

## A. Background

On April 12, 1989, President Bush issued Executive Order (E.O.) 12674, "Principles of Ethical Conduct for Government Officers and Employees." Section 201(a) of E.O. 12674 made the Office of Government Ethics (OGE) responsible for promulgating "a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable."

The OGE issued uniform standards of ethical conduct for all employees of the executive branch, codified at 5 CFR Part 2635, on August 7, 1992 (57 FR 35006). These regulations became effective on February 3, 1993.

Section 301(a) of E.O. 12674 allows agency heads to supplement, where necessary and appropriate, the OGE standards of conduct. The Secretary of Defense, in consultation and conjunction with the OGE, issued supplemental ethical rules applicable to all Department of Defense (DOD) Components in August 1993. These supplemental rules, codified in 32 CFR Parts 83 and 84, state that the DOD "shall have a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment rules, enforcement, and training." See, 32 CFR 83.4(a) and 84.1(a).

With promulgation of the OGE regulations and the DOD "Joint Ethics Regulation," the DON's standards of conduct contained in 32 CFR part 721 have been completely superseded. The Secretary of the Navy formally cancelled the DON's standards of conduct instruction on April 11, 1997. For these reasons, the Navy is now removing and reserving 32 CFR part 721.

Similarly, the rule contained in 32 CFR part 722 no longer has any meaning or effect. Part 722 contains requirements and procedures for the filing of form DD 1787 by certain present, former or retired DON personnel in reporting employment with DOD prime contractors. Authority for this rule was formerly found in 10 U.S.C. 2397. The National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-106, Sec. 4304) repealed this statutory provision. The reporting requirement that this Part implements no longer exists.

## B. Determination to Remove Without Prior Public Comment

This removal action is being issued as a final rule, without a public comment period, as an exception to the DON's standard practice of soliciting comments during the rulemaking process.

Providing a period of public comment in this case would be unnecessary, impracticable, and contrary to the public interest. This determination is based on several factors. First, removal of these Parts is entirely administrative and corrective in nature, not requiring the exercise of agency discretion. Second, this action has already been substantially delayed, and further delay is unwarranted. Finally, to allow these Parts to remain in the Code of Federal Regulations any longer may mislead and confuse the public and past or present DON employees regarding applicable ethics rules and post-government employment reporting requirements.

## C. Matters of Regulatory Procedure

### *Executive Order 12866, Regulatory Planning and Review*

Removal of these Parts does not meet the definition of "significant regulatory action" for purposes of E.O. 12866.

### *Regulatory Flexibility Act*

Removal of these Parts will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

### *Paperwork Reduction Act*

Removal of these rules will not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR Part 1320).

## List of Subjects

### *32 CFR Part 721*

Conflict of interests, Government employees, Military personnel, Reporting and recordkeeping requirements.

### *32 CFR Part 722*

Conflict of interests, Government contracts, Government employees, Military personnel, Reporting and recordkeeping requirements.

## PARTS 721 AND 722—[REMOVED AND RESERVED]

Under the authority of Sec. 4304, Public Law 104-106, 110 Stat. 186, and E.O. 12674, and for the reasons set forth in the preamble, remove and reserve parts 721 and 722 of title 32 of the Code of Federal Regulations.

Dated: January 13, 1998.

**Michael I. Quinn,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Parts 154 and 155

[USCG-98-3350]

### Review of Cap Increases; Response Plans for Marine Transportation-related (MTR) Facilities and Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

**SUMMARY:** Current Coast Guard response plan regulations for MTR facilities and tank vessels contain requirements for on-water oil removal capacity (referred to as caps) that plan-holders transporting or transferring groups I through IV petroleum oil are required to meet in planning for a worst case discharge. The original caps were set in 1993 and were scheduled to increase by 25% on February 18, 1998, provided the Coast Guard completed a review of the cap increases and determined the cap increases were practicable. The Coast Guard's review of the cap increases is on-going. Therefore, the Coast Guard will not implement the cap increases as originally scheduled, and the 1993 caps will remain in effect pending the results of the review. The Coast Guard requests comments on the practicability of the cap increases.

**DATES:** Comments must be received on or before April 27, 1998.

**ADDRESSES:** You may mail comments to the Docket Management Facility, [USCG-98-3350], U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, or deliver them to room PL-401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

The Docket Management Facility maintains the public docket for this request for information. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL-401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access the public docket on the internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** LCDR John Caplis, Project Manager, Office of Response (G-MOR), at 202-267-6922; e-mail:

jcplis@comdt.uscg.mil. Note: Comments to the docket may only be accepted by mail to the address under ADDRESSES. This telephone is equipped to record messages on a 24-hour basis.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

The regulatory history for these regulations are recounted in the preambles of the final rules entitled "Vessel Response Plans" (61 FR 1052, January 12, 1996) and "Response Plans for Marine Transportation-Related Facilities" (61 FR 7890, February 29, 1996).

