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Coast Guard

33 CFR Part 154

Marine Transportation-Related Facility Response Plans for Hazardous Substances; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 154

[USCG–1999–5705]

RIN 2115–AE87

Marine Transportation-Related Facility Response Plans for Hazardous Substances

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; notice of public meeting.

SUMMARY: The Coast Guard proposes regulations that would require response plans for Marine Transportation-Related facilities that could reasonably be expected to cause substantial or significant and substantial harm to the environment by releasing a hazardous substance into the navigable waters of the United States. These regulations are mandated by the Oil Pollution Act of 1990 (OPA 90), which requires the President to issue regulations requiring the preparation of hazardous substance response plans. The purpose of requiring response plans is to minimize the impact of a hazardous substance discharge on human health and the environment. In addition, this notice announces a public meeting on response plans for Marine Transportation-Related facilities.

DATES: Written comments and related material must reach the Docket Management Facility on or before June 29, 2000. The meeting will be held on Wednesday, May 10, 2000, from 9 a.m. to 5 p.m. and Thursday, May 11, 2000, from 9 a.m. to 1 p.m. The meeting may close early if all business is finished. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 30, 2000.

ADDRESSES: The public meeting will be held in the hearing room of the Marine Safety Office, 1615 Poydras Street, New Orleans, LA 70112–1254. To make sure your written 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–1999–5705), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand 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.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated 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 at the same address 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: For questions on this proposed rule, call LT Michael Roldan, Office of Operating and Environmental Standards (G–MSO), Coast Guard, telephone 202–267–0106; e-mail: mroldan1@comdt.uscg.mil or LT Claudia Gelzer, Office of Response (G–MOR), Coast Guard, telephone 202–267–1983; e-mail: cgelzer@comdt.uscg.mil. These telephones are equipped to record messages on a 24-hour basis. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

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–1999–5705), 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 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

We will hold a public meeting regarding this proposed rulemaking on Wednesday, May 10, 2000, from 9 a.m. to 5 p.m. and Thursday, May 11, 2000, from 9 a.m. to 1 p.m. The meeting will be held at the address under **ADDRESSES.**

Background and Purpose

The Clean Water Act (CWA) (33 U.S.C. 1321(j)(5)), as amended by section 4202(a)(5) of OPA 90 (Pub. L. 101–380), requires owners or operators of tank vessels, offshore facilities, and onshore facilities that could reasonably be expected to cause substantial harm to the environment to prepare and submit plans for responding, to the maximum extent practicable, to a worst case discharge, or a substantial threat of such a discharge, of oil or a hazardous substance into or on the navigable waters, adjoining shoreline, or the exclusive economic zone. Final rules for oil spill response plans were published (''Vessel Response Plans'' (61 FR 1052; January 12, 1996); and ''Response Plans for Marine Transportation-Related Facilities'' (61 FR 7890; February 29, 1996)). This proposed rulemaking only addresses OPA 90 response planning requirements for hazardous substances at Marine Transportation-Related (MTR) facilities. We have also published an NPRM entitled ''Tank Vessel Response Plans for Hazardous Substances'' (64 FR 13734; March 22, 1999).

Consistent with provisions of OPA 90, these proposed regulations are intended to address gaps in hazardous substance spill response readiness that now exist for MTR facilities. The regulations are not intended to duplicate or supersede any other regulations that have been promulgated by the Coast Guard or other Federal agencies. Because response planning at onshore facilities is not limited to bulk hazardous substances, it appears that there exists a potential for redundancy with existing response planning regulations. The redundancy is generally eliminated through use of the National Response Team's Integrated Contingency Plan Guidance. To further ensure that duplication of regulations is avoided, the Coast Guard and the Environmental Protection Agency (EPA) have jointly reviewed the various regulations that cover MTR facilities.

In Executive Order (E.O.) 12777, the President divided the responsibility for

implementing the provisions of OPA 90 regarding hazardous substance response plans among various Federal agencies. Through a series of delegations, the Coast Guard was granted the authority to implement hazardous substance response plan requirements for fixed and mobile onshore MTR facilities and for deepwater ports. The EPA was granted the authority to regulate fixed onshore non-transportation-related facilities. The Research and Special Programs Administration (RSPA) was granted the authority to regulate onshore non-marine transportation-related facilities (*i.e.,* pipelines, motor carriers, and railways). The Department of Interior's Mineral Management Service (MMS) was granted the authority to regulate offshore facilities and associated pipelines, other than deepwater ports subject to the Deepwater Ports Act of 1974.

Regulatory History

Advance Notice of Proposed Rulemaking

We published an Advance Notice of Proposed Rulemaking (ANPRM) on this project in the **Federal Register** on May 3, 1996 (61 FR 20084). The ANPRM discussed the background, statutory requirements of section 311(j) of the CWA, and possible regulatory approaches. In addition, the ANPRM raised 96 questions for public comment. We received 42 comment letters addressing the questions the respondents deemed applicable. We considered all of the comment letters in developing this NPRM.

Public Meetings

We conducted public meetings on July 30, 1996, in Washington, DC, and August 5, 1996, in Houston, TX. Comments made during these meetings were considered in the development of these proposed regulations.

We are working on a related rulemaking titled ''Tank Vessel Response Plans for Hazardous Substances'' (USCG–1998–4354) and have already published proposed rules in the **Federal Register**. As announced in the **Federal Register** (64 FR 31994; June 15, 1999), we held a public meeting for the related rulemaking on August 12 and 13, 1999, in Houston, Texas. Because of similarities in our proposed regulations for tank vessels and facilities, some comments made during the public meeting for tank vessels may also be applied to facilities. As we proceed towards a final rule for facility response plans, we will consider comments made at the August 1999 public meeting for tank vessels along with comments made to this rulemaking.

Response Plan Workshop

In addition to accepting written comments concerning the development of regulations for vessel response plans for hazardous substances, a workshop and meeting were held in Houston, TX, on February 26 and 27, 1997. The purpose of the workshop was to engage various stakeholders in issues that had been identified as significant in response to the ANPRM. Approximately 120 persons participated in the workshop. The workshop focused on four specific issues identified in advance by the Coast Guard. These issues were:

(1) Role and Contents of First Responders' Guides;

(2) Role and Capabilities of Decision Support Systems;

(3) Chemical Removal Technology; and

(4) Public Responder versus Private Responder Issues.

The recommendations from the workshop were considered when developing this NPRM. A summary of the proceedings of the workshop is available for review and copying in the public docket as described under **ADDRESSES.**

Advisory Committee

Under the auspices of the Chemical Transportation Advisory Committee (CTAC), the Hazardous Substances Response Plan Subcommittee was formed to develop and recommend hazardous substance response plan criteria for our consideration in developing requirements for OPA 90-mandated response plans. In addition to the formation of a Steering Committee, the Subcommittee established the following working groups to address appropriate aspects of response planning: Fate and Effects, Response Resources and Methodology, and Planning Process. Based on work done by the groups, the CTAC subcommittee delivered a report containing findings and recommendations. Input from the committee was used in the development of this NPRM.

Discussion of Proposed Rule

1. General

In response to public comments and recommendations from the Chemical Transportation Advisory Committee (CTAC), we established several principles to guide the development of this proposed rule. These principles specify that the regulations should:

a. Primarily address human health, including the health of the general public, vessel crew, facility personnel and responders;

b. Recognize and promote existing industry best practices;

c. Allow for flexibility in plan development to accommodate other existing practices that are effective;

d. Avoid prescriptive ''one size fits all'' requirements;

e. Not duplicate existing federal regulations;

f. Be consistent, to the utmost, with international standards;

g. Reflect the differences in planning requirements between oil and hazardous substances, specifically as they relate to recoverability and risk of exposure; and

h. Be structured so that oil response plans for MTR facilities may be amended or augmented to meet OPA requirements for hazardous substances.

A basic premise of these proposed regulations is that, for a hazardous substance discharge, the availability of information and expertise is essential to support response decision-making, while the mobilization of containment and collection equipment will be feasible only as conditions allow. For discharges of oil, some portion of the spilled product may be recoverable through containment and collection. The amount recovered is largely a function of how rapidly response equipment can be deployed. For hazardous substances, containment and collection may be viable for certain chemicals, depending on environmental conditions and safety considerations. Limitations on containment and collection are also imposed by the compatibility of equipment with the hazardous substance in question. The most effective mitigation strategy may be to control the source of the discharge, not contain and collect the hazardous substance. We prefer to foster a philosophy of ''quickly assess the risk and respond appropriately,'' instead of ''rush in to contain and collect the product.'' Above all, getting response information is the critical problem due to the large number and various potential behaviors of hazardous substances.

For the reasons previously described, these proposed regulations contain requirements that ensure access to certain information and equipment during a response, and the availability of appropriate technical expertise as necessary. We intend that, through an analysis of the required information by area specialists, the most appropriate response strategies will be identified and performed.

2. Integrated Contingency Plan Guidance

These proposed regulations are intended to fully accommodate the use of the National Response Team's Integrated Contingency Plan (ICP) Guidance, published in the **Federal Register** on June 5, 1996 (61 FR 28642). The purpose of the guidance is to provide a mechanism for consolidating multiple plans that facilities have prepared to comply with various regulations into one functional emergency response plan, minimizing or eliminating duplication of information. The guidance describes essential elements of a ''core plan,'' as well as the need for annexes containing appropriate supplementary information. The following federal regulations are specifically addressed in the National Response Team guidance document:

- Minerals Management Service Facility Response Plan Regulation (30 CFR part 254).
- Department of Transportation Research and Special Programs Administration (RSPA) Pipeline Response Plan Regulation (49 CFR part 194).
- U.S. Coast Guard Response Plans For Oil Facilities Regulations (33 CFR part 154—subpart F).
- Environmental Protection Agency (EPA) Oil Pollution Prevention Regulation (40 CFR 112.7, 112.20, and 112.21).
- EPA Risk Management Programs Regulation (40 CFR part 68).
- EPA Resource Conservation and Recovery Act Contingency Planning Requirements (40 CFR parts 264, 265, and § 279.52).
- Occupational Safety and Health Administration (OSHA) Emergency Action Plan Regulation (29 CFR 1910.38(a)).
- OSHA Process Safety Standard (29 CFR 1919.119).
- OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) Regulation (29 CFR 1910.120).

If a facility uses the ICP format, then the Coast Guard would only review those portions of the ICP that are specifically required by these proposed regulations and by the Coast Guard's regulations on response plans for oil facilities.

