

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Parts 154 and 155****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 112**

[Docket No. USCG–2010–0592; EPA–HQ–OPA–2010–0559]

RIN 1625–AB49; 2050–AG63

**Temporary Suspension of Certain Oil Spill Response Time Requirements To Support Deepwater Horizon Oil Spill of National Significance (SONS) Response**

**AGENCIES:** Coast Guard, DHS, and Environmental Protection Agency.

**ACTION:** Notice of no further regulatory action and alternative arrangements.

**SUMMARY:** The Coast Guard and the Environmental Protection Agency (EPA) announce that we have considered the comments, materials, and evidence received in response to the joint emergency temporary interim rule issued on June 30, 2010, and do not intend to take further regulatory action regarding the rule. As such, the rule will expire as scheduled on December 31, 2010. The Coast Guard and EPA also provide notice of the alternative arrangements under the National Environmental Policy Act used for the joint emergency temporary interim rule.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of dockets USCG–2010–0592 and EPA–HQ–OPA–2010–0559 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0592 or EPA–HQ–OPA–2010–0559 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; and EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460, Public Reading Room, between 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA Docket Center Public Reading Room is 202–566–1744, and the telephone number to make an

appointment to view the docket is 202–566–0276.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail:

*Coast Guard:* (Facilities) Mr. David Condino, Ports and Facilities Division, Coast Guard, telephone 202–372–1145, e-mail [David.A.Condino@uscg.mil](mailto:David.A.Condino@uscg.mil); (Vessels) LCDR Ryan Allain, Office of Vessel Activities, Coast Guard, telephone 202–372–1226, e-mail [Ryan.D.Allain@uscg.mil](mailto:Ryan.D.Allain@uscg.mil). If you have questions on viewing the USCG–2010–0952 docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

*EPA:* Troy Swackhammer, U.S. Environmental Protection Agency, telephone 202–564–1966, e-mail [swackhammer.j-troy@epa.gov](mailto:swackhammer.j-troy@epa.gov).

**SUPPLEMENTARY INFORMATION:** On April 20, 2010, the Mobile Offshore Drilling Unit (MODU) “Deepwater Horizon” exploded and sank, causing an unprecedented discharge of crude oil into the Gulf of Mexico, which was thereafter declared a “Spill of National Significance” (SONS). On April 24, 2010, the Commandant of the Coast Guard designated a Federal On-Scene Coordinator (FOSC) to coordinate Federal and State responses to the oil spill.

On June 16, 2010, the FOSC for the Deepwater Horizon SONS determined, after consulting with appropriate Federal and State agencies, that an adequate number of available oil spill response resources could not be employed in a timely manner to recover the oil released from the Deepwater Horizon SONS. (Memorandum from Rear Admiral J.A. Watson, FOSC BP Deepwater Horizon Oil Spill, to National Incident Command (June 16, 2010), available in the docket for this rulemaking).

In response to the FOSC’s determination, on June 30, 2010, the Coast Guard and EPA issued a joint emergency temporary interim rule permitting oil spill removal organizations (OSROs) and facilities and vessels with oil spill response resources to relocate those resources to the Gulf of Mexico Deepwater Horizon SONS at the FOSC’s request. 75 FR 37712. The rule also confirmed that the FOSC for the Deepwater Horizon SONS requested that the Armed Forces relocate response resources, in particular those of the Navy, from their current locations within the continental United States to the Gulf of Mexico to aid in the response to the Deepwater Horizon SONS.

The Navy did relocate response resources to the Deepwater Horizon SONS. While many spare State and privately owned resources had already relocated to the Gulf of Mexico before publication of the rule, no State or private entity relocated response resources to the SONS under the provisions of the rule.

The Coast Guard and EPA also requested comments on the rule, and stated that we would consider those comments and any other materials or evidence received from the field on an ongoing basis every thirty days to determine if changes to the rule might be necessary. The comment period closed on August 16, 2010, with the Coast Guard and EPA receiving 27 comments. We discuss those comments below. Neither the Coast Guard nor EPA has received comments since the close of the comment period. Although the rule will expire as scheduled on December 31, 2010, Coast Guard and EPA will continue to consider any new or additional comments, material or evidence related to the provisions of the rule until that date. If we decide to make changes to the rule before its expiration, we will publish another joint notice, or other appropriate document, in the **Federal Register**.

