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# Part IV

# Department of Transportation

## Coast Guard

## 33 CFR Part 154

## Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 154**

**[USCG–1999–5149]**

**RIN 2115–AF79**

## Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Coast Guard regulations requiring response plans for marine transportation-related (MTR) facilities that handle, store, or transport animal fats or vegetable oils. Specifically, the new rule downgrades the initial classification of affected facilities and clarifies planning and equipment requirements. This final rule addresses a statutory mandate.

**DATES:** This final rule is effective December 27, 2000.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–1998–4469), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. You may also access docket materials over the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions on this rule, contact Lieutenant Claudia Gelzer, Project Manager, Office of Response (G–MOR) Coast Guard, telephone 202–267–1983. For questions on viewing, or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

On March 14, 1997, the National Oil Processors Association (NOPA) petitioned the Coast Guard to change response plan regulations for marine transportation-related (MTR) facilities to more fully differentiate animal fat and vegetable oil facilities from other oil facilities.

On October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277). Section 343(b) of that act mandated the Coast Guard to amend, by March 31, 1999, 33 CFR part 154 to comply with the Edible Oil Regulatory Reform Act (EORRA) (Pub. L. 104–55).

These regulations address the mandate from Congress and the petition from NOPA. This final rule amends only response plan requirements for marine transportation-related (MTR) facilities that handle, store, or transport animal fats and vegetable oils.

### Legislative and Regulatory History

On August 18, 1990, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) in response to several major oil spills. OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)) establishing requirements, and an implementation schedule, for facility response plans. The FWPCA, as amended by OPA 90, directs the President to issue regulations requiring response plans for MTR facilities transferring oil.

The President delegated the authority to issue these regulations to the Commandant, U.S. Coast Guard through the Secretary of the Department of Transportation. On February 5, 1993, the Coast Guard published an interim final rule (IFR) in the **Federal Register** entitled ''Response Plans for Marine Transportation-Related Facilities''(58 FR 7330).

On November 20, 1995, Congress passed the Edible Oil Regulatory Reform Act (EORRA). This act required Federal agencies to differentiate between fats, oils, and greases of animal, marine, or vegetable origin, and other oils and greases, in issuing regulations. The act also required Federal agencies to consider the environmental effects and the physical, chemical, biological, and other properties of the different classes of fats, oils, and greases.

On February 29, 1996, the Coast Guard published its final rule (FR) on response plans for MTR facilities in the **Federal Register** (61 FR 7890). In developing the final rule, the Coast Guard fully complied with EORRA by differentiating between oils of animal or vegetable origin and other oils based upon physical, chemical, biological and other properties. The Coast Guard carefully considered all comments to the IFR, including those from the animal fats and vegetable oils industry. At the industry's request, Coast Guard officials also met with industry representatives to hear their views. The Coast Guard also considered the views and comments of other Federal agencies with expertise, including the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service. These regulations have been codified in 33 CFR part 154, subparts F through I. In meetings with Coast Guard officials, animal fat and vegetable oil industry representatives stated their main request was that animal fats and vegetable oils be separated from petroleum oils and other oils in the regulations. The industry representatives stated that this was largely a public relations issue due to the bad publicity petroleum oil spills had received. The Coast Guard concluded, based upon all comments to the docket and its own research, that separate subparts were in keeping with both the letter and spirit of EORRA. Therefore, The final rule added two new subparts to the response plan regulations (subparts H and I). Subpart H contained planning requirements for animal fat and vegetable oil facilities, while subpart I contained planning requirements for other non-petroleum oil facilities. The final rule also allowed animal fat and vegetable oil facilities to propose needed response equipment and personnel for worst case discharges (WCD), rather than the specific equipment and personnel required for petroleum oil facilities.

On October 19, 1996, Congress passed the Coast Guard Authorization Act of 1996 (Pub. L. 104–324). Section 1130 of that act required the Secretary of Transportation to submit to Congress an annual report describing how new Coast Guard regulations have met EORRA requirements. The Secretary of Transportation submitted reports on April 11, 1997, and March 3, 1998. The reports, available in the public docket for this proposed rule, describe how the Coast Guard's regulations have met the EORRA requirements.

In a letter dated March 14, 1997, NOPA filed a petition with the Coast Guard requesting amendments to the MTR facility response plan regulations. The petition requested separate and appropriate regulations for facilities that handle animal fats and vegetable oils.

