressure monitoring device that is permanently installed on each cargo tank by [Either **OPTION ONE**, three years after effective date, or **OPTION TWO**, five years after the effective date], and each U.S. and foreign-flag single-hull tank barge carrying oil or oil residue as cargo must have a tank level or pressure

monitoring device that is permanently installed on each cargo tank by [Either **OPTION ONE**, five years after effective date, or **OPTION TWO**, three years after the effective date].

(b) 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 heavy seas, 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.

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

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

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

3. 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.

4. Add in § 156.120 paragraph (ee) as follows:

§ 156.120 Requirements for transfer.

* * * * *

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

46 CFR Chapter I

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

5. 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.

Subpart 32.22T [Removed]

6. Remove subpart 32.22T (§§ 32.22 T–1 and 32.22T–5).

Dated: September 26, 2001.

James M. Loy,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 01–24493 Filed 9–26–01; 4:44 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AH21

Total Disability Ratings Based on Inability of the Individual To Engage in Substantially Gainful Employment

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend those portions of its adjudication regulations and its Schedule for Rating Disabilities dealing with the issue of total disability ratings based on inability of the individual to engage in substantially gainful employment in claims for service-connected compensation or non-service-connected pension. The purpose of these proposed changes is to revise and clarify the procedures and substantive standards for determining whether a veteran's disabilities, although they do not meet the schedular requirements for a total rating, nonetheless prevent him or her from engaging in substantially gainful employment. The intended effect of this action is to establish clear standards for assigning a total rating based on the individual's inability to engage in substantially gainful employment and to ensure consistency of decisions in such claims.

DATES: Comments must be received on or before November 30, 2001.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to “RIN 2900–AH21.” All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Janice Jacobs, Consultant, Regulations

Staff, Compensation and Pension Service (211), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7223.

SUPPLEMENTARY INFORMATION: It is a long-standing VA policy to assign a total (100 percent) rating for an individual veteran who is unable to engage in a substantially gainful occupation because of his or her disabilities. When the veteran does not meet the requirements for a total rating under the Schedule for Rating Disabilities, 38 CFR part 4, but because of unusual individual circumstances, he or she is nonetheless prevented from engaging in substantially gainful employment because of disability, VA may assign a total rating.

The regulations governing these extra-schedular “individual unemployability” ratings are scattered throughout part 3 and subpart A of part 4 of 38 CFR. (See 38 CFR 3.321, General rating considerations; § 3.340, Total and permanent total ratings and unemployability; § 3.341, Total disability ratings for compensation purposes; § 3.342, Permanent and total disability ratings for pension purposes; § 4.15, Total disability ratings; § 4.16, Total disability ratings for compensation based on unemployability of the individual; § 4.17, Total disability ratings for pension based on unemployability and age of the individual; and § 4.18, Unemployability.) The United States Court of Appeals for Veterans Claims (the Court) has characterized these regulations as “a confusing tapestry for the adjudication of claims.” *Hatlestad v. Derwinski*, 1 Vet. App. 164, 167 (1991); see also *Talley v. Derwinski*, 2 Vet. App. 282 (1992). In addition to being scattered and confusing, the current regulations neither define the terms used nor clearly state specific requirements for entitlement to a total rating based on inability of the individual to engage in substantially gainful employment.

In order to address these problems and make the provisions clearer and more uniform, we propose to make a number of changes throughout §§ 4.15 through 4.18. The current regulations use the various terms “secure and follow,” “secure or follow” and “follow” substantially gainful employment. We propose to employ a single term, “engage in” substantially gainful employment. We propose to define terms used and outline specific requirements for these special ratings. We propose to make the regulations in 38 CFR part 3 (§§ 3.321, 3.340, 3.341,