For this emergency rulemaking, and in accordance with Council On Environmental Quality (CEQ) Regulations Implementing the Procedural Requirements of the National Environmental Policy Act (40 CFR parts 1500–1508) and the National Environmental Policy Act of 1969 (NEPA) (43 U.S.C. 4321–4370f), the Coast Guard, with the assistance of EPA, consulted with CEQ about alternative arrangements pursuant to 40 CFR 1506.11. The Coast Guard, with the assistance of EPA, continued to consult with CEQ as well as with the National Oceanic and Atmospheric Administration (NOAA) and other key authorities in order to determine appropriate environmental impact analysis. A discussion of these consultations and determinations is below in *B. Alternative Arrangements under NEPA*. As stated above and discussed in greater detail below, the rule will expire as scheduled on December 31, 2010, without changes.

**A. Discussion of Comments**

The Coast Guard and EPA received 8 letters containing 27 comments in response to the request for comments on the rule. Commenters included individuals; an organization that represents companies that own, operate or charter tankers, ships, and other merchant vessels engaged in domestic

and international trade; an organization representing State environmental and health agencies; and a trade association representing companies involved in all aspects of the oil and natural gas industry. We also received comments from the Makah Tribal Council (MTC), and joint comments from the Governor of Washington and the Governor of Oregon. The Coast Guard and EPA responded directly in writing to MTC and the Governors. Those comments and responses, together with all other public comments, are available in the docket for this rulemaking. Also in the docket is a summary of an in-person communication that occurred on July 1, 2010, between Coast Guard personnel and OSRO community representatives regarding the rule. The in-person communication touched on concerns and questions about the substance of the rule, as well as questions relating to implementation of the rule. These concerns and questions and Coast Guard responsive comments are included in the summary of the communication, and are covered in the discussion below.

Several of the comments expressed support for the Coast Guard and EPA efforts to respond to the Deepwater Horizon SONS, and we appreciate the statements of support. Several other comments provided opinions about the causes and effects of the oil spill. The Coast Guard and EPA appreciate these commenters' participation in this rulemaking, however, such comments are beyond the scope of this rulemaking and are not addressed in this document. The remaining comments addressed the rule and are discussed by topic below.

#### 1. Plan Holder Liability

Commenters were concerned about plan holder liability for damages and penalties if a spill occurred in their original location after the plan holder already contractually released its spill response providers and equipment for use in the response to the Deepwater Horizon SONS. Commenters were also concerned about liability under State requirements as well as other penalties, such as natural resource damages, under other Federal and State law.

*Response:* The intent of the rule is to make available more response resources for use in responding to the Deepwater Horizon SONS by relieving certain Coast Guard and EPA regulatory requirements. Through this rule, the Coast Guard and EPA encouraged plan holders to relieve their contracted-OSROs of certain responsibilities in order for those OSROs to be available to aid in responding to the Deepwater Horizon SONS. The Coast Guard and EPA coordinated on the rule because

many oil spill response plans address both Coast Guard and EPA oil spill response requirements. The rule was not meant to address all sources of potential plan holder liability, including other Federal requirements or State requirements.

#### 2. Oil Spill Response Resources Return Time

Several comments noted concerns about the return of assets to original locations. One comment expressed concern that the rule does not contain a timetable for returning assets used in response to the Deepwater Horizon SONS. Other comments noted the distances and travel time for response assets from the West Coast, especially for larger vessels, to deploy to the Gulf in response to the Deepwater Horizon SONS and to return to the assets' original locations if needed to respond to an oil spill in those locations.

*Response:* The rule does not address return times for assets relocated in support of the response to the Deepwater Horizon SONS, because under the rule such issues, including the relative environmental impacts and other risks and impacts of the FOSC requesting and accepting offers for specific response resources from locations outside the Gulf of Mexico, are coordinated at the local level with the cognizant Captains of the Port (COTPs), Regional Response Teams, and Area Committees.

Additionally, in the letter to the Governors of Washington and Oregon dated September 3, 2010, (available in the docket) the Coast Guard and EPA specifically stated: "Any decision to request or accept [deployment of equipment or personnel that would result in the loss of response capability below worst case and maximum most probable discharge response time requirements in the Pacific Northwest] will consider carefully the distances and travel time from the West Coast to the Gulf Coast spill."

#### 3. Adequate Coverage in Regions Outside the Gulf of Mexico

Comments addressed concerns about whether the Average Most Probable Discharge and Small Discharge standards in the rule provided adequate coverage, especially for the West Coast and Pacific Northwest, as well as delays in an adequate number of response resources responding to any oil spill outside of the Gulf Region. One comment noted that almost all new response equipment manufactured/built during the Deepwater Horizon SONS will likely be purchased/deployed for response to the Deepwater Horizon

SONS, further lengthening the time to return other locations to full preparedness levels under current response plan standards.

*Response:* As discussed above, under the rule, any decisions about equipment and personnel deployment are coordinated at the local level with the cognizant COTPs, Regional Response Teams, and Area Committees. Additionally, the letter to the Governors of Washington and Oregon stated that Coast Guard and EPA will continue to work in close coordination with state and local governments, affected local industries, Regional Response Teams and Area Committees to maintain a level of equipment able to best protect all localities.