On October 27, 1997, Congress passed the Department of Transportation and Related Agencies Appropriations Act of 1998 (Pub. L. 105–66). Section 341 of that Act stated that the Coast Guard could not use any of the available funds to issue, implement, or enforce a regulation or to establish an interpretation or guideline under the EORRA that did not recognize and provide for differences in—

- Physical, chemical, biological, and other relevant properties; and
- Environmental effects.

On October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999. Section 343(b) of that act required that not later than March 31, 1999, the Coast Guard issue regulations amending 33 CFR part

154 to comply with the requirements of the EORRA.

On October 21, 1998, Congress also passed the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999 (Pub. L. 105–276), which contained a similar requirement for the Environmental Protection Agency (EPA) to amend its regulations to comply with EORRA. On January 16, 1998, NOPA filed, with EPA, a petition similar to the one filed with the Coast Guard. In a separate notice of proposed rulemaking (NPRM), EPA proposed modifications to its response plan rules for animal fat and vegetable oil facilities.

On April 8, 1999, we published a notice of proposed rulemaking entitled ''Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils'' in the **Federal Register** (64 FR 17222). We have received ten industry letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

The Coast Guard and EPA were each given the same mandate to amend the regulations pertaining to facilities that handle, store and transport animal fats and vegetable oils. The two agencies have worked together to develop this final rule, and ensure harmonization in the rules wherever possible. Each agency regulates a distinct community of facilities, that while sharing similarities, have different physical activities and different response schemes to fit their environments. Each of the agencies' rules addresses the most probable activities for the facilities under its jurisdiction. One significant difference between MTR facilities and non transportation-related facilities is in the volume of worst case discharges. EPA facilities generally have a significantly greater potential for large discharges than do Coast Guard-regulated facilities. EPA-regulated facilities tend to have a larger number of oil transfers, with a significant potential for small and medium discharges. The worst case discharge from an EPA-regulated facility is determined by the capacity of the largest bulk storage tank; Coast Guard-regulated facilities calculate worst case discharge by estimating the amount of oil in the pipeline from the first valve inside the secondary containment to the dock, and determining flow rate for loading and unloading a vessel. Thus, each agency's final rule is tailored to meet the needs of the types of facilities it regulates.

In developing this final rule, the Coast Guard researched and identified a total of 61 MTR facilities that handle, store, or transport animal fats or vegetable oils throughout the nation. Of these facilities, 26 handle animal fat/vegetable oils exclusively. The Coast Guard determined that this regulation impacts only these 26 facilities as those that also handle petroleum products must also comply with response plan requirements in 33 CFR 154, Subpart F.

In evaluating the worst case discharges from these 26 facilities, the Coast Guard identified a range from 2,136 gallons to 152,628 gallons. Among the 26 facilities' worst case discharges, 50 percent were less than 10,000 gallons, and 77 percent were less than 25,000 gallons.

**Discussion of Comments**

In the preamble of the NPRM, we specifically requested public comment on the appropriateness of providing planning volume tables in the amended regulations for animal fat and vegetable oil facilities. The tables were developed by the EPA to calculate planning volumes. We requested comment on whether these tables, similar to existing tables in both agencies' petroleum oil regulations, would be useful to the animal fat/vegetable oil industry. We received no comments from industry to indicate support or opposition to the tables.

To afford maximum flexibility to the regulated community, we have decided to allow use of planning tables as an option, but not require their use. The tables may allow certain facilities to provide a more appropriate level of response resources to mitigate an oil spill. If you believe that your facility will benefit from using the tables as a planning tool, they can be found in EPA regulations, 40 CFR part 112, Appendix E, Section 10.0, Tables 6 and 7.

We received ten industry comment letters in response to our notice of proposed rulemaking. The following discussion summarizes the comments received and our response to proposed changes.

Eight comment letters include specific statements of support for the changes we proposed in the NPRM. The letters also included additional suggestions for changes to the regulation. All comments received are outlined in this section.

