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

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

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

Regulatory Evaluation

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

Small Entities

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

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

Collection of Information

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

Federalism

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

Environment

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

List of Subjects in 46 CFR Part 32

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

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

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

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

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

2. Subpart 32.22 is added to read as follows:

Subpart 32.22—Cargo Leak Detection

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

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

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

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

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

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

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

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

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

Dated: June 29, 1995.

G.N. Naccara,

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

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

BILLING CODE 4910–4–M

Research and Special Programs Administration

49 CFR Part 107

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

RIN 2137–AC70

Hazardous Materials Pilot Ticketing Program

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

ACTION: Notice of Proposed Rulemaking (NPRM).

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

failing to file incident reports. Procedures under this pilot program would be less complicated than current procedures for civil penalty actions, and penalties would be substantially reduced for persons who elect to pay the amounts assessed in the tickets.

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

ADDRESSES: Address comments to Dockets Unit (DHM–30), Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and notice number and five copies should be submitted, when possible. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001. Office hours are 8:30 am to 5:00 pm, Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Director, Office of Hazardous Materials Enforcement, (202) 366–4700; or Edward H. Bonekemper, III, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Research and Special Programs Administration (RSPA) is the administration within the Department of Transportation primarily responsible for implementing the Federal hazardous material transportation law, 49 U.S.C. 5101–5127. RSPA does this by issuing and enforcing the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180. RSPA's Office of the Chief Counsel (OCC) may initiate administrative proceedings for violations of the HMR, and these proceedings may result in a civil penalty, an order directing compliance actions, or both. 49 CFR 107.307.

Administrative proceedings are initiated by mailing a notice of probable violation to a person believed to have violated the HMR. 49 CFR 107.311. The notice specifies the alleged violation(s) of the HMR, states the proposed penalty, and includes a copy of the inspection report. Within 30 days of receiving the notice, the recipient of the notice may admit the allegations by paying the proposed penalty, make an informal response, or request a formal hearing. 49 CFR 107.313, 107.315.

The recipient who chooses to respond informally submits a written response to the OCC to contest the alleged violations or the proposed penalty. The OCC considers the inspection report, the response, and any additional evidence obtained to determine whether the recipient committed the alleged violations and, if so, the appropriate penalty in accordance with the statutory criteria for penalty determination, 49 U.S.C. 5123(c). *See also* RSPA's civil penalty guidelines at 60 FR 12139 (March 6, 1995). If the recipient requests an informal conference, an opportunity is provided to supplement the written response in person or by telephone with the OCC attorney and the inspector. Information obtained by the OCC during the informal conference becomes part of the case file. The Chief Counsel then issues an order finding a violation or violations and, for each violation found, assesses a civil penalty. The order may be appealed to the RSPA Administrator. *See generally* 49 CFR 107.317, 107.325(b).

Alternatively, the recipient may request a formal administrative hearing on the record before an Administrative Law Judge (ALJ) from the Department of Transportation's Office of Hearings. At the conclusion of the hearing, the ALJ determines whether the alleged violations have been committed and, if so, imposes a penalty in accordance with the statutory assessment criteria. Either party may appeal a decision of the ALJ to the RSPA Administrator. *See generally* 49 CFR 107.319, 107.325(a).

At any time during an informal or a formal proceeding, RSPA and the recipient of the notice may agree upon an appropriate resolution of the case. 49 CFR 107.327.

II. Proposal

Under the proposed rule, the Associate Administrator for Hazardous Materials Safety would be authorized to issue tickets for certain HMR violations that currently are handled through the civil penalty process. To be included in the ticketing program, a particular violation must not have a substantial impact on safety. Because this program is designed to ease administrative and regulatory burdens on persons subject to the HMR, violations currently eligible for letters of warning under 49 CFR 107.309 generally will not be included in the ticketing program. Tickets will not be issued on the spot by inspectors following an inspection.

This program would be a two-year pilot program. At the end of two years, RSPA would evaluate the program in terms of cost savings, time savings, and impact on the effectiveness of its compliance program.

RSPA is considering a number of violations for inclusion in the ticketing program, including, among others, operating under an expired exemption, failing to register, failing to maintain training records, and failing to file incident reports. Based on comments received and experience gained through administration of the ticketing program, additional types of violations may be added to the program. These violations will not be processed under the ticketing program if more serious violations also are alleged. Violations processed under the ticketing program will be considered prior violations in the event of future violations of the HMR by the same party.

RSPA expects that the Associate Administrator for Hazardous Materials Safety would delegate ticketing authority to the Director, Office of Hazardous Materials Enforcement (OHME) who may redelegate that authority. RSPA field inspectors would conduct inspections as at present. Supervisory inspectors then would evaluate field inspector reports, and tickets would be issued to parties when appropriate. The ticketing process would be limited to those cases involving violations identified as meeting safety risk criteria for ticketing established by the Associate Administrator for Hazardous Materials Safety.

The ticket would include a statement of the facts supporting the alleged violation. In addition, the ticket would set forth the maximum penalty provided for by statute, the proposed penalty determined according to the RSPA civil penalty guidelines, *see* 60 FR 12139 (March 6, 1995), and the ticket penalty amount. The ticket would state that the recipient must pay the penalty or request a hearing within 30 days of receipt of the ticket.

The civil penalty contained in the ticket would be substantially less than the penalty that would be proposed under current procedures or that could be imposed by an ALJ at a hearing. If the recipient pays the ticket amount and states that action to correct the violation has been taken, the matter would be closed and there would be no further agency action. If the recipient elects not to pay the ticket and requests a hearing, RSPA would forward the case file to a Coast Guard Hearing Officer who would review the case in accordance with Coast Guard procedures set forth at 33 CFR 1.07. The Hearing Officer would not be bound by the reduced penalty amount in the ticket and could impose

a civil penalty as high as the proposed penalty determined under RSPA's civil penalty guidelines. The Hearing Officer's factual findings and legal conclusions in a particular case would apply solely to that case. A person could appeal the decision of the Hearing Officer to the Commandant, United States Coast Guard.

A recipient would waive a right to a hearing by failing to respond to the ticket within 30 days. Moveover, failure to respond would be deemed an admission of the violation, and the proposed penalty would be owed to RSPA. An unpaid proposed penalty or a penalty imposed by the Coast Guard Hearing Officer or the Commandant on appeal would constitute a debt owed to the United States Government.

This proposed rule is consistent with the recommendation in the National Performance Review (DOT02.01) to streamline the enforcement process by implementing pilot programs to offer greater flexibility in enforcement methods. RSPA's pilot program for ticketing would, for certain violations, reengineer RSPA's current program to cut costs, simplify the processing of less significant HMR violations, and achieve compliance through more efficient and effective processes. The ticketing program would create a vehicle for recipients to more easily respond to allegations of HMR violations.

Comments are invited on all of these proposed procedures.

III. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore is not subject to review by the Office of Management and Budget. The notice is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The proposed changes would not result in any additional costs to persons subject to the HMR, but would result in modest cost savings to a small number of them and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted. This certification may be revised as a result of public comment.

Executive Order 12612

This notice of proposed rulemaking has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism'') and does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 107 would be amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

2. In § 107.307, paragraph (a) would be revised to read as follows:

§ 107.307 General.

(a) When RSPA has reason to believe that a person is knowingly engaging or has knowingly engaged in conduct which is a violation of the Federal hazardous material transportation law or any provision of this subchapter or subchapter C of this chapter, or any exemption, or order issued thereunder, for which RSPA exercises enforcement authority, RSPA may—

(1) Issue a warning letter, as provided in § 107.309;

(2) Initiate proceedings to assess a civil penalty, as provided in either § 107.310 or 107.311;

(3) Issue an order directing compliance, regardless of whether a warning letter has been issued or a civil penalty assessed; and

(4) Seek any other remedy available under the Federal hazardous material transportation law.

* * * * *

§ 107.307 [Amended]

3. In addition, in § 107.307, in paragraph (b), the wording ''Office of Chief Counsel'' would be revised to read ''RSPA''.

§ 107.309 [Amended]

4. In § 107.309, at the beginning of paragraph (a), the wording ''In addition to the initiation of proceedings under § 107.307 for the imposition of sanctions or other remedies, the'' would be revised to read ''The''.

5. Section 107.310 would be added to read as follows:

§ 107.310 Ticketing.

(a) For an alleged violation that does not have a substantial impact on safety, the Associate Administrator for Hazardous Materials Safety may issue a ticket.

(b) The Associate Administrator issues a ticket by mailing it by certified or registered mail to the person alleged to have committed the violation. The ticket includes:

(1) A statement of the facts on which the Associate Administrator bases the conclusion that the person has committed the alleged violation;

(2) The maximum penalty provided for by statute, the proposed penalty determined according to RSPA's civil penalty guidelines and the ticket penalty amount; and

(3) A statement that within 30 days of receipt of the ticket, the person must either pay the penalty in accordance with paragraph (d) of this section or request a hearing under paragraph (c) of this section.

(c) If the person requests a hearing, the Associate Administrator forwards the inspection report, ticket and response to a Coast Guard Hearing Officer. The Hearing Officer reviews a case in accordance with Coast Guard procedures set forth in 33 CFR 1.07–15 to 1.07–65. Where in 33 CFR 1.07–15 to 1.07–65 the words ''District Commander'' appear, they will be understood to mean ''Associate Administrator for Hazardous Materials Safety, RSPA''. The Hearing Officer may impose a civil penalty that does not exceed the proposed penalty determined according to RSPA's civil penalty guidelines (as stated in the ticket). The Hearing Officer's findings of fact and conclusions of law in a case apply only to that case. The person may appeal the decision of the Hearing Officer to the Commandant, United States Coast Guard.

(d) Payment of the ticket penalty amount or the amount imposed by the Coast Guard Hearing Officer must be made in accordance with the instructions on the ticket or as instructed by the Hearing Officer.

(e) If within thirty days of receiving the ticket the person neither pays the ticket amount nor requests a hearing, the person has waived the right to a hearing, has admitted the violation and owes the ticket penalty amount to RSPA.

6. In § 107.311, paragraph (a) would be revised to read as follows:

§ 107.311 Notice of probable violation.

(a) The Office of Chief Counsel may serve a notice of probable violation on a person alleging the violation of one or more provisions of the Federal hazardous material transportation law or any provision of this subchapter or subchapter C of this chapter, or any exemption, or order issued thereunder.

* * * * *

Issued in Washington, DC on August 16, 1995 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–20676 Filed 8–18–95; 8:45 am]

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