- Department of Transportation Research and Special Programs Administration (RSPA) Pipeline Response Plan Regulation (49 CFR part 194).
- U.S. Coast Guard Response Plans For Oil Facilities Regulations (33 CFR part 154—subpart F).
- Environmental Protection Agency (EPA) Oil Pollution Prevention Regulation (40 CFR 112.7, 112.20, and 112.21).
- EPA Risk Management Programs Regulation (40 CFR part 68).
- EPA Resource Conservation and Recovery Act Contingency Planning Requirements (40 CFR parts 264, 265, and § 279.52).
- Occupational Safety and Health Administration (OSHA) Emergency Action Plan Regulation (29 CFR 1910.38(a)).
- OSHA Process Safety Standard (29 CFR 1919.119).
- OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) Regulation (29 CFR 1910.120).

If a facility uses the ICP format, then the Coast Guard would only review those portions of the ICP that are specifically required by these proposed regulations and by the Coast Guard's regulations on response plans for oil facilities.

3. Summary of Proposed Requirements

Following is a discussion of sections contained in the proposed rule.

Section 154.2015 indicates who must comply with these regulations. As provided in OPA 90, these regulations apply to owners and operators of an MTR facility that, because of its location, could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging hazardous substances into or on the navigable waters, adjoining shorelines, or the exclusive economic zone. For the purpose of these regulations all MTR facilities that transfer any bulk hazardous substances to vessels are designated as significant and substantial harm facilities unless otherwise reclassified by the Captain of the Port (COTP). All requests for reclassification from significant and substantial harm to substantial harm must be made in writing. Substantial harm facilities need only have plans submitted to the COTP. These proposed regulations do not apply to packaged or containerized hazardous substances; they do apply to bulk transfers of hazardous substances. Bulk is defined in § 154.2020 of the proposed regulations.

Unlike existing regulations, which apply only to facilities that transfer oil or hazardous substances to a vessel with a capacity of 250 barrels or more, these proposed regulations contain no minimum thresholds for compliance. It is assumed that MTR facilities affected by these regulations will not engage in small quantity bulk transfers. The characteristics of hazardous substances further preclude the establishment of any minimum threshold, as the discharge of even a small quantity of a hazardous substance may lead to death, injury, environmental damage, or, as a minimum, a need to notify proper authorities. For these reasons, the 250-barrel threshold is largely irrelevant for the purpose of response planning for hazardous substances.

Because OPA 90 response planning requirements amend the CWA, regulations are statutorily restricted to the hazardous substances covered by the CWA. The complete list of CWA hazardous substances can be found in 40 CFR Table 116.4.

By a Memorandum of Understanding (MOU) between the EPA and the Department of Transportation published in the **Federal Register** on December 18, 1971 (36 FR 24080), we exercise authority on the MTR portion of an oil onshore facility. Due to the relationship of oils and hazardous substances in OPA 90 and FWPCA, we are extending this MOU to include hazardous substances for jurisdictional purposes. Therefore, the list of chemicals is further reduced to those CWA hazardous substances that are transferred in bulk quantities to or from a vessel. If the CWA list of hazardous substances is modified, the modification will automatically be covered under these regulations.

Often bulk ''hazardous substance'' cargoes consist of mixtures and solutions of CWA listed chemicals. Under 40 CFR 116.4, a hazardous substance is defined as including any isomers and hydrates, mixtures and solutions containing any of the listed substances. If applied to response planning, this definition could potentially apply to mixtures, such as chlorinated drinking water, with extremely low concentrations of listed substances.

To establish a reasonable and recognized standard for response planning, we propose that the regulations apply to any hazardous substance, including isomers and hydrates, as well as any mixtures or solutions that contain 10% or more of a single CWA hazardous substance by weight.

This percentage is consistent with the International Maritime Organization's rules for establishing shipping requirements for mixtures (*Guidelines for the Provisional Assessment of Liquids Transported in Bulk,* MEPC/Circ.265).

Some comments made during public meetings and in response to the ANPRM encouraged us to expand the applicability of these regulations beyond the CWA hazardous substances that are carried in bulk. For the reasons

described previously, OPA 90 and the CWA, as amended, prevent us from doing this. However, a concerted effort was made to ensure that response plans would contain tools that could be used by plan-holders and responders following any hazardous substance release, to include those not covered under these regulations.

Section 154.2020 includes definitions that apply to the subpart. The definitions used in these proposed regulations mirror those used in oil spill response planning regulations. Where appropriate, some of the definitions have been added, deleted or modified to make them more applicable to hazardous substance response activities or to improve clarity.

For oil spill response, the term ''adverse weather conditions'' includes weather conditions that hinder containment and collection efforts, i.e., rough seas, rain and wind. In the case of hazardous substance discharges, these conditions might be advantageous in that they may aid in the rapid dispersion of the hazardous substance. In contrast, the most adverse weather conditions, or those that could maximize exposure to human health, will often be calm seas, no wind and no precipitation. Therefore, we define ''adverse weather'' to mean the environmental conditions that magnify the risk when a hazardous substance discharge occurs and must be considered when identifying response resources in a response plan.

The term ''bulk'' indicates that a hazardous substance is transferred through a pipe or hose to or from a tank vessel. The tank on the vessel may be an independent, integral, or portable tank. However, a marine portable tank that is placed onto a vessel is not considered a ''bulk transfer'' if the tank was filled before being put on the vessel. We have included the definitions of tanks to clarify the term ''bulk.'' These definitions correspond to the definitions of tanks under 46 CFR 98.30–1, 98.30–2, 151.15–1 and 153.2. We intend to add these definitions to the tank vessel response plan final rule to harmonize the parallel rulemaking.

The terms, ''floater'' and ''sinker,'' are used to describe hazardous substances that could, under proper conditions, be contained and collected following a discharge. Both of these classifications represent hazardous substances that do not tend to react chemically with water, vaporize, or dissolve.

The term ''MTR facility'' is that portion of a larger facility or complex designed to conduct transfer operations. The MTR facility extends from the first valve inside a storage tank's secondary containment to the transfer system's connection with the vessel. In the absence of a storage tank's secondary containment, the MTR facility extends from the valve or manifold adjacent to the tanks under EPA's jurisdiction to the transfer system's connection with the vessel. It is our intent to only cover the transfer system outside EPA's jurisdiction.

For both oil and hazardous substances, the CWA defines, in section 311(a)(24), ''worst case discharge'' for facilities to mean ''the largest foreseeable discharge in adverse weather conditions.'' The CWA further defines, in section 311(a)(2), the term ''discharge'' to mean ''any spilling, leaking, pumping, pouring, emitting, emptying, or dumping. * * *'' Hazardous substance discharges, even in the marine environment, may result in airborne releases. Therefore, we have determined, for the purposes of these regulations, the term ''discharge'' includes both waterborne and airborne releases from MTR facilities. We have also defined ''incident'' as a discharge or substantial threat of a discharge.

As reflected in existing oil response planning regulations and in this rulemaking, the ''largest foreseeable discharge'' is a planning volume that constitutes the sum of the following three volumes:

(1) The volume of the entire contents of the in-line and break-out tanks.

(2) The volume of a hazardous substance discharged at the maximum flow rate for the maximum time period from discovery to shutdown.

(3) The leakage after shutdown.

Section 154.2021 discusses the methods that a plan-holder can use to identify resources that must be ensured available under the proposed regulations. These requirements are essentially unchanged from oil response plan regulations, although different types of resources must be ensured available.

Section 154.2022 contains the requirement to designate a Qualified Individual (QI) and alternate QI in the plan. As prescribed by OPA 90, a QI must have full authority to implement all response actions necessary to minimize or mitigate damage to public health, the environment, and public and private property. A QI must be able to, immediately and continuously, communicate with the appropriate federal official and response resource providers, as needed. It is not assumed that a QI for oil spill response will necessarily be an appropriate QI for hazardous substance incidents.

Several comments to the ANPRM and public meetings have indicated that under the oil response planning regulations, some QI's do nothing more than obligate funds. These comments suggest that the role of the QI does not include involvement in decisions relating to a response and therefore, the QI does not need to have any understanding of incident response. This is not our expectation of a QI.

We understand that Congress intended a ''qualified individual'' to have basic qualifications that demonstrate an ability to coordinate, with full authority from the plan-holder, a response to an incident. Early in a response, when the risks are often greatest, the QI may independently make decisions that could impact the overall response. For example, a plan may identify a list of contractors that provide particular response services. Without a basic knowledge of chemical response, a QI may not know which resource provider to contact or be able to characterize the nature of the incident to responders. This knowledge may not be as important for oil spills, where response options are more standardized, and the immediate threat to human health is not as prevalent. Therefore, we propose minimum training requirements for a QI.

To build on an existing standard that is widely accepted and demonstrates the appropriate skill set, the proposed regulations require QI's to meet the requirements of an incident commander under the OSHA HAZWOPER provisions in 29 CFR 1910.120(q)(6)(v). Qualifications are further described in emergency response training guidance for incident commanders contained in Appendix E to § 1910.120. The OSHA training requirement for incident commanders should be interpreted as a minimum qualification, not an absolute measure of expertise in and of itself. Plans require designating each QI in writing, and indicate that the QI is familiar with the response plan and has full authority to implement actions to contain, remove, or otherwise minimize or mitigate threats to human health, the environment, and public property. Owner or operators should ensure that the QI's training and experience are adequate to carry out designated responsibilities.

We welcome comments regarding the recognition of other standards or certifications that demonstrate a working knowledge of hazardous substance response that is adequate for the responsibilities contained in these regulations for a QI.

At the time of an incident, a responsible employee of the facility becomes the incident commander and initiates notification and mitigation

procedures, as appropriate. When that employee notifies the QI of the hazardous substance incident, the QI may assume the role of incident commander. Individuals acting as incident commander may change as an incident progresses, particularly if the response to the incident is prolonged.

Section 154.2025 describes the actions that could be taken to receive authorization to transfer bulk hazardous substances after submitting a plan to the Coast Guard, but before it has been approved. These proposed requirements mirror those currently required under oil response plans, and enable those owners or operators who are currently conducting hazardous substance operations to continue operations while the plans are being developed, submitted, and approved.

Section 154.2026 describes what owners and operators could do to obtain an interim operating authorization. This requirement is essentially the same as current requirements under oil response plans. A request generally consists of a written request to the COTP certifying that the response resources have either been contracted or identified per the requirements of these regulations.

Section 154.2030 provides plan-holders with the flexibility to modify existing oil response plans with additional information that meets hazardous substance response-specific requirements. As discussed in section two of the ''Discussion of Proposed Rule'' of this preamble, we also fully endorse the use of the National Response Team's ICP Guidance.