#### Background and Purpose

One important goal of the Oil Pollution Act of 1990 (OPA 90) is to increase the overall oil spill response capability in the United States. To achieve this goal, minimum on-water oil removal capacities were developed through two rulemakings and public meetings, including Negotiated Rulemaking Committee meetings. As a result, 33 CFR 154.1045(m) and 33 CFR 155.1050(o) set out caps which an owner or operator must ensure available, through contract or other approved means, in planning for a worst case discharge. These caps were established taking into account 1993 technology and availability of response resources.

In 1993, the Coast Guard set the caps at the present levels based on the following reasons. First, in many geographic areas of the U.S., on-water recovery capability and containment and protection resources simply did not exist for responding to a large spill—especially from a very large or ultra large crude carrier. Second, the Coast Guard believed Congress intended to encourage the development and enlargement of the response community, but not to cause significant, adverse economic impacts. To support this, the Coast Guard set a nationwide criteria as opposed to geographic-specific criteria as an incentive to improve the overall response capability in the United States. Third, the caps acknowledged a reasonable and practical limit to the amount of 1993 technology resources that could be constructively used during the first stages of a spill response. Lastly, the Coast Guard intended that the caps would ensure a baseline recovery capability, and would not limit the resources brought to bear during an actual oil discharge. Owners or operators were and still are expected to activate the response resources

necessary for the particular circumstances of any spill, regardless of what has been contracted for the advance.

The 1998 cap, a 25% increase from the 1993 levels, was proposed as a planning target for increasing response capabilities. This increase was discussed by the Vessel Response Plan Negotiated Rulemaking Committee as an incentive to expand response capabilities within the United States to an obtainable and desirable level by 1998. The Coast Guard concurred with the recommendation from the Committee to evaluate the proposed cap increase before the increase would be implemented to determine if it remains practicable.

The Coast Guard believes that in certain geographic areas existing response capabilities already exceed the 1998 proposed cap. Several states have enacted state requirements that meet or exceed the 1998 caps. However, the Coast Guard understands that in other regions plan-holders may have great difficulty in meeting the 1998 increase. Additionally, the Coast Guard believes, since 1993, significant advances have occurred in the use and availability of high rate response techniques and technology within the United States. The Coast Guard intends to take into account these factors when reassessing the 1998 cap.

#### Reason for Equipment Caps Review

In accordance with the regulations 33 CFR 154.1045(n) and 33 CFR 155.1050(p), the Coast Guard is required to conduct a review of the 25% cap increase. During the review, which is ongoing, the Coast Guard will determine if the increase is practicable; if not, the Coast Guard will propose an alternative cap which may be higher or lower. The review is to include, but not be limited to, the following topics:

- a. Increases in skimming efficiencies and improvements in design technologies;
- b. Advances in oil tracking technology;
- c. Improvements in high rate response techniques;
- d. Other applicable technologies;
- e. Increases in the availability of private response resources.

The regulations also state that the scheduled cap increase would occur on February 18, 1998, unless the review is not completed by the Coast Guard. The Coast Guard can not complete the review by February 18, 1998, and will not implement the cap increase as scheduled. Any changes or additional

requirements will occur through the public notice and comment process and will not become effective until 90 days after publication of a **Federal Register** notice reporting the results of the review.

#### Request for Comments

The Coast Guard encourages interested persons to submit specific comments with regard to the requirements of 33 CFR 154.1045(m) and 33 CFR 155.1050(o). The Coast Guard is seeking comments to determine if the proposed increase to the cap remains practicable. Responses to the following questions regarding the proposed cap increase will be helpful in determining the practicality of these requirements:

(1) Is a 25% cap increase practicable? Nationally? Regionally?

(2) Have there been advances or improvements in the efficiency of mechanical recovery designs that should be considered in determining a new cap?

(3) Have there been improvements in oil tracking technologies that should be considered in determining a new cap?

(4) Have there been improvements in high rate response technologies such as dispersants, in situ burning, etc., that should be considered in determining a new cap?

(5) Have there been large increases in the availability of private resources within specific regions of the country?

Persons submitting comments should include their name and address, identify this request for information (USCG 98-XXX), and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing, to the DOT Docket Management Facility at the address under ADDRESSES. If you want acknowledgment of receipt of your comments, enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period, and may propose a new cap based on the comments.

Dated: January 21, 1998.

**Joseph J. Angelo,**

*Acting Assistant Commandant for Marine Safety and Environmental Protection.*

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