We received four comments recommending that we reconsider our proposal to require planning for an average most probable discharge (AMPD). We received one comment in support of this proposed requirement. The Coast Guard's decision to require AMPD planning came from the evaluation of spills from animal fat/vegetable oil facilities. An analysis of data from the Coast Guard's Marine Safety Information System (MSIS), (spill history between 1992 and 1998) revealed a pattern of relatively small spill volumes (82 percent of the animal fat/vegetable oil discharges were less than 100 gallons). These volumes meet the average most probable discharge criteria as defined in 33 CFR part 154.1020. The Coast Guard finds that requiring animal fat/vegetable oil facilities to plan for average most probable discharge will better prepare them to respond to more realistic scenarios in addition to assisting them in planning for worst case discharges, as required by OPA 90.

The Coast Guard received five comments requesting that we reconsider the proposed requirement for animal fat/vegetable oil facilities to have at least 1,000 feet of boom on scene within an hour of spill detection. Current Coast Guard regulations require at least 1,000 feet of boom for significant and substantial harm facilities that handle Group I through Group IV petroleum oils. We expect that fixed animal fat and vegetable oil facilities already have access to this quantity of boom through existing worst case discharge (WCD) volume planning. Furthermore, under the Environmental Protection Agency regulations on facility response plans in 40 CFR 112, we expect that facilities currently regulated by this final rule would already have at least 1,000 feet of containment boom that can be deployed within one hour. In responding to the Notice of Proposed Rulemaking, four commenters simply requested reconsideration of the proposal and one commenter stated that the additional requirement for 1,000 feet of boom is unnecessary. Without further explanation, we presume the commenter is suggesting that the requirement is unnecessary because the EPA regulations already include this requirement. We disagree and formally make this requirement a part of Coast Guard regulations to help ensure that all animal fat/vegetable oil facilities can quickly provide at least this minimum amount of response equipment in the event of a spill. Also, any marine transportation-related animal fat/vegetable oil facility that may come into existence would be required to have this response equipment.

Current regulations require a minimum of 200 feet of boom for substantial harm facilities handling petroleum oils under Subpart F. This same requirement will still apply for animal fat/vegetable oil mobile facilities, and fixed animal fat/vegetable oil facilities that are part of a non-transportation-related onshore facility

with a storage capacity of less than 42,000 gallons.

We received five comments indicating that the NPRM inappropriately applies the response requirements for Higher Volume Port areas to animal fat/vegetable oil facilities, and that the Tier 1 response for these facilities should be relaxed from 6 to 12 hours. We disagree. Relaxing the requirements could double the response time in the event of a spill, which would significantly reduce the effectiveness of the response. Immediate action is critical when mitigating a spill. A quick response prevents problems with controlling and collecting oil. Control and collection are more difficult when the oil has dispersed or combined with water. Furthermore, the commenters suggested that because we designated higher volume port areas based on the location of petroleum oil facilities, this requirement should not apply to animal fat and vegetable oil facilities. The designation of higher volume port areas is not based on the location of petroleum oil facilities. Rather, the areas were selected because of the availability of response resources. Facilities located in higher volume port areas have a higher density of response contractors and resources nearby. Data on animal fat/vegetable oil facilities provided by Coast Guard field units suggest that about 25 percent of animal fat/vegetable oil facilities are in higher volume port areas, and we believe those facilities can achieve more rapid response times than facilities in other areas.

We received four comments requesting that we relax the requirements for equipment exercises for animal fat/vegetable oil facilities from semiannual to annual. We consider the current requirements appropriate. The current regulations require semi-annual equipment deployment exercises for facility owned or operated equipment and annual equipment deployment exercises for OSRO equipment. These standards are in accordance with the requirements of the National Preparedness for Response Exercise Program (PREP).

We received five comments recommending that we revise the regulations to permit the ''no action'' response alternative under certain, well-defined circumstances. We do not consider it appropriate to specify ''no action'' as a response alternative for planning purposes, and we are not revising the regulations in this way. The Federal On-Scene Coordinator (FOSC) has the authority to decide on the appropriate level of response action to an oil spill, ranging from taking no action to taking vigorous and extensive action. Such decisions are made on a case-by-case basis and after evaluating a range of factors such as: Spill amount; proximity to threatened areas; type of oil; weather conditions; and tides and currents.

We received seven comments requesting that the section of the regulation addressing ''other appropriate equipment'' as specified in 33 CFR part 154.1240(4) be modified to specifically identify mechanical dispersal equipment. We disagree. The Coast Guard, as Federal On-Scene Coordinator (FOSC), has the authority to determine whether a specific response technique is appropriate for any given spill response in the coastal zone. It is not appropriate to limit that authority by prescribing specific response techniques within the regulations. Under the current regulations, such techniques may be used under certain conditions, as decided by the Federal On-Scene Coordinator (FOSC). Response to an oil spill will take into account a range of factors and variables as listed in the preceding paragraph.

We received five comments requesting that facilities be permitted to plan for the use of public fire-fighting resources. The current regulations permit facilities to use public resources that are supported by local municipal, county, city, or state organizations, as well as other public resources. There must be a cooperative agreement between the facility and the public resource indicating that both parties understand all expectations. However, under a separate regulatory project (USCG–1998–3497), we are reviewing the possible conditions under which the industry as a whole needs fire-fighting resources, and we may propose further planning criteria based on that review. Therefore, we have revised the wording in subpart H for clarification.

We received four comments requesting that we allow a facility to be the lead exercise developer and final decision authority on exercise design, as a condition of participating in Area Exercises. The current exercise guidelines allow for this opportunity. The Coast Guard strongly encourages each MTR facility to participate in PREP, and volunteer to assume the lead plan holder's role in industry-led area exercises. When this happens, the lead facility does have the primary voice and final decision authority in the exercise design. Likewise, in government-led PREP area exercises or non-PREP area exercises, the Federal On-Scene Coordinator (FOSC) is the lead plan holder and has final decision authority in exercise design. In all cases, exercise design should be conducted as a cooperative effort of the entire design team, including the State government, the Coast Guard, and the industry.

We also received four comments recommending that we eliminate the requirement for annual plan reviews while retaining the requirement to report changes to plans as they occur. We disagree with this recommendation. Thorough and regular review of plans is critical to plan viability. Formal plan review ensures that plan holders keep crucial response information such as phone contacts, reporting requirements and equipment inventories up-to-date. We are retaining both requirements.

We received five comments requesting that regulations be modified to require animal fat/vegetable oil facilities to include, as part of the spill mitigation procedures, those procedures to be taken by the facility personnel in the event of a discharge resulting from fire or explosion. We have considered this request and decided not to impose this additional requirement. Historical spill data does not indicate a high risk of fire or explosion in connection with animal fat/vegetable oil spills to justify such a requirement. Plus, fires at MTR facilities fall within the response jurisdiction of local municipal, county or city fire departments that are charged with protection of public health and safety. We encourage facilities to closely coordinate with Local Emergency Planning Committees to ensure a safe and effective response in the event of fire or explosion.

We also received several comments requesting changes that were not proposed in our Notice of Proposed Rulemaking. Those suggestions are beyond the scope of this rulemaking and therefore not included in this rule.

We received one comment requesting that we further differentiate the regulation of facilities that handle other classes of non-petroleum oils in addition to animal fats and vegetable oils, such as polydimethylsiloxane, (PDMS). These changes are outside the scope of this rulemaking, which amends only 33 CFR part 154 subpart H-Response Plans for Animal Fats and Vegetable Oils Facilities. Facilities that handle PDMS are regulated by 33 CFR part 154 subpart I, ''Response Plans for Other Non-Petroleum Oil Facilities.''

We also received one comment that referred to Executive Order 13101, ''Greening the Government through Waste Prevention, Recycling, and Federal Acquisition,'' signed on September 14, 1998. (63 FR 49641–49651) Executive Order 13101 directs all government agencies to make efforts to purchase environmentally preferable products and services.

''Environmentally preferable'' refers to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services. In addition to promoting environmentally preferable purchasing, the Executive Order encourages agencies to purchase bio-based products, such as animal fats and vegetable oils. The comment suggests that our regulations should recognize the same differences in characteristics that the government used to promote the use of bio-based products as environmentally preferred products. Executive Order 13101 applies to government procurement of products and services, not planning requirements for effective response to oil spills. We have found that animal fats and vegetable oils have many properties similar to petroleum oils and produce many of the same environmental effects when discharged into the environment. The properties of these bio-based products do not affect the probability that they might be discharged when they are handled, stored, or transported. If the result of the Executive Order is to increase use of these products, it will be even more important that facilities are prepared to respond to a spill.

**Discussion of Rule**

We are making the following three changes to our existing regulations.

(a) *Downgrading the initial classification of affected facilities from significant and substantial harm to substantial harm.* This regulation downgrades the initial classification of all animal fat/vegetable oil facilities to substantial harm. The Captain of the Port (COTP) has the authority to upgrade a facility to significant and substantial harm based upon factors such as: type and quantity of oil; spill history of the facility; the age of the facility; the proximity to water supply intakes; and proximity to navigable waters; as outlined in 33 CFR part 154.1216(b). The Coast Guard's Marine Safety Information System (MSIS) database collects information on various marine activities. We used MSIS to review facility spill history of marine transportation-related facilities between 1992 and 1998, and we found that 31 animal fat or vegetable oil spills were reported during that time, ranging from 1 to 7,500 gallons. Of those 31 spills, 28 (90 percent) were less than 1,000 gallons; of those 28 spills, 23 were less than 100 gallons. While animal fats and vegetable oils may be just as damaging, or more so, as other oils when discharged into the environment, we reclassified animal fat and vegetable oil facilities from significant and substantial harm to substantial harm, taking into account this history of small volume spills.

(b) *Requiring planning for an average most probable discharge (AMPD).* The spill history we have used to justify downgrading animal fat and vegetable oil facilities shows a pattern of relatively small spill volumes. These volumes meet the criteria for AMPD volumes defined in 33 CFR part 154.1020. Accordingly, we will now require AMPD planning in addition to worst case planning. By requiring AMPD planning, we will further harmonize our regulations with EPA's. We do not anticipate that requiring AMPD planning will increase planning burdens for animal fat and vegetable oil facilities. Under 33 CFR part 154.545, we already require all oil facilities to plan for responses to operational discharges. Animal fat or vegetable oil facilities may use the planning done to meet the requirements under 33 CFR part 154.545 to help satisfy the AMPD planning requirements. The new 33 CFR part 154.545(e) explicitly allows this option.

(c) *Requiring at least 1,000 feet of boom for fixed facilities.* Current regulations require at least 1,000 feet of boom for Group I through Group IV petroleum oils. (Groups of oils are explained in the definitions for persistent and non-persistent oils under 33 CFR part 154.1017.) We expect that fixed animal fat and vegetable oil facilities already have access to this quantity of boom through existing worst case discharge (WCD) volume planning, and in planning for responses to operational discharges under 33 CFR part 154.545. Furthermore, EPA regulations in 40 CFR part 112 require the facilities currently regulated by this final rule to have at least 1,000 feet of containment boom that can be deployed within one hour. Therefore, this requirement is not expected to add an additional burden on the industry. This requirement is made to ensure that any marine transportation-related animal fat/vegetable oil facility that may come into existence, and that may not otherwise be required to have this response equipment, be required to do so. The requirement for 200 feet of boom will still apply for animal fat/vegetable oil mobile facilities and fixed animal fat/vegetable oil facilities that are part of a non-transportation-related onshore facility with a storage capacity of less than 42,000 gallons.

(d) We have made several non-substantive changes from the NPRM to further clarify the regulations.

(1) We moved the paragraphs that were 33 CFR part 154.1240(d) and (e) in the NPRM to 33 CFR part 154.1225(f) and (g) in the final rule. This clarifies that our intent is to require at least 1,000 feet of boom for all fixed animal fats and vegetable oil facilities (except those with a storage capacity of less than 42,000 gallons), whether classified as substantial harm or as significant and substantial harm facilities.

(2) In 33 CFR part 154.1220(a), we removed section 154.1035 from the list of sections that do not apply to substantial harm MTR facilities. 33 CFR part 154.1035 applies to petroleum oil facilities classified as significant and substantial harm. Animal fat and vegetable oil facilities that are classified as substantial harm facilities must comply with 33 CFR part 154.1035 as modified by 33 CFR part 154.1240. Animal fat and vegetable oil facilities that are upgraded to significant and substantial harm must comply with all of 33 CFR part 154.1035.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket as indicated under **ADDRESSES.** A summary of the Regulatory Evaluation follows:

**Summary of Costs**

This regulation includes three measures that impact industry. The first measure, downgrading animal fat or vegetable oil facilities from significant and substantial harm to substantial harm will not result in any additional costs to the industry. The second measure, requiring average most probable discharge planning, might result in minor additional costs to the industry by increasing the amount of information a facility has to report. We estimate that owners or operators of facilities will spend 4 hours amending their response plans. The additional cost per response plan would be $140 ($35 per hour x 4 burden hours). We have conducted research and found that the Coast Guard regulates 26 fixed and mobile marine transportation-related facilities that handle, store, or transport animal fats and vegetable oils

exclusively. The total estimated annual cost for all 26 facilities would be $3,640 (26 facilities x $140 per response plan). Finally, we do not expect that requiring a minimum amount of boom for fixed facilities will add any cost to the proposed rule. When planning for a WCD under current regulations, it is expected that fixed animal fat and vegetable oil facilities, regardless of their classification, already identify in their response plans the greater of 1,000 feet or twice the length of the longest vessel that regularly conducts operations at the facility of boom that can be deployed on scene within one hour of an incident. Therefore, we estimate that 100 percent of the regulated, fixed facilities already meet this requirement.

The amended regulation is expected to decrease costs to the government. Those facilities downgraded from significant and substantial harm to substantial harm will no longer need Coast Guard approval of their response plans. Therefore, the workload of Coast Guard field units will decrease.

**Summary of Benefits**

The rule will reduce regulatory burden, further harmonize federal agency regulations, formalize discharge planning for smaller spills, and ensure that an adequate quantity of boom is maintained at the facilities. Downgrading the classification of animal fat/vegetable oil facilities to substantial harm eliminates the need for these facilities to obtain Coast Guard approval, which saves time for both the industry and the Coast Guard. Facilities will still be required to submit plans, but will not need Coast Guard approval. Requiring facilities to plan for the average most probable discharge further aligns these regulations with those of EPA and better prepares facilities to respond to smaller, more common spills. Requiring a minimum amount of boom—1,000 feet or twice the length of the longest vessel—ensures that facilities are in a better position to immediately prevent the spread of oil in the event of a spill.

**Small Entities**

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

An Initial Regulatory Flexibility Analysis discussing the impact of this final rule on small entities is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Although this rule will reduce the regulatory burden on the affected facilities, it will also slightly increase their record-keeping requirement. The additional level of response planning will result in only minor additional informational reporting burdens. Each of the 26 affected facilities will incur 4 additional hours of information reporting burden. This will result in an additional cost of $140 per facility (4 hours x $35 per hour). We decided to require facilities to plan for AMPD spills because the spill history of these facilities shows a pattern of relatively small spill volumes. Our research indicated that most of the 26 facilities affected by this rule are not small entities. We did not receive any comments from small entities during this rulemaking indicating that the additional record-keeping cost would present a significant economic impact on them. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the Project Development Division (G–MSR–1) at 202–267–6819.

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 rule calls for an additional collection of information, under an already approved collection, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c) ''collection of information'' includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

*Title:* Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Response Equipment Requirements for Prince William Sound.

*Summary of Collection:* This additional collection of information will be included under the current, approved Office of Management and Budget (OMB) collection numbered 2115–0595 entitled Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Response Equipment Requirements for Prince William Sound. This rulemaking will add 104 hours to the already approved collection of information. The new total number of annual hours requested will be 188,733, which includes the facility response plans, vessel response plans, shipboard oil pollution emergency plans and additional equipment requirements for Prince William Sound. The new collection of information requirements for this rule are described in sections: § 154.1220 and § 154.1225.

*Need for Information:* This rule will require owners or operators of each facility to modify their facility response plans to plan for an AMPD of animal fats and vegetable oils.

*Proposed Use of Information:* We will use this information to ensure that such facilities are prepared to respond in the event of a spill incident. The information will be reviewed by the Coast Guard to assess the effectiveness of the facility response plans.

*Description of the Respondents:* An owner or operator of a facility that handles, stores or transports animal fats and vegetable oils.

*Number of respondents:* 26 facilities.

*Frequency of Response:* Annual.

*Burden of response:* 4 hours per respondent.

*Estimated Total Annual burden:* 104 hours.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB approval of the collection is pending. You are not required to respond to a collection of information unless it displays a

currently valid OMB control number. We will announce when OMB grants approval for this collection of information, by separate notice in the **Federal Register**.

We solicited public comment on the collection of information to (1) Evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information would have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, as by allowing the submission of responses by electronic means or the use of other forms of information technology. There were no comments submitted.

**Federalism**

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

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This rule will not result in such an expenditure.

**Taking of Private Property**

This rule will 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 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 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 final rule and concluded that under figure 2–1, paragraph (34)(a) and (e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This rule will not result in—

(a) Significant cumulative impacts on the human environment;

(b) A substantial controversy or substantial change to existing environmental conditions;

(c) Impacts which are more than minimal on properties protected under 4(f) the DOT Act, as superseded by Public Law 97–449 and section 106 of the National Historic Preservation Act; or

(d) Inconsistencies with any Federal, State, or local laws, or administrative determinations relating to the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 154**

Fire prevention, Hazardous substances, Oil pollution, Reporting and record keeping requirements.

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

## PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIALS IN BULK

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.

**§ 154.545 [Amended]**

2. In § 154.545(e), add the words ''and subpart H'' after the words ''of subpart F''.

**§ 154.1020 [Amended]**

3. In the definition for *Facility that could reasonably be expected to cause significant and substantial harm,* remove all words after ''under § 154.1015(c)'' and add, in their place, the words ''and § 154.1216.''

4. In the definition for *Facility that could reasonably be expected to cause substantial harm,* remove all words after ''under § 154.1015(b)'' and add, in their place, the words ''and § 154.1216.''

5. Revise § 154.1210 to read as follows:

**§ 154.1210 Purpose and applicability.**

(a) The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

(b) This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils including—

(1) A fixed MTR facility capable of transferring oil in bulk, to or from a vessel with a capacity of 250 barrels or more; and

(2) A mobile MTR facility used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more.

6. Add § 154.1216 to read as follows:

**§ 154.1216 Facility classification.**

(a) The Coast Guard classifies facilities that handle, store, or transport animal fats or vegetable oils as ''substantial harm'' facilities because they may cause substantial harm to the environment by discharging oil.

(b) The COTP may change the classification of a facility that handles, stores, or transports animal fats or vegetable oils. The COTP may consider the following factors, and any other relevant factors, before changing the classification of a facility:

(1) The type and quantity of oils 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 part 2.05–25.

(6) The fish, wildlife, and sensitive environments near the facility.

7. Revise § 154.1220 to read as follows:

**§ 154.1220 Response plan submission requirements.**

(a) The owner or operator of an MTR facility identified in § 154.1216 as a substantial harm facility, shall prepare and submit to the cognizant COTP a response plan that complies with this subpart and all sections of subpart F of this part, as appropriate, except §§ 154.1015, 154.1016, 154.1017, 154.1028, 154.1045 and 154.1047.

(b) The owner or operator of an MTR facility classified by the COTP under § 154.1216(b) as a significant and substantial harm facility, shall prepare and submit for review and approval of the cognizant COTP a response plan that complies with this subpart and all sections of subpart F of this part, as appropriate, except §§ 154.1015,

154.1016, 154.1017, 154.1028, 154.1045 and 154.1047.

(c) In addition to the requirements in paragraph (a) of this section, the response plan for a mobile MTR facility must meet the requirements of § 154.1041 subpart F.

8. In § 154.1225, revise the section heading and paragraphs (a) introductory text, (a)(1), (b), (c), (d), and (e); redesignate paragraph (f) as paragraph (h) and revise it; and add paragraphs (f) and (g) to read as follows:

**§ 154.1225 Specific response plan development and evaluation criteria and other requirements for fixed facilities that handle, store, or transport animal fats or vegetable oils.**

(a) The owner or operator of a fixed facility that handles, stores, or transports animal fats or vegetable oils must include information in the response plan that identifies—

(1) The procedures and strategies for responding to a worst case discharge and to an average most probable discharge of an animal fat or vegetable oil to the maximum extent practicable; and

* * * * *

(b) The owner or operator of a fixed facility must ensure the equipment listed in the response plan will operate in the geographic area(s) where the facility operates. To determine if the equipment will operate, the owner or operator must—

(1) Use the criteria in Table 1 and Section 2 of appendix C of this part; and

(2) Consider the limitations in the area contingency plan for the COTP zone where the facility is located, including

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges; and

(iv) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils must name the personnel and list the equipment, including those that are specified in § 154.1240, that are available by contract or by a method described in § 154.1228(a). The owner or operator is not required, but may at their option, refer to the tables in Environmental Protection Agency regulations, 40 CFR 112, Appendix E, Section 10.0, Tables 6 and 7, to determine necessary response resources.

(d) The owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils must ensure that the response resources in paragraph (c) of this section are able to effectively respond to an incident within the amount of time indicated in the following table, unless otherwise specified in § 154.1240:

| | Tier 1 (hrs.) | Tier 2 | Tier 3 |
|---|---|---|---|
| Higher volume port area | 6 | N/A | N/A. |
| Great Lakes | 12 | N/A | N/A. |
| All other river and canal, inland, nearshore, and offshore areas | 12 | N/A | N/A. |

(e) The owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils must—

(1) List in the plan the personnel and equipment that the owner or operator will use to fight fires.

(2) If there is not enough equipment or personnel located at the facility, arrange by contract or a method described in § 154.1228(a), or through a cooperative agreement with public fire-fighting resources, to have the necessary personnel and equipment available to fight fires.

(3) Identify an individual located at the facility who will work with the fire department on fires, involving an animal fat or vegetable oil. The individual—

(i) Verifies that there are enough trained personnel and operating equipment within a reasonable distance to the incident to fight fires.

(ii) Can be the qualified individual defined in § 154.1020 or an appropriate individual located at the facility.

(f) For a fixed facility, except for facilities that are part of a non-transportation-related fixed onshore facility with a storage capacity of less than 42,000 gallons, the owner or operator must also ensure and identify, through contract or a method described in § 154.1228, response resources for an average most probable discharge, including—

(1) At least 1,000 feet of containment boom or two times the length of the longest vessel that regularly conducts operations at the facility, whichever is greater, and the means of deploying and anchoring the boom within 1 hour of the discovery of an incident. Based on site-specific or facility-specific information, the COTP may require the facility owner or operator to make available additional quantities of containment boom within 1 hour of an incident;

(2) Adequate sorbent material located at the facility;

(3) Oil recovery devices and recovered oil storage capacity capable of being at the incident's site within 2 hours of the discovery of an incident; and

(4) Other appropriate equipment necessary to respond to an incident involving the type of oil handled.

(g) For a mobile facility or a fixed facility that is part of a non-transportation-related onshore facility with a storage capacity of less than 42,000 gallons, the owner or operator must meet the requirements of § 154.1041, and ensure and identify, through contract or a method described in § 154.1228, response resources for an average most probable discharge, including—

(1) At least 200 feet of containment boom and the means of deploying and anchoring the boom within 1 hour of the discovery of an incident. Based on site-specific or facility-specific information, the COTP may require the facility owner or operator to make available additional quantities of containment boom within 1 hour of the discovery of an incident;

(2) Adequate sorbent material capable of being at the site of an incident within 1 hour of its discovery;

(3) Oil recovery devices and recovered oil storage capacity capable of being at incident's site within 2 hours of the discovery of an incident; and

(4) Other equipment necessary to respond to an incident involving the type of oil handled.

(h) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports animal fats and vegetables oils may request a credit for up to 25 percent of the worst case planning volume set forth by subpart F of this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1228(a), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit for dispersants will be based on the volumes of the dispersants available to sustain operations at the manufacturers' recommended dosage rates. Other spill mitigation techniques, including

mechanical dispersal, may be identified in the response plan provided they are in accordance with the NCP and the applicable ACP. Resources identified for plan credit should be capable of being on scene within 12 hours of a discovery of a discharge. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP.

9. Add § 154.1240 to subpart H to read as follows:

**§ 154.1240 Specific requirements for animal fats and vegetable oils facilities that could reasonably be expected to cause substantial harm to the environment.**

(a) The owner or operator of a facility, classified under § 154.1216 as a facility that could reasonably be expected to cause substantial harm to the environment, must submit a response plan that meets the requirements of § 154.1035, except as modified by this section.

(b) The plan does not need to list the facility or corporate organizational structure that the owner or operator will use to manage the response, as required by § 154.1035(b)(3)(iii).

(c) The owner or operator must ensure and identify, by contract or a method described in § 154.1228, that the response resources required under § 154.1035(b)(3)(iv) are available for a worst case discharge.

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