Section 154.2032 contains requirements that pertain to the format and contents of response plans. These requirements have been designed to maximize consistency with facility oil spill response plan requirements.

Section 154.2035 describes the required contents of each section of a response plan. The following is a discussion of several of the proposed requirements that would deviate substantially from existing oil spill response plan provisions.

Paragraph (a) requires facility information such as facility name, address, county, telephone and facsimile numbers, etc. This information is commonly found in other required response plans, and per the ICP Guidance, may be referenced if in another plan.

Paragraph (b) includes:

(1) All required notifications, in a prioritized fashion, that must take place following a hazardous substance incident.

(2) All procedures necessary to ensure that required notifications occur.

(3) An example of a form that contains minimal information to be included in the initial report to Federal, State, and designated local authorities.

Paragraph (c) contains requirements for developing an impact analysis for a worst case discharge. The intent of this requirement is to ensure that in the event of a worst case discharge, owners or operators will have pre-identified the area in which adverse impact to human health and the environment could occur.

Because of the many variables that influence the fate, transport and effects of a hazardous substance discharge, these analyses are not intended to be precise. Rather, they are designed to provide a macroscopic view of potential impacts. By identifying worst case discharge planning volumes, endpoints, and distances to endpoints, diagrams of impacted areas for each hazardous substance can be developed. Further, within these impact areas, owners or operators will be able to identify the magnitude of potential exposure to humans and the environment, and factor this information into the overall response.

An endpoint is a threshold defining a hazardous condition, such as an exposure level or pollutant concentration. For example, under the EPA Risk Management Plans, the endpoint for a toxic substance is its Emergency Response Planning Guideline Level 2 (ERPG–2) developed by the American Industrial Hygiene Association. Endpoints can be obtained or derived from health guideline values from a recognized authority, to include Federal or State agencies, professional associations, or scientific studies. An endpoint is used to determine the perimeter of an area adversely impacted by a hazardous substance discharge.

The EPA is currently developing Acute Exposure Guideline Levels (AEGL's) to establish airborne threshold concentrations for acutely toxic chemicals above which adverse effects are seen in humans. As developed, we may find that these are acceptable endpoints under our hazardous substance response regulations.

The requirement to develop an impact analysis was designed to align with those found in the EPA Risk Management Plan (RMP) regulations (40 CFR part 68); therefore, information completed under those regulations may be referenced or otherwise incorporated. We envision that the analysis will result in a series of diagrams illustrating the areas potentially impacted, as well as human and environmental receptors within those areas.

Paragraph (d) requires that plans contain discharge mitigation procedures. While all plans must include basic procedures such as personnel safety, use of personal protective equipment (PPE), and job responsibilities, several of the procedures will be dictated by the extent facility employees (as opposed to contracted responders) will be involved in mitigating an incident and conducting air and water monitoring.

Paragraph (e) requires that plans describe the organizational structure that will be used to manage response operations. This structure must outline the roles and responsibilities of the specific functional areas contained in the National Interagency Incident Management System (NIIMS) Incident Command System (ICS). This organizational structure is described in the U.S. Coast Guard Field Operations Guide (ICS–OS–420–1). This document can be obtained electronically via Internet URL http://www.uscg.mil/hq/g-m/nmc/response/fog/fog.htm or requested by writing or telephoning U.S. Coast Guard Headquarters (G–MOR–3), 2100 Second Street SW., Washington, DC 20593–0001, 202–267–6860.

Paragraph (e)(4)(i) contains a provision that requires an understanding of the unified command. Briefly summarized, the unified command consists of a—

- Federal On-Scene Coordinator (Federal OSC);
- State On-Scene Coordinator (SOSC);
- Local emergency coordinator; and
- Responsible party's incident commander.

They direct and oversee all public and private resources dedicated to the response. Unified command members are expected to establish joint control over an incident, and develop mutually agreeable response strategies. If the unified command cannot develop mutually agreeable response strategies, or if the Federal OSC believes that the responsible party's actions are unsatisfactory, the Federal OSC may assume overall control of the response. This action is normally used as a last resort when the responsible party is uncooperative with federal and state representatives.

This paragraph also requires that each plan describe the key roles and responsibilities of the incident commander, defined in the proposed regulations as the designated representative of the responsible party in the unified command. This individual may be the QI.

Paragraph (e)(4)(iv) requires that each plan describe how the responsible party will coordinate with local public

response organizations following a hazardous substance incident. Although OPA 90 explicitly requires the availability of private resources to respond to these releases, local responders, such as firefighters and hazardous materials response teams, will probably respond as well. This requirement recognizes the benefits gained by ensuring an effective liaison between the responsible party and these response organizations.

Paragraph (e)(5) contains requirements to have the capability to rapidly integrate the following types of expertise into the spill management team: product specialist, toxicologist, chemist or chemical engineer, and certified industrial hygienist. The need for these areas of specialty to be involved will be dictated by each discharge scenario. However, the response to an incident will be more effectively executed if this expertise is available to advise the unified command. Therefore, these specialties must be accessible.

The requirement contained in paragraph (f) of this section would call for plan-holders to develop a risk-based decision support process. Public comments suggested that the use of automated ''decision support systems'' or ''expert systems'' may be an effective tool for use in determining response strategies. This proposed requirement provides a tool to be used by responders to ensure thorough consideration of risk factors that may influence response activities. This section of the plan would include a description of processes to identify, evaluate, control and communicate risks of a hazardous substance incident. This requirement could be met through a checklist, decision tree, flow diagram, automated system, or any other method that contains the required components.

Paragraph (g) contains requirements relating to response resources that must be contracted, as well as resources that need only be identified in the plan. The likelihood of needing certain equipment in a worst case discharge is directly related to whether that equipment must be contracted. It is likely that PPE, monitoring equipment, and dispersion modeling will be necessary in each incident to assess the potential risks and develop response strategies. Unlike oil spills, where containment and collection strategies are standard, many hazardous substances, once discharged, cannot be contained or collected. The first priority for these types of incidents is to minimize the threat to human health. The proposed equipment requirements are designed to do this.

The use of removal equipment (such as in situ treatment equipment, chemical detection equipment and containment and collection equipment) is less probable and is limited to certain recoverable hazardous substances. Consequently, equipment requirements correspond to two recoverable types of hazardous substances: equipment used to recover ''sinkers'' and equipment used to recover ''floaters.'' It is intended that these recoverable hazardous substances do not include those that are reactive in water, and therefore could not be contained or collected under any conditions.

For plan-holders transferring hazardous substances that can be contained and collected (*i.e.,* floaters), paragraph (g)(2) requires that a specified amount of response resources must be contracted. This rule also proposes times in which contracted equipment needs to be available on-scene; in some cases the equipment may not be deployed. These time requirements are based on the time of discovery of the incident. Decisions pertaining to response strategies and equipment deployment will be made on a case-by-case basis. The time requirement ensures that, if needed, the equipment is available for use.

Beyond this specified amount, additional removal equipment must be identified and listed in the plan, but not contracted, so it can be quickly mobilized when appropriate. The equipment need not be ensured available by contract or other approved means because the probability of its use is limited, and factors influencing a potential incident create an almost limitless number of response scenarios.

Paragraph (i) requires that plans include certain information and activities pertaining to hazardous substance response exercises. The requirements are aligned with the requirements contained in oil spill response plan regulations for facilities, except that plan-holders now conducting oil spill exercises would be allowed to replace between 25 percent and 75 percent of those exercises with hazardous substance exercises. The percentage would be determined by the plan-holder, and should reflect the relative number of oil and hazardous substance transfers conducted. We are currently examining methods in which the Preparedness for Response Exercise Program (PREP) could be modified to assist the regulated community by providing hazardous substance exercise program guidelines.

Section 154.2040 contains the required contents of each appendix to the response plan.

Paragraph (a) requires that the plan contains certain facility-specific information. This information includes physical descriptions of mooring areas, transfer locations, control stations, locations of safety equipment, locations and capacities of all piping and storage tanks, descriptions of vessels transferring at the facility, and other information related to hazardous substance transfers.

Paragraph (b) would require the inclusion of chemical-specific information in each plan. The types of information would include cautionary response considerations, health hazards, fire hazards, chemical reactivity, water pollution, shipping information, hazard classifications, and physical and chemical properties.

Hazardous-substance-specific information required in the proposed rule is essentially the same information that is contained in the Chemical Hazards Response Information System (CHRIS). CHRIS has been expanded to include more chemicals, as well as improvements in format, content, and capabilities. It has historically functioned as a widely accepted source of chemical-specific information for use by responders and response plan developers.

Because CHRIS is one of many tools that responders could use in planning for and during an actual response, and because responders and response planners need the flexibility to choose their own response tools, we do not propose to require the use of the CHRIS manual.

Unlike previous versions of CHRIS, which were available only as hard-copy manuals, the new version is available in hard-copy, electronic, and Internet formats. The revised CHRIS gives users flexibility to tailor the system to meet specific needs. The electronic version resides in a searchable database that allows for customized queries. Comments on how to further improve CHRIS are welcome and may be forwarded to the location listed under **ADDRESSES.**

Section 154.2045 includes requirements to ensure that response resources are periodically inspected and maintained, and that other activities, necessary to ensure that the equipment is in good working order, are conducted.

Section 154.2055 calls for plan-holders to conduct their own evaluations of response resource providers named in response plans. These evaluations would cover both equipment adequacy and competency of personnel resources. The plan-holder must provide written certification of

this evaluation, signed by the owner or operator.

We will consider adopting privately-sponsored programs that establish a standard that assures adequate capabilities of resource providers exist in order to meet the plan requirements. We encourage the development of such a program to reduce the burden on owners and operators of conducting individual provider evaluations.

Facility response plans are ''self-certifying'' in nature; the plans require two certifications as provided for by 33 CFR 154.2055 and 2065(a)(1). The scope of these certification statements includes the assurance that (1) the response resources required by the applicable subparts have been ensured available through contract or other approved means and are adequate to carry out the planned response requirements, and (2) the plan meets all requirements of the regulations. As such, please note that any knowingly fraudulent statements or misrepresentations regarding contracted resources within the plan can result in an owner or operator being criminally prosecuted under 18 U.S.C. 1001, which, upon conviction, carries criminal penalties of a fine, up to five years of imprisonment, or both.

Assessment

Due to substantial public interest, this proposed rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A draft Assessment is available in the docket as indicated under **ADDRESSES.** A summary of the Assessment follows:

The Coast Guard does not anticipate that the proposed rule will result in a significant economic burden on regulated entities. These proposed regulations are expected to impact only those facilities that must comply with any new requirements. The Coast Guard will also incur costs related to plan review and approval.