#### 4. Regional Approach for Moving Response Assets

Two comments suggested that the Coast Guard and EPA develop a regional approach rather than one nationwide rule for moving response assets. The comments encouraged developing regional strategies to ensure sufficient coverage remains in those regions before moving oil spill response assets outside of those regions. Another comment specifically requested utilizing Regional Response Teams for such a regional approach.

*Response:* The Coast Guard and EPA agree that the decision to actually move response assets is best made at the local and regional level. In order to allow those local and regional decisions to be made, however, this nationwide rule is necessary to temporarily suspend certain regulatory response time requirements. As stated in the rule, the Coast Guard and EPA coordinate and consult with Regional Response Teams and Area Committees, which include State representatives, for such decisions. Additionally, in a letter to the Governors of Washington and Oregon, the Coast Guard and EPA specifically stated: "If there were to be a scenario in which more response resources were needed in the Gulf, we would work closely with [state and local governments and affected local industries] and the Regional Response Teams and Area Committees, to ensure that we do not deploy equipment or personnel that would result in the loss of response capability below worst case and maximum most probable discharge response time requirements in the Pacific Northwest."

#### 5. Plan Holders Included in the Decision To Move Assets

At least one comment requested that plan holders be included in any discussion regarding movement of

response assets to the Gulf or any future Spill of National Significance.

*Response:* The rule only addresses relocating assets in response to the Deepwater Horizon SONS. The Coast Guard and EPA agree that plan holders should be included in discussions regarding movement of response assets in response to the Deepwater Horizon SONS. That is why, as stated in the rule, any such relocation of assets is done only through coordination with the cognizant COTPs and Regional Response Teams and Area Committees, which include oil spill response community and plan holder representatives.

#### 6. State Consultation

One comment requested that Coast Guard and EPA formally consult with state environmental agencies prior to approving the deployment of additional equipment and personnel out of their region that would result in the loss of response capability below the federal Maximum Most Probable Discharge standards.

*Response:* As stated in the rule, States are involved in any decisions about equipment and personnel deployment. The Coast Guard and EPA stated that we coordinate and consult with Regional Response Teams and Area Committees, which include State representatives, for such decisions. Additionally, in the letter to the Governors of Washington and Oregon, the Coast Guard and EPA stated that we will continue to work in close coordination with state and local governments and affected local industries.

#### 7. Other Federal Laws and State and Local Laws

Several comments noted that the rule addresses only Coast Guard and EPA requirements, but that plan holders are also covered by other Federal regulatory requirements as well as State and local laws. One comment suggested revising the rule to address other Federal requirements as well as State and local requirements. Another comment suggested creating a permanent rule to address all Federal and State response standards for use in such emergency situations. This comment suggested working with States and Congress for a legislatively established emergency procedure for such situations.

*Response:* The Coast Guard and EPA coordinated on the rule because many oil spill response plans address both Coast Guard and EPA oil spill response requirements. The rule was not meant to address all Federal requirements or State requirements. In the rule, we

specifically stated that States are authorized to establish oil spill response standards more stringent than Coast Guard and EPA, and Coast Guard and EPA coordinate and consult with State representatives, regarding implementation of the rule. The rule will expire on December 31, 2010. The Coast Guard and EPA are considering whether a permanent rule addressing this issue is necessary, but would initiate a separate rulemaking for any such permanent rule.

#### 8. Tribal Implications

The MTC disagreed with the finding in the rule that the rule does not have tribal implications under EO 13175 because tribal marine resources could be significantly jeopardized by an uncontained oil spill due to the depletion of government and private oil spill response assets in this region.

*Response:* In a letter to the MTC dated August 24, 2010, (available in the docket), the Coast Guard reaffirmed its determination that the rule does not have any tribal implications because the rule does not require the movement of any oil spill response resources away from current locations. Additionally, the letter noted that the MTC has been appointed to the Northwest Area Committee and will be part of any decision on whether to relocate oil spill response resources away from that Committee's area. EPA has also reaffirmed, through a letter to the MTC dated October 25, 2010, its determination that the rule does not have any tribal implications because the rule does not require the movement of any oil spill response resources away from current locations.

#### 9. Plan Holder Input Into the Rule

One commenter felt that plan holders did not have sufficient input into the development of the rule.

*Response:* The Coast Guard and EPA note that the rule was issued as an emergency rulemaking in response to the exigent circumstances presented by the Deepwater Horizon SONS. Plan holders were given an opportunity to comment on the rule during the comment period. All comments, materials and evidence received on the rule are discussed above in this section.

#### *B. Alternative Arrangements Under NEPA*

Coast Guard and DