

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 155

[USCG-1998-3417]

RIN 1625-AA19 [formerly published as RIN 2115-AF60]

Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil

AGENCY: Coast Guard, DHS.

ACTION: Final rule; partial suspension of regulation.

SUMMARY: Current vessel response plan regulations require the owners or operators of vessels carrying Groups I through V petroleum oil as a primary cargo to identify in their response plans a salvage company with expertise and equipment, and a company with firefighting capability that can be deployed to a port nearest to the vessel's operating area within 24 hours of notification (Groups I-IV) or a discovery of a discharge (Group V). On January 17, 2001, a notice of suspension was published in the **Federal Register**, suspending the 24-hour requirement scheduled to become effective on February 12, 2001, until February 12, 2004 (63 FR 7069). The Coast Guard has decided to extend this suspension period for another 3 years to allow us to complete the rulemaking that proposes to revise the salvage and marine firefighting requirements.

DATES: This extension is effective as of February 12, 2004. Termination of the suspension will be on February 12, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-1998-3417 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

- (1) Web Site: <http://dms.dot.gov>;
- (2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001;
- (3) Fax: 202-493-2251;
- (4) Delivery: 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; or
- (5) Federal eRulemaking Portal: <http://www.regulations.gov>.

The Docket Management Facility maintains the public docket for this

rulemaking. Comments and material received from the public 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 access this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have question on this final rule; partial suspension of regulation, call Lieutenant Reed Kohberger, Office of Response, Response Operations Division, Coast Guard Headquarters, telephone 202-267-0448, or via e-mail: RKohberger@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202-366-0271.

SUPPLEMENTARY INFORMATION:

Background and Regulatory History

Requirements for salvage and marine firefighting resources in vessel response plans have been in place since February 5, 1993 (58 FR 7424). The existing requirements are general. The Coast Guard did not originally develop specific requirements because each salvage and marine firefighting response for an individual vessel is unique, due to the vessel's size, construction, operating area, and other variables. The Coast Guard's intent was to rely on the planholder to prudently identify contractor resources to meet their needs. The Coast Guard anticipated that the significant benefits of a quick and effective salvage and marine firefighting response would be sufficient incentive for industry to develop salvage and marine firefighting capability parallel to the development of oil spill removal organizations.

Early in 1997, it became apparent that there was disagreement among planholders, salvage and marine firefighting contractors, maritime associations, public agencies, and other stakeholders as to what constituted adequate salvage and marine firefighting resources. There was also concern as to whether these resources could respond to the port nearest to the vessel's operating area within 24 hours.

On June 24, 1997, a notice of meeting was published in the **Federal Register** (62 FR 34105) announcing a workshop to solicit comments from the public on potential changes to the salvage and marine firefighting requirements currently found in 33 CFR part 155.

A public workshop was held on August 5, 1997, to address issues related to salvage and marine firefighting

response capabilities, including the 24-hour response time requirement, which was then scheduled to become effective on February 18, 1998. The participants uniformly identified the following three issues that they felt the Coast Guard needed to address:

(1) Defining the salvage and marine firefighting capability that is necessary in the plans;

(2) Establishing how quickly these resources must be on-scene; and

(3) Determining what constitutes an adequate salvage and marine firefighting company.

Reason for Suspension

On February 12, 1998, a notice of suspension was published in the **Federal Register** suspending the 24-hour requirement scheduled to become effective on February 18, 1998, until February 12, 2001 (63 FR 7069) so that the Coast Guard could address issues identified at a public workshop through a rulemaking that would revise the existing salvage and marine firefighting requirements. On January 17, 2001, a second notice of suspension was published in the **Federal Register** suspending the 24-hour requirement scheduled to become effective on February 12, 2001, until February 12, 2004 (63 FR 7069) because the potential impact on small businesses from this new rulemaking requires the preparation of an initial regulatory flexibility analysis under the Small Business Regulatory Enforcement Fairness Act of 1996. This was not determined until a draft regulatory assessment was completed in November 2000.

The Coast Guard is extending the suspension period for an additional 3 years, to run until February 12, 2007. During the past 3 years, the Coast Guard had to redirect the majority of its regulatory resources to issue security-related regulations in response to the Maritime Transportation Security Act of 2002. As a result, we have not been able to complete our review of the comments we received in response to a Notice of Proposed Rulemaking on the proposed revisions to the existing salvage and marine firefighting requirements. Now that the security regulations have been issued, we expect to be able to redirect our resources to projects such as this one.

The extension of the suspension period will continue to relieve the affected industry from complying with the existing 24-hour requirements until this rulemaking project is complete, and amendments to the salvage and marine firefighting requirements become final.

Regulatory Evaluation

Although the final rule published in 1996 was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget (OMB) does not consider this extension a significant action. As a result, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this extension will have a significant economic impact on a substantial number of small entities. "Small entities" include 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.

This extension will not have a significant economic impact on a substantial number of small entities because it reflects existing conditions and relieves planholders from certain original requirements. Any future regulatory action on this issue will address any economic impacts, including impacts on small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this extension to a suspension of a final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This action does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

this action extends a suspension of a final rule, it does not preempt any state action.

Unfunded Mandates Reform Act

This action will not result in an unfunded mandate under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538).

Taking of Private Property

This action 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 action 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 action 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. An Environmental Assessment and a Finding of No Significant Impact are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 155

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

Sections 155.110-155.130, 155.350-155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110-155.1150 also issued 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials appear in 46 CFR parts 30 through 36, 150, 151, and 153.

§ 155.1050 [Amended]

■ 2. In § 155.1050, paragraph (k)(3) is suspended until February 12, 2007.

§ 155.1052 [Amended]

■ 3. In § 155.1052, the last sentence in paragraph (f) is suspended until February 12, 2007.

Dated: January 16, 2004.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY65-270, FRL-7610-7]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision; 1-Hour Ozone Control Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to Part 226, "Solvent Metal Cleaning", Part 228, "Surface Coating Processes", Part 235, "Consumer Products" and the adoption of new rule Part 239, "Portable Fuel Container Spillage Control" of Title 6 of the New York Codes, Rules and Regulations. This SIP revision consists of control measures needed to meet the shortfall emissions reduction identified by EPA in New York's 1-hour ozone attainment demonstration SIP. The intended effect of this action is to approve control strategies which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

EFFECTIVE DATE: This rule will be effective February 23, 2004.

ADDRESSES: A copy of the New York submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air