Benefits are anticipated to result from an increased level of preparedness and efficiency in conducting response operations. Anticipated benefits from these regulations include averted pollution, a reduction in injuries and property damage associated with hazardous substance discharges, the avoidance of costs incurred by both public and private entities directly involved in response operations, and reduction of impacts on populations located in the vicinity of such discharges.

An estimated 225 companies own as many as 450 facilities which transfer bulk chemicals to or from vessels in U.S. waters. While all of these facilities do not transfer the specific hazardous substances covered under these regulations, the analysis uses the conservative assumption that all of these facilities are affected by the regulations.

In determining the costs and benefits of the proposed regulations, the Assessment for this proposed rule considered the following potential regulatory components:

1. The Coast Guard will take no action beyond existing regulations.

2. Regulations will require the submission of response plans containing information regarding QIs, training, exercises, hazardous substance characteristics, notification procedures, and other personnel procedures. This is identified as component A in the Assessment.

3. The regulations will encourage a ''first responders guide'' and require a ''decision support system''. This is identified as component B in the Regulatory Assessment.

First responders guides are concise instructions or handbooks that would be immediately available to personnel most likely to be at risk in the event of a hazardous substance incident, and therefore most likely to take immediate actions. The level of detail in these guides would be determined by each facility's expectation of their personnel in the event of an incident. It is intended that the guides would be as specific as possible, and not include generic guidelines that allow for broad interpretation by those expected to use them.

The decision support systems have two elements. The first element consists of tools that responders can use to analyze risks associated with a hazardous substance incident and that assist in making decisions related to identifying and evaluating response strategies. These tools could be automated or manual. The second element consists of a human-based decision support team. Team members will be specialists such as a product specialist, a toxicologist, a chemist or chemical engineer, and an industrial hygienist. A team member may serve as one or more specialists.

4. The preferred regulatory approach includes components A and B, plus requiring companies to contract for spill response equipment and conduct deployment drills. Regulations will essentially mirror requirements for facility response plans for oil now found in 33 CFR part 154 by requiring contracted containment and removal equipment to respond to hazardous substance incidents. This approach, designated as Alternative 1 in the Assessment, is reflected in this proposed rule.

Cost-Effectiveness Summary

The measures included in the selected regulatory alternative are expected to yield a net cost-effectiveness of about $3,419 per barrel of hazardous substance spillage averted. This cost-effectiveness value is expressed in 1997 dollars and is a ten-year present value (PV). The cost of the proposed rule is approximately $99.44 million, while its benefits are approximately 23,300 barrels of pollution averted, and approximately $19.77 million in avoided costs. Subtracting the avoided costs of the proposed rule from its total cost yields a net rule cost of about $79.67 million. Dividing this net cost by 23,300 barrels yields the net cost-effectiveness ratio of $3,419 per barrel unspilled. This procedure allows us to compare pollution and property damage benefits together.

The total first-year cost of these new requirements to industry is estimated to be $18.93 million. The recurring costs are estimated to be $14.56 million per year.

The estimated cost for component A only is $74.17 million. Its benefits include 14,103 barrels of avoided pollution and $11.97 million of damages averted. Its net cost-effectiveness is $4,411 per barrel unspilled.

The marginal cost for the additional measures contained in component B and not included in component A is $1.08 million. Marginal benefits include 3,777 barrels of avoided pollution and $3.21 million of damages averted. The marginal net cost effectiveness of these additional measures is $(563) per barrel unspilled. A negative cost effectiveness results from the damages averted being greater than the cost of the component.

The marginal cost for the additional measures contained in Alternative 1 not included in component B is $24.18 million. Marginal benefits include 5,420 barrels of avoided pollution and $4.59 million of damages averted. The marginal net cost effectiveness of these additional measures is $3,615 per barrel unspilled.

Non-quantified benefits could further decrease the cost per barrel of pollution averted. The most significant non-quantifiable benefit is the usefulness of response plans in many chemical

discharge scenarios, not just those involving a worst case discharge of bulk Clean Water Act hazardous substances. History shows that, while only a limited number of ''worst case discharges'' of Clean Water Act hazardous substances have occurred in recent years, hundreds of discharges involving other chemicals, and in smaller quantities, have occurred. Response to these discharges would also have been enhanced if response plans had been developed.

A. Costs

The 10-year PV cost of the proposed rule is approximately $99.44 million. Costs associated with these proposed regulations are the development of the actual hazardous substance response plans, as well as the costs of operating in compliance with the plan. In calculating costs, the Coast Guard used the estimate that 43% of facilities covered by these regulations are currently holding oil response plans required by 33 CFR part 154 subpart F, and will modify or add to these existing plans rather than develop entirely new plans. Consequently, these facilities have been credited with partial compliance with these proposed regulations. To the extent possible, costs reflect input from a range of industry sectors that will be directly or indirectly affected by these regulations. Unless otherwise specified, ''total cost'' reflects the aggregate cost to the entire industry affected by these proposed regulations. The Assessment breaks down costs by components. The following is a discussion of the different components considered for MTR facilities:

Baseline

The Coast Guard will take no action beyond existing regulations. By passing OPA 90, Congress indicated a preference for a statutory solution to oil and hazardous substance response planning for MTR facilities and vessels rather than a ''free market'' solution. Given that OPA 90 has been enacted, ''no action'' is essentially not a feasible alternative for MTR facilities and vessels.

Component A

The Coast Guard will require that response plans be developed for all facilities that transfer hazardous substances covered by the regulations. The plans must be consistent with associated national and area planning requirements and must include the following:

- General site information
- Designation of a QI with the authority to activate spill response resources
- Contact lists
- Training and drills
- Submission of plans
- Periodic updates as changes occur

Component B

Component B includes cost from the measures in component A, plus the costs from the following two measures:

- ''First Responders Guides'' or handbooks that provide instructions for initial response.
- Decision Support System to assist in responding to a spill and assessing the risk to the surrounding areas.

Alternative 1

Alternative 1 captures what is mandated by statute. In addition to components A and B, companies will be required to contract or provide by other approved means for spill response capabilities and have equipment deployment drills. This requirement will mirror that required in the oil response plan regulations but will be applied only to those substances that display oil-like characteristics (i.e., those that float on water).

B. Benefits

Based on the preferred alternative and assuming a 10-year PV, the amount of pollution averted is estimated at 23,300 barrels, while the avoided costs are estimated to be about $19.77 million. Anticipated benefits from these regulations include averted pollution, a reduction in injuries and property damage associated with hazardous substance discharges, the avoidance of costs incurred by both public and private entities directly involved in response operations, and reduction of impacts on populations located in the vicinity of such discharges.

The degree to which response operations would be improved was estimated by interviewing 11 subject matter experts who have been directly involved with responding to hazardous substance incidents. These interviewees represent facility and vessel owners or operators, local hazardous material response teams, U.S. Coast Guard Federal OSCs and Marine Safety Offices, and the U.S. Environmental Protection Agency.

Each interviewee was asked to estimate the level of effectiveness for each regulatory component. These estimates, ranging from minimal to significant impact on the efficiency of response operations, were averaged to develop an overall ''percent efficiency.'' This in turn reflects the percent to which costs of a response would be reduced and the amount of pollution that could be averted.

An indirect benefit applies to chemical release discharges not covered under these regulations. These regulations apply to worst case discharges and the threat of such discharges. In reality, the vast majority of these discharges occur during transfer operations and are not worst case discharges, and frequently involve chemicals not transferred in bulk or not covered by these regulations. Realizing that the benefit of the plans would be limited if they could be applied only to worst case discharges involving specific bulk hazardous substances, the Coast Guard designed these regulations with enough flexibility to be useful in guiding a wider range of chemical responses.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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.

These regulations are not expected to significantly impact small businesses. No comments were made in response to an ANPRM and during two public meetings, and one workshop that expressed concerns about impacts on small entities. We contacted trade associations representing small businesses in the chemical manufacturing industry and received no indications that these regulations would adversely impact small entities. In total, chapter five of the Assessment estimates that these regulations would affect a maximum of 49 small entities.

The proposed regulations provide allowances to modify existing response plans and to take advantage of participation in industry cooperatives. Additionally, the Coast Guard is updating and making CHRIS available. This update would essentially provide affected parties with the hazardous-substance-specific information required in the regulations. For any company that believes it will be significantly affected, the regulations allow the company to request further flexibility in complying with the requirements.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think your business, organization, or governmental jurisdiction qualifies as a

small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 LT Michael Roldan, Office of Operating and Environmental Standards (G–MSO), 202–267–0106; e-mail: mroldan1@comdt.uscg.mil.

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 a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Marine Transportation-Related Facility Response Plans for Hazardous Substances.

Summary of the Collection of Information: The Coast Guard has prepared and will seek approval for this collection of information under a consolidated collection which applies to these proposed regulations, proposed regulations for Tank Vessel Response Plans for Hazardous Substances as well as existing regulations for Vessel and Facility Oil Response Plans. This proposal contains collection of information requirements in §§ 154.2022 (What are the requirements for qualified individuals and alternate qualified individuals and what is their authority?); 154.2025 (When may I conduct hazardous substance transfer operations?); 154.2026 (How do I obtain interim operating authorization?); 154.2030 (May I augment an existing oil response plan with hazardous substance response information?); 154.2031 (How many copies of the plan must I have, and where must they be maintained?); 154.2032 (What are the required contents of a response plan?); 154.2035 (What are the required contents for each section of the plan?); 154.2055 (How must I certify that my response resource providers are capable of meeting plan requirements?); 154.2065 (What are the procedures for plan submission and approval?); 154.2070 (What are the procedures for plan review, revision, and resubmission?); 154.2072 (When must I resubmit my plan?); 154.2080 (How do I appeal a plan deficiency or COTP determination?); and 154.2085 (What are the procedures for submitting a request for acceptance of alternative planning criteria?).

Need for Information: This information is necessary to ensure that facilities transferring hazardous substances in bulk to or from vessels in U.S. waters are adequately prepared to respond to a hazardous substance incident.

Proposed Use of Information: In part, the purpose of the OPA 90 amendments to section 1321 of the FWPCA is to derive benefits anticipated to result from these regulations because of an increased level of preparedness and efficiency in conducting response operations. Anticipated benefits include averted pollution, reduced injuries and property damage associated with hazardous substance discharges, avoided costs incurred by both public and private entities directly involved in response operations, and minimized impact of the hazardous substance discharges when they occur in U.S. waters. Without the proposed requirements for facility response plans, it is possible that some owners or operators will not maintain the necessary internal resources (effective planning, training, exercises, *etc.*) or external resources (adequate shore-based response capability) to meet the requirements of these proposed regulations. The proposed collection of information requirements help monitor and ensure, through the submission and recurring update of response plans, that facilities conducting transfer operations in U.S. waters have appropriate response plans and response resources.

Submission of facility response plans to the U.S. Coast Guard for approval, the on-sight verification of an approved plan during routine facility inspections, and the maintenance of training and exercise records are the best way to ensure compliance.

Description of the Respondents: Owners and operators of facilities transferring hazardous substances in bulk to or from vessels in U.S. waters.

Number of Respondents: 225.

Frequency of Response: Response plan submitted every 5 years; notice of reviews completed annually; updates as necessary.

Burden of Response: A one-time burden of 44,502 hours for reporting and an annual recordkeeping burden of 4,504 hours for all respondents.

Estimated Total Annual Burden: One-time reporting burden of 198 hours per respondent and an annual recordkeeping burden of 20 hours per respondent.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES.**

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

However, we have consulted with interested State and local government officials and relevant representative national organizations and have received meaningful and timely input by those officials and organizations.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that preparation of an Environmental Impact Statement is not necessary. A draft Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES.**

The Environmental Assessment indicated that these regulations would not be expected to result in a significant impact on the environment. The Assessment analyzed the range of environmental impacts associated with several potential regulatory strategies considered by us, with a ''no action'' option as a baseline. A ''no action'' regulatory option would have adverse environmental impacts. Other regulatory options considered would result in positive impacts by mitigating environmental damage due to increasing response efficiencies. These damage reductions would be approximately 67% less than damages from the baseline. This estimate was established through interviews with individuals having substantial experience in the area of chemical response. No aspects of these regulations would be expected to result in adverse impacts on the environment. Cost reductions associated with environmental damage mitigation include those associated with environmental restoration and natural resources damages.

List of Subjects in 33 CFR Part 154

Incorporation by reference, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 154 as follows:

PART 154—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR FACILITIES

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757, 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

2. Add subpart J, consisting of §§ 154.2010 through 154.2085, to read as follows:

Subpart J—Response Plans for Hazardous Substances

Sec.

154.2010 What is the purpose of this subpart?
154.2015 Who must follow this subpart?
154.2016 What is the classification of my facility?
154.2017 How can I have my facility reclassified by the COTP?
154.2018 What are the basic submission requirements for my facility's response plan?
154.2020 What definitions apply to this subpart?
154.2021 What is a ''contract or other approved means''?
154.2022 What are the requirements for qualified individuals (QI) and alternate qualified individuals and what is their authority?
154.2025 When may I conduct hazardous substance transfer operations?
154.2026 How do I obtain interim operating authorization?
154.2030 May I augment an existing response plan with hazardous substance response information?
154.2031 How many copies of the plan must I have, and where must they be maintained?
154.2032 What are the required contents of a response plan?
154.2035 What are the required contents for each section of the plan?
154.2040 What appendices must I include in my plan?
154.2045 What inspections and maintenance must I conduct on response resources that I own or operate and are named in my plan?
154.2050 What are the operating criteria that apply to response resource equipment?
154.2055 How must I certify that my response resource providers are capable of meeting plan requirements?
154.2065 What are the procedures for plan submission and approval?
154.2070 What are the procedures for plan review, revision, and resubmission?
154.2072 When must I resubmit my plan?
154.2075 How will the Coast Guard notify me of deficiencies that may exist in my plan?
154.2076 When may my plan be declared invalid?
154.2080 How do I appeal a plan deficiency or COTP determination?
154.2085 What are the procedures for submitting a request for acceptance of alternative planning criteria?

§ 154.2010 What is the purpose of this subpart?

The purpose of this subpart is to establish hazardous substance response planning requirements for all marine transportation-related (MTR) facilities that transfer hazardous substances, in bulk, to or from a vessel. The development of response plans is intended to better prepare owners or operators to respond to a hazardous substance incident. The Coast Guard is not specifying the actions you need to take in case of an incident. Instead, we are specifying problem areas you must address during the planning process before an incident.

§ 154.2015 Who must follow this subpart?

You must follow this subpart if you own or operate an MTR facility that transfers, in bulk, to or from a vessel—

(a) A hazardous substance;

(b) A hazardous substance's isomer or hydrate; or

(c) A mixture or solution with 10% or more by weight of a single hazardous substance.

§ 154.2016 What is the classification of my facility?

(a) The Coast Guard classifies facilities identified in § 154.2015 as ''significant and substantial harm'' facilities because a discharge may cause significant and substantial harm to the environment.

(b) The Captain of the Port (COTP) may change the classification of a facility identified in § 154.2015 to or from ''substantial harm''. Before changing the classification of a facility

the COTP will consider, as a minimum, the following factors:

(1) The type and quantity of substance(s) handled.

(2) The spill history of the facility.

(3) The age of the facility.

(4) The public and commercial water supply intakes near the facility.

(5) The navigable waters near the facility. *Navigable waters* is defined in 33 CFR 2.05–25.

(6) The fish, wildlife, and sensitive environments.

§ 154.2017 How can I have my facility reclassified by the COTP?

The COTP will consider reclassifying your facility upon receiving a written request for reclassification. Your request must discuss those factors identified in § 154.2016(b).

§ 154.2018 What are the basic submission requirements for my facility's response plan?

(a) If you own or operate a facility identified in § 154.2017 as a significant and substantial harm facility, then you must submit your plan to the cognizant COTP for review and approval.

(b) If you own or operate a facility identified in § 154.2017 as a substantial harm facility, you must also submit your plan to the cognizant COTP, but it does not require COTP approval.

(c) Section 154.2065 provides specific procedures for plan submission and approval.

§ 154.2020 What definitions apply to this subpart?

As used in this subpart:

Adverse weather means the hydrographic, meteorological, and other environmental conditions that magnify the risk of an adverse impact to human health and the environment when a hazardous substance is discharged, and must be considered when identifying response resources in a response plan.

Bulk means any volume of a hazardous substance transferred to or from an integral tank of a vessel, and any volume of a hazardous substance transferred to or from a marine portable tank or independent tank while on board a vessel.

Captain of the Port (COTP) Zone means a zone specified in 33 CFR part 3 and, for coastal ports, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ).

Endpoint means the level or concentration in air, soil, or water of a hazardous substance below which human health and the environment should not be adversely impacted.

Federal On-Scene Coordinator (Federal OSC) means the Federal official pre-designated by the Coast Guard or Environmental Protection Agency (EPA) to coordinate and direct response efforts at the scene of a hazardous substance incident, as prescribed in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan (NCP)) published in 40 CFR part 300.

Fish and Wildlife and Sensitive Environments means areas that may be identified by either their legal designation or by Area Committees in applicable Area Contingency Plans (ACP) (for planning) or by members of the Federal OSC's spill response structure (during responses). These areas may include: wetlands, national and state parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, areas of economic importance, recreational areas, national forests, Federal and state lands that are research areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as: Aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Floater means any hazardous substance whose physical and chemical properties, when discharged into water, result in a substance on the water surface that does not rapidly sink, react chemically with water, vaporize, or dissolve.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

Hazardous substance means any chemical that is listed in 40 CFR 116.4.

Hazardous substance operations means the transferring of any hazardous substance in bulk to or from a vessel in areas subject to the jurisdiction of the United States.

Incident means a discharge or a substantial threat of a discharge.

Independent tank means a cargo tank that is permanently affixed to the vessel, that is self-supporting, that incorporates no part of the vessel's hull and that is not essential to the integrity of the hull.

Inland area means either the area shoreward of the boundary lines defined in 46 CFR part 7, or in the Gulf of Mexico, the area shoreward of the lines of demarcation (COLREG lines) as defined in 33 CFR 80.740 through 80.850. The Great Lakes are not included in the inland area.

Integral tank means a cargo tank that also is part of, or is formed in part by, the vessel's hull structure so that the tank and the hull may be stressed by the same loads.

Interim operating authorization means authorization granted by the Coast Guard for a significant and substantial harm facility to conduct hazardous substance operations without having an approved plan.

Marine transportation-related facility (MTR facility) means all onshore terminal facilities including transfer hoses, loading arms, and in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and other equipment used for the purpose of handling or transferring hazardous substances in bulk to or from a vessel, but excluding terminal exclusive hazardous substance storage facilities. If the storage facility has secondary containment, the MTR facility extends from the first valve inside a storage tank's secondary containment to the transfer system's connection with the vessel.

Nearshore area means either the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, or, in the Gulf of Mexico, the area extending seaward 12 miles from the lines of demarcation (COLREG lines) as defined in 33 CFR 80.740 through 80.850.

Offshore area means the area from the outer boundary of the nearshore area seaward 38 nautical miles.

Open ocean area means the area from the outer boundary of the offshore area to the seaward boundary of the exclusive economic zone.

Operating area means any of the following: Rivers and canals, Great Lakes, Inland area, Nearshore area, Offshore area, or Open ocean area.

Personal protective equipment (PPE) means equipment that meets the requirements contained in 29 CFR 1910.120.

Portable tank means—

(a) An IM 101 portable tank or an IM 102 portable tank constructed in accordance with 49 CFR 178.270 through 178.272 and approved under 49 CFR 173.32a;

(b) A marine portable tank (MPT) that was inspected and stamped by the Coast Guard on or before September 30, 1992, and that meets the applicable requirements of 46 CFR parts 64 and 98; and

(c) A portable tank authorized for liquid hazardous materials, other than liquefied gases, by the Associate Administrator for Hazardous Materials

Safety (AAHMS), Research and Special Programs Administration, under an exemption issued in accordance with subpart B of 49 CFR part 107.

Response activity means any actions necessary to minimize or mitigate damage to human health, the environment, or property.

Response area means the area designated by the Federal OSC in which response activities are occurring.

Response resources means the personnel, equipment, supplies, and other capabilities necessary to perform response activities identified in the response plan.

Response resource provider means an entity that provides response personnel, equipment, supplies, or other capabilities necessary to perform response plan activities identified in a response plan.

Rivers and canals means bodies of water confined within the inland area. These include the Intracoastal Waterways and other waterways artificially created for navigation having a project depth of 12 feet or less.

Sinker means any hazardous substance whose physical and chemical properties, when discharged into water, result in a substance in the water that does not float, react chemically with water, rapidly vaporize, or rapidly dissolve.

Spill management team (SMT) means the personnel identified in a response plan who staff the organizational structure that manages response plan implementation. The term Incident Management Team may also be used.

Worst case discharge means the largest foreseeable hazardous substance discharge in adverse weather conditions.

§ 154.2021 What is a ''contract or other approved means''?

A ''contract or other approved means'' is any of the following methods used to meet the requirements contained in § 154.2035:

(a) A written contract with a response resource provider.

(b) A written certification that the personnel, equipment, and capabilities required by your response plan are available and are under your control.

(c) An active membership in a local or regional response resource provider.

(d) A document such as a letter, memorandum, or other form of written consent that specifies the agreement you have with a response resource provider and that the provider is capable of and intends to commit to meet your plan requirements. This document must give permission for the Coast Guard to verify the identified response resources and their capabilities through tests, inspections, and exercises.

(e) You have found another way you can comply with the requirements of this section and it is approved by the Commandant (G–MOR).

§ 154.2022 What are the requirements for qualified individuals (QI) and alternate qualified individuals and what is their authority?

(a) You must designate a QI and at least one alternate QI in your response plan. You may designate a third party organization to fulfill the role of the QI and alternate QI. The organization must identify a QI and at least one alternate QI. These individuals must be available at any time.

(b) QIs and alternate QIs must—

(1) Speak fluent English;

(2) Be located in the United States;

(3) Be familiar with the implementation of your plan; and

(4) Meet the training requirements contained in 29 CFR 1910.120(q)(6)(v), to include the capabilities contained in Appendix E, 29 CFR 1910.120, in the section entitled ''Suggested Training Curriculum Guidelines,'' in paragraph C.b.(5) entitled ''Incident commander.''

(c) You must designate each QI and alternate QI in writing. In your designation document you must specify that the QI—

(1) Has full authority to implement actions to contain, remove, or otherwise minimize or mitigate damage to the public health, the environment, and public property;

(2) Is able to immediately and continuously communicate with the Federal OSC and persons providing resources and equipment, as needed;

(3) Is authorized to engage in contracting and to obligate funds to carry out response activities; and

(4) Is adequately trained and experienced to carry out the responsibilities of the QI.

(d) The QI's liability is covered in 33 U.S.C. 1321(c)(4).

(e) As soon as is practicable after an incident, the QI will provide the Federal OSC with the name of the individual who will direct response activities and act as the owner or operator's incident commander. The QI may also be the incident commander.

§ 154.2025 When may I conduct hazardous substance transfer operations?

(a) If you submit a plan prior to [6 months after publication of the final rule], you may conduct hazardous substance operations pending receipt of interim operating authorization. You must conduct these operations consistent with your plan.

(b) If you are waiting for approval of a submitted plan and have received interim operating authorization from the COTP, then you may conduct hazardous substance operations for up to 2 years after the date your plan was submitted.

(c) Your facility may not continue to conduct hazardous substance operations if —

(1) You have not submitted a plan to the COTP prior to [6 months after publication of the final rule];

(2) The COTP determines that the response resources referenced in the plan do not substantially meet the requirements of this subpart;

(3) The contracts or agreements cited in your plan have lapsed or are otherwise no longer valid;

(4) You are not operating consistent with your plan;

(5) Your plan has not been resubmitted or approved within the last 5 years; or

(6) The interim operating authorization under paragraph (b) of this section has expired.

§ 154.2026 How do I obtain interim operating authorization?

To receive interim operating authorization, you must submit a written request with your plan to the COTP certifying that you have identified and ensured available, by contract or other approved means, the private response resources necessary to respond to a worst case discharge or substantial threat of such a discharge.

§ 154.2030 May I augment an existing response plan with hazardous substance response information?

Yes, you may augment an existing response plan with requirements that are specific to this subpart. The use of the National Response Team's Integrated Contingency Plan Guidance is also acceptable as long as you include items required by this subpart.

§ 154.2031 How many copies of the plan must I have, and where must they be maintained?

You must maintain a current copy of the plan at your facility and provide one to each QI and alternate QI named in the plan.

§ 154.2032 What are the required contents of a response plan?

(a) Your response plan must contain, in the same order unless supplemented by a cross-reference table, the following sections:

(1) General information.

(2) Notification procedures and list of contacts.

(3) Worst case discharge impact analysis.

(4) Facility discharge mitigation procedures.

(5) Facility response organization.

(6) Risk-based decision support process.

(7) Response resources.

(8) Training requirements.

(9) Exercise requirements.

(10) Appendices, including the following:

(i) Facility-specific information.

(ii) Hazardous substance-specific information.

(iii) Site-specific safety and health plan.

(iv) Disposal plan.

(b) Your plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)(40 CFR part 300) and the Area Contingency Plan (ACP) in effect 6 months prior to the submission of your plan.

§ 154.2035 What are the required contents for each section of the plan?

(a) *General information.* This section of the plan must include—

(1) The facility's name, street address and mailing address (if different), city, county/parish, state, ZIP code, and facility telephone and facsimile numbers;

(2) Information regarding the facility's location described in a manner that would aid a reviewer and a responder in locating the facility;

(3) A table of contents or index of sufficient detail to allow any user to find a specific section of the plan; and

(4) A page showing a record of changes to record information on plan reviews, updates, or revisions.

(b) *Notification procedures and list of contacts.* (1) This section of your plan must include a prioritized list of individuals to be notified in the event of a hazardous substance incident and the notification procedures. The list must include names and 24-hour telephone or other contact numbers for all of the following:

(i) QI and alternate.

(ii) Incident commander (if other than the QI) who is capable of arriving at the incident command post, if established, or at the immediate vicinity of the incident within a reasonable time.

(iii) Facility owner or operator.

(iv) Facility response personnel.

(v) Spill management team.

(vi) Response resource providers.

(vii) Notifications required by 33 CFR part 153.

(viii) Federal, State, and designated local authorities.

(2) Your plan must include procedures to ensure that all notifications are made.

(3) Your plan must describe the primary and alternate methods of communication to be used during incidents, including notifications and communications at the facility and at remote locations within the areas covered by the response plan. You may refer to additional communications packages provided by the response resource providers. This section may reference another existing plan or document.

(4) Your plan must include a form, created by you, which contains information to be provided, if available, in any initial and follow-up notifications to Federal, State and designated local authorities. The form must include the phone number for the National Response Center (1–800–424–8802). The form must also contain a statement advising that initial notification must not be delayed pending collection of all information. Copies of the form must also be placed at the location(s) from which notifications are made. The following table represents the types of information, which must be collected on the form, if available:

Information categories	Types of information
(i) REPORTING PARTY	Name of individual or company.
	Address.
	Phone Number(s).
	Party reported incident to: USCG/EPA/Other Federal, State, or local agency.
(ii) SUSPECTED RESPONSIBLE PARTY	Name of company/individual/organization.
	Phone number(s).
	Type of company/individual/organization: Government (Federal/State/local), Private citizen, Private enterprise, Public utility.
(iii) INCIDENT DESCRIPTION	Address/location of incident.
	Cause and/or source of incident.
	City nearest incident.
	Date of incident.
	Facility capacity.
	Facility location: Latitude and longitude/mile post or river mile.
	Storage tank container type: Above or below ground.
	Tank capacity.
	Time of incident.
(iv) MATERIALS	Name of discharged substance.
	Quantity discharged.
	Quantity in water.
	Unit of measure.
(v) RESPONSE ACTION	Past, present, or future measures to correct or mitigate the incident.
(vi) IMPACT	Damage: Yes/no/unknown.
	Damage in dollars.
	Number of evacuations.
	Number of fatalities.
	Number of injuries.
(vii) ADDITIONAL INFORMATION	Any other information not previously provided.

(c) *Worst case discharge impact analysis.* This section of your plan must contain an analysis which will result in ''potentially impacted area'' diagrams that provide a reference tool for use in quickly assessing the impacts of each hazardous substance worst case discharge. Specific components of the analysis must include:

(1) *Planning volume calculation.* Use the following table to calculate the planning volume for each hazardous substance:

PLANNING VOLUME CALCULATION FOR A WORST CASE DISCHARGE

Item	Description
(i) TRANSFER SYSTEM TANK CAPACITY	Sum of the capacities of all in-line and break out tank(s) needed for the continuous operation of the transfer system.
(ii) PIPING DISCHARGE RATE	Calculate the discharge from the MTR facility's piping carrying a hazardous substance. The discharge from each pipe is calculated as follows: the maximum time to discover the discharge and shut down the flow from the pipe multiplied by the maximum flow rate. See note.
(iii) LEAKAGE AFTER SHUTDOWN	The total volume of the MTR facility's piping.
(iv) PLANNING VOLUME	TRANSFER SYSTEM TANK CAPACITY + PIPING DISCHARGE RATE + LEAKAGE AFTER SHUTDOWN.

Note to paragraph (c)(1) table: Based on the maximum relief valve setting or maximum system pressure when relief valves are not provided.

(2) *Identifying endpoints.* This step in the process requires the identification of endpoints for each hazardous substance. Endpoints can be obtained or derived from health guideline values from a recognized authority, including Federal or State agencies, professional associations, or scientific studies. You must assign air endpoints for each hazardous substance that produces a toxic or flammable airborne constituent. You must also assign water endpoints for each hazardous substance that produces a toxic condition or harmful pH level in the marine environment.

(3) *Determining the distance to air and water endpoints.* Endpoints are critical in determining distances, from the source of an incident, within which human health and the environment could expect to be adversely affected. In addition to the characteristics of the hazardous substances your plan addresses, distances to endpoints are affected by planning volumes and impact analysis parameters.

(i) For those substances that pose a threat by air, you must include the following parameters:

(A) Wind speed.

(B) Atmospheric stability class.

(C) Ambient temperature.

(D) Ambient humidity.

(E) Height of discharge.

(F) Surface roughness (urban, rural).

(G) Gas density.

(H) Temperature of substance during transfer.

(I) Location of incident. Assume the incident occurs at the point of transfer unless you determine that an alternate location presents greater risk. Values for parameters in paragraphs (c)(3)(i) (A) through (D) of this section can be of this section derived from historical data, while parameters in paragraphs (c)(3)(i) (E) through (H) of this section can be determined by actual conditions. Parameters listed in 40 CFR 68.22, paragraphs (b) through (g), for worst case discharge analysis, may also be used.

(ii) For those substances that pose a threat by water, you must include the following parameters:

(A) Water temperature.

(B) Tides (ebb and flood).

(C) Currents.

(D) Salinity.

(E) Wind speed.

(F) Ambient temperature.

(G) Ambient humidity.

(H) Location of incident. Assume the incident occurs at the point of transfer unless you determine that an alternate location presents greater risk. Values for parameters in paragraphs (c)(3)(ii) (A) through (G) of this section can be derived from historical data.

(iii) To determine the distance to each endpoint, you may use a methodology, model, or other technique that accounts for modeling conditions and reflects current industry standards. You may use proprietary models provided that you allow the Coast Guard access to the model and describe the model's features to local emergency planners, upon request.

(4) *Developing diagrams of impacted areas.* You must illustrate on a chart or map the area of impact, originating at the point of discharge, to each endpoint identified in paragraph (c)(2) of this section. This diagram may take into account the effects of physical or geographical obstructions.

(5) *Identifying receptors within impacted areas.* You must identify the potential public and environmental receptors within the impacted areas.

(i) Public receptors are population centers such as off-site residences, institutions (*e.g.,* schools, hospitals), industrial or commercial office buildings, drinking water intakes, parks, and recreational areas.

(ii) Environmental receptors are fish and wildlife and sensitive environments that should be identified in the Area Contingency Plan.

(iii) All of the public and environmental receptors must be indicated or otherwise referenced on the diagrams of impacted areas.

(d) *Facility discharge mitigation procedures.* This section of your plan must contain prioritized procedures necessary to protect the facility's personnel, and mitigate, control or prevent a hazardous substance incident resulting from hazardous substance operations. A copy of these procedures must be maintained at the facility's operations center or other appropriate location. Paragraphs (d)(1) through (3) of this section include the requirements for facility discharge mitigation procedures.

(1) All plans must include procedures for—

(i) Personnel safety, and if applicable, the use of personal protective equipment;

(ii) Facility personnel responsibilities by job title;

(iii) Facility personnel actions in the event of an incident involving the following scenarios:

(A) Failure of manifold, mechanical loading arm, other transfer equipment, or hoses, as appropriate.

(B) Tank overfill.

(C) Tank failure.

(D) Piping rupture.

(E) Piping leak, both under pressure and not under pressure.

(F) Explosion or fire.

(G) Equipment failure (*e.g.,* pumping system failure, relief valve failure, or other general equipment relevant to operational activities associated with internal or external facility transfers.); and

(iv) Facility personnel assigned to gather information that must be provided to response personnel.

(2) If your facility personnel will engage in incident mitigation measures or other response measures (beyond required notification), then include—

(i) The identification and description of responsibilities, and the activities that the personnel have been trained in and are qualified to conduct; and (ii) Facility responsibilities to mitigate a

hazardous substance incident. You must include procedures for use of equipment and personal protective equipment.

(3) If your facility personnel will sample or monitor air or water, then include personnel responsibilities for recordkeeping and sampling of hazardous substances involved in an incident, personal protective equipment requirements, and safety procedures during the sampling or monitoring operation.

(e) *Facility response organization.* This section of your plan must include the following:

(1) The authority and responsibilities of the QI. The authority must allow for immediate and continuous communication with the Federal OSC and notification and activation of the hazardous substance response resource provider(s).

(2) Procedures for transferring the responsibility for direction of response activities from the facility's personnel to the QI or incident commander, if other than the QI.

(3) Procedures for coordinating all response actions with the Federal OSC who oversees or directs those actions.

(4) The organizational structure to be used to manage response actions. You must include the following functional areas and list the responsibilities, duties and functional job descriptions for each:

(i) Command and control (incident commander).

(ii) Public information.

(iii) Safety.

(iv) Liaison with government agencies and other agencies as appropriate.

(v) Response operations.

(vi) Planning.

(vii) Logistics support.

(viii) Finance.

(5) You must list individuals, with the following specific technical specialties, who are available on a 24 hours-a-day basis for integration into the spill management team:

(i) Product specialist.

(ii) Toxicologist.

(iii) Chemist or chemical engineer.

(iv) Industrial hygienist.

(6) You will satisfy the requirements of paragraphs (e)(1) through (4) of this section if you design your spill management team per the U.S. Coast Guard-adopted National Inter-agency Incident Management System (NIIMS) Incident Command System (ICS).

(f) *Risk-based decision support process.* This section of your plan must outline processes which will help responders make decisions relating to the identification, evaluation, and control of risks to human health and the environment following a hazardous substance incident. These outlined processes do not need to be scenario specific, but can be generic in nature. This section of the plan may take the form of a decision tree, an automated decision support system, or any other format that meets the elements described in this paragraph. As a minimum, the process must include all of the following:

(1) *Risk identification* which describes the process which will be used to determine the extent and route of hazardous substance exposure to humans and the environment.

(2) *Risk evaluation* which describes the process which will be used to establish relative degrees of risk and prioritizing risks.

(3) *Risk control* which describes the process which will be used to determine which response methods are feasible to eliminate or reduce impacts of the hazardous substance incident on the humans and environment likely to be exposed.

(4) *Risk communication* which describes the process which will be used to communicate information resulting from paragraphs (f)(1), (2), and (3) of this section to parties internal and external to response activities.

(g) *Response resources.* This section must include the following information:

(1) You must ensure the availability by contract or other approved means of the following resources, adequate to conduct response operations for a worst case discharge, to be on-scene within the times indicated from the detection of an incident. You must list a 24-hour point of contact for each response resource provider.

(i) Air monitoring equipment per 29 CFR 1910.120—2 hours.

(ii) Water sampling equipment—2 hours.

(iii) Personal protective equipment—2 hours.

(iv) Modeling capabilities to include dispersion modeling (water and air)—2 hours.

(v) Firefighting resources—24 hours.

(A) If you determine that adequate local firefighting resources exist, then you do not have to ensure by contract this response resource.

(B) If you rely on local firefighting resources, then you must identify an individual located at the facility to coordinate with the local fire department and verify that adequately trained resources are retained for hazardous substance fires.

(C) The individual may be the QI as defined in § 154.2022 or another appropriate individual located at the facility.

(2) If you transfer a hazardous substance that is a ''floater,'' then you must ensure available, by contract or other approved means, response resource providers that are capable of providing the following services and equipment on-scene within 1 hour of detection of the incident. You must list a 24-hour point of contact for each provider of the following response resources:

(i) 1,000 ft of containment boom, or twice the length of the largest vessel that regularly conducts hazardous substance operations at your facility, whichever is greater.

(ii) The means of deploying and anchoring the boom.

(3) If you transfer a hazardous substance that is a ''floater,'' then you must list response resource providers that are capable of providing the following services and equipment on-scene within 12 hours of detection of the incident. You must list a 24-hour point of contact for each response resource provider.

(i) Recovery devices (including temporary storage).

(ii) 10,000 feet of inland boom for shoreline and wildlife and sensitive area protection operations. Resources, as required in approved oil response plans, will meet this requirement.

(4) If you transport a hazardous substance that is a ''sinker,'' then you must list response resource providers that are capable of providing the following services and equipment on-scene within 12 hours of detection of the incident. You must also list a 24-hour point of contact for each response resource provider.

(i) Sorbent boom, containment boom, silt curtains, or other equipment to contain hazardous substances that may remain floating on the surface or to reduce spreading on the bottom.

(ii) Dredges, pumps, or other equipment necessary to recover hazardous substances from the bottom and shoreline.

(iii) Chemical detection devices, such as sonar or sampling equipment.

(iv) In situ treatment equipment as deemed appropriate by the plan-holder.

(5) The listed response resource providers must meet the equipment criteria contained in § 154.2050. Response resource providers must provide trained personnel to operate equipment, and staff their organization and the spill management team for the first 7 days of the response.

(h) *Training requirements.* This section of your plan must describe the training procedures and programs.

(1) This section does not apply to the individuals listed in § 154.2035(e)(5).

(2) You must identify the training required for personnel having

responsibilities under the response plan.

(3) You must differentiate between training provided to vessel personnel and shore-based personnel.

(4) You must document the training of your personnel and make your training records available when requested by the Coast Guard. This applies to both initial and refresher training, as applicable. Records must be maintained for 3 years following completion of training.

(5) Nothing in this section relieves you from the responsibility to ensure that private shore-based response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1920.120.

(i) *Exercise requirements.* This section of your plan addresses your exercise program. These exercises should help to ensure that your plan will function in an emergency. Your exercise program must detail the types of exercises, frequencies, scopes, objectives, and the scheme for exercising your entire response plan every 3 years. You must include announced and unannounced exercises in your plan.

(1) Minimum exercise requirements are:

Exercise type	Frequency	Comments
(i) Qualified individual notification	Quarterly.	
(ii) Emergency procedures	Optional.	
(iii) Spill management team tabletop	Annually	In a 3-year period, one exercise must include a worst case discharge scenario for hazardous substances. See note.
(iv) Response resource providers	Annually	See note.
(v) Owned and operated equipment	Semiannually.	
(vi) Entire response plan	Every 3 years	You must design your exercise program so that every component of the plan is exercised at least once every 3 years. You may exercise the components all at once. The components may be exercised via the required exercises or an area exercise.

Note to paragraph (i)(1) table: One of these exercises must be unannounced in the three year exercise cycle.

(2) You must participate in unannounced exercises, as directed by the COTP. The objectives of these exercises are to verify the ability and evaluate the performance of facility personnel in fulfilling their emergency-related responsibilities under the plan. These exercises will be limited to four per area per year. After participating in an unannounced exercise, you will not be required to participate in another unannounced exercise for at least 3 years from the date of the exercise.

(3) You must participate in area exercises as directed by the Federal OSC. The area exercises will involve those actions necessary to respond to the spill scenario developed by the exercise design team, of which you will be a member. After participating in an area exercise, you will not be required to participate in another area exercise for at least 6 years.

(4) You must maintain adequate exercise records as follows:

(i) Records of the QI notification exercises and the emergency procedures exercises must be maintained at the facility.

(ii) Exercise records must be available to the Coast Guard for 3 years following completion of the exercises.

(5) For holders of approved oil response plans augmented for hazardous substances, oil and hazardous substances exercises are interchangeable. However, a minimum of 25 percent to a maximum of 75 percent of all exercises must be for hazardous substances.

(6) You may satisfy the exercise response plan requirements by complying with the National Preparedness for Response Exercise Program (PREP) Guidelines. These guidelines are available from the United States Government Printing Office, North Capitol and H Sts., NW., Washington, DC 20402 or at their Web site: http://www.access.gpo.gov. You may also order a copy of the guidelines by mail or fax from TASC Dept Warehouse, 3341Q 75th Ave., Landover, MD 20785; fax: 301–386–5394. The publication number is USCG–X0191.

§ 154.2040 What appendices must I include in my plan?

You must include the following:

(a) *Facility-specific information appendix.* This appendix must contain a description of the facility's principal characteristics.

(1) There must be a physical description of the facility including a plan of the facility showing the mooring areas, transfer locations, control stations, locations of safety equipment, and the locations and capacities of all piping and storage tanks.

(2) The appendix must identify the sizes, types, and number of vessels that the facility can transfer hazardous substances to or from simultaneously.

(3) The appendix must identify or illustrate the MTR portion(s) of the facility.

(b) *Hazardous substance-specific appendix.* This section of the plan must include a separate appendix for each hazardous substance transferred to or from a vessel at your facility. The types of information, which must be included, if pertinent, may be found in the Coast Guard's Chemical Hazard Response Information System (CHRIS) manual.

(c) *Site-specific safety and health plan appendix.* This appendix must describe the safety and health plan to be implemented for any response location(s). It must provide as much information as is practicable in advance of an actual incident. This appendix may reference another existing plan required under 29 CFR 1910.120.

(d) *Disposal plan appendix.* This appendix must describe any actions to be taken or procedures to be used to ensure that all recovered hazardous substances and contaminated debris produced as a result of the incident are disposed of according to applicable Federal, State, and local requirements.

§ 154.2045 What inspections and maintenance must I conduct on response resources that I own or operate and are named in my plan?

(a) A facility owner or operator required to submit a response plan under this part must ensure that—

(1) Containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan are periodically inspected and maintained in good operating condition, consistent with the manufacturers' recommendations, and best commercial practices; and

(2) All inspection and maintenance is documented and that these records are maintained for 3 years.

(b) For equipment that must be inspected and maintained under this section, the Coast Guard may—

(1) Verify that the equipment inventories exist as represented;

(2) Verify the existence of records required under this section;

(3) Verify that the records of inspection and maintenance reflect the actual condition of any equipment listed or referenced; and

(4) Inspect and require operational tests of equipment.

(c) This section does not apply to equipment ensured available from a response resource provider through written contract under § 154.2021(d).

§ 154.2050 What are the operating criteria that apply to response resource equipment?

(a) If you transfer a hazardous substance that is a ''floater'' or ''sinker,'' then the containment boom and recovery devices listed under § 154.2035(g) must meet the following criteria:

(1) Table 1 must be used to identify appropriate hazardous substance recovery devices in the response plan. These criteria reflect conditions used for planning purposes to select mechanical response equipment. They are not conditions that would limit response actions or affect a response vessel's normal operations. Table 1 follows:

TABLE 1.—RESPONSE RESOURCE OPERATING CRITERIA HAZARDOUS SUBSTANCE RECOVERY DEVICES

Operating area	Significant wave height [1] (in feet)	Sea State
Rivers and Canals	≤1	1
Inland	≤3	2
Great Lakes	≤4	2–3
Nearshore, Offshore, Open Ocean	≤6	3–4

[1] Recovery devices and boom must be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating area.

BOOM

Boom	Use			
	Rivers and canals	Inland	Great lakes	Nearshore, offshore, open ocean
Significant Wave Height	≤1	≤3	≤4	≤6
Sea State	1	2	2–3	3–4
Boom Height—in (draft plus freeboard)	6–18	18–24	18–24	≥24
Reserve Buoyancy to Weight Ratio	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength—lbs	4,500	15–20,000	15–20,000	≥20,000
Skirt Fabric Tensile Strength—lbs	200	300	300	500
Skirt Fabric Tear Strength—lbs	100	100	100	125

(2) When evaluating operability of response equipment you must consider limitations identified in the Area Contingency Plans for the COTP zone in which your facility is located, to include—

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges; and

(iv) Weather-related visibility.

(b) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be listed in the Area Contingency Plan. Reclassifications may be to—

(1) A more stringent operating area if the prevailing wave conditions exceed the significant wave height criteria during more than 35 percent of the year; or

(2) A less stringent operating area if the prevailing wave conditions do not exceed the significant wave height criteria during more than 35 percent of the year.

(c) Response equipment must—

(1) Meet or exceed the criteria listed in Table 1 of paragraph (a)(1) of this section;

(2) Be capable of functioning in the applicable operating area;

(3) Be appropriate for the hazardous substance carried; and

(4) Be periodically inspected and maintained consistent with the manufacturer's recommendations and best commercial practices. All inspections and maintenance must be documented and these records must be maintained for 3 years.

§ 154.2055 How must I certify that my response resource providers are capable of meeting plan requirements?

(a) Your plan must include the original written certification that—

(1) You have evaluated the risks associated with the worst case discharge of a hazardous substance you carry;

(2) You have contracted or listed, as appropriate, the resources that you have determined are necessary to effectively respond to a worst case hazardous substance discharge;

(3) The response resource providers you listed in your plan have acknowledged being listed; and

(4) You have determined that the technical expertise of the response resource providers is adequate to carry out the planned response requirements.

(b) This certification must be signed by the facility's owner or operator.

§ 154.2065 What are the procedures for plan submission and approval?

(a) You must submit one copy of your plan to the COTP for initial review and, if appropriate, approval. Your plan must—

(1) Include a statement certifying that your plan meets the requirements of this subpart; and

(2) Be submitted at least 60 days before your facility intends to perform hazardous substance operations.

(b) If your plan is approved, then the Coast Guard will send you an approval letter. Your plan will be approved for up

to 5 years from the date the plan was submitted.

(c) For a facility that has been reclassified under § 154.2016 as a substantial harm MTR facility, your plan will be valid for 5 years from the date the plan was submitted.

(d) If your plan is not approved, then you will receive written notification of your plan's deficiencies per § 154.2075. You must submit a revised plan or the corrected portions within the time period specified in the Coast Guard's notice.

(e) If you have received interim operating authorization per § 154.2025, then the deficiency provisions of § 154.2075 will also apply.

§ 154.2070 What are the procedures for plan review, revision, and resubmission?

(a) You must review your plan—

(1) Annually within 1 month of the anniversary date of the Coast Guard's approval of your plan; and

(2) After an exercise or hazardous substance incident to evaluate and validate the plan's effectiveness.

(b) Your review must incorporate any revisions to the plan, including listings of fish and wildlife and sensitive environments identified in the ACP in effect 6 months prior to plan review.

(c) After review of your plan, you must submit any amendments or revisions to the COTP for information or approval, as applicable. A cover page that provides a summary of the changes and the pages affected must be included with the revisions. The revised pages must be annotated with the revision number and effective date of the revision. Any changes must be noted on the record of changes page to include what changes were made and the date they were made. You must also note the completion of the annual review on the record of changes page.

(d) You must submit revisions or amendments to your plan to the COTP and all other holders of the response plan for information or approval at least 30 days in advance, whenever there is—

(1) A change in the owner if that owner did not provide the certifying statements required by § 154.2055(a) and § 154.2065(a)(1);

(2) A change in the operator if that operator did not provide the certifying statements required by § 154.2055(a) and § 154.2065(a)(1);

(3) A significant change in your facility's configuration that affects the information in your response plan;

(4) A change in the hazardous substances your facility transfers to or from a vessel that affects the response resource providers;

(5) A change in the name or capability of your response resource providers;

(6) A significant change in your facility's emergency response procedures;

(7) A change in the QI or alternate QI; or

(8) Any other changes that affect the implementation of the plan.

(e) You must submit certification as required by § 154.2055(a) and § 154.2065(a)(1) with all revisions or amendments.

(f) The COTP may require you to revise your response plan at any time as a result of a compliance inspection if the COTP determines that the response plan does not meet the requirements of this subpart or as the result of inadequacies noted in the response plan during an actual hazardous substance incident.

(g) The COTP will review the revisions submitted by you and will give written notice to you of any objections to the proposed revisions within 30 days of the date the revisions were submitted. The revisions shall become effective not later than 30 days from their submission to the COTP unless the COTP indicates otherwise as provided in § 154.2075.

(h) You must advise the Coast Guard and all other holders of the response plan of any revisions to personnel and telephone numbers and provide a copy of these revisions. Amendments to personnel and telephone number lists included in the response plan do not require prior Coast Guard approval, except as required in paragraph (c) of this section.

§ 154.2072 When must I resubmit my plan?

(a) You must resubmit your entire plan to the COTP—

(1) When the owner changes, if that owner provided the certifying statement required by § 154.2055;

(2) When the operator changes, if that operator provided the certifying statement required by § 154.2055;

(3) Six months prior to the expiration of your existing plan's approval; or

(4) For facilities that have been reclassified under § 154.2016, as substantial harm MTR facilities, within 6 months from the date of being reclassified.

(b) A new certifying statement must be submitted in each of these cases as required by § 154.2055.

§ 154.2075 How will the Coast Guard notify me of deficiencies that may exist in my plan?

The COTP will notify you in writing of any deficiencies noted during review of your response plan, revisions, amendments, drills observed by the Coast Guard, or inspection of equipment or records maintained in connection with this subpart.

§ 154.2076 When may my plan be declared invalid?

The COTP may declare your plan invalid, prohibiting you from conducting hazardous substance operations, if you fail to address any deficiency in your plan noted by the COTP.

§ 154.2080 How do I appeal a plan deficiency or COTP determination?

(a) If you disagree with a deficiency issued by the COTP, then you may appeal the deficiency to the COTP within seven days or the time specified by the COTP to correct the deficiency, whichever is less. This time commences from the date you receive the COTP notice.

(b) If you desire to appeal the classification that your facility could reasonably be expected to cause substantial harm or significant and substantial harm to the environment, then you must submit a written request to the COTP requesting review and reclassification. You must identify those factors the COTP should consider regarding reclassification of your facility including, but not limited to, those listed in § 154.2016. After considering all relevant material presented by you and any additional material available to the COTP, the COTP will notify you of the decision on the reclassification of your facility—

(1) Within 10 days of the COTP's decision, you may appeal it by writing to the District Commander via the COTP.

(2) Within 30 days of the District Commander's decision, you may appeal it by writing to Commandant (G–MOR), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, via the COTP and District Commander.

(c) Unless you appeal the Coast Guard's decision, you must correct the response plan deficiencies or comply with the COTP's initial determination within the period specified.

(d) When considering an appeal, the COTP, District Commander, or Commandant may stay the effective date of the decision or action being appealed pending the determination of the appeal.

§ 154.2085 What are the procedures for submitting a request for acceptance of alternative planning criteria?

If you believe that national planning criteria contained elsewhere in this part are not applicable to your facility for the areas in which you wish to operate, then you may request the Coast Guard to accept alternative planning criteria. Your request must be made 90 days before you intend to conduct hazardous substance operations under the proposed alternative, and must be forwarded to Commandant (G-MOR), U. S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, via the COTP and District Commander.

Dated: March 20, 2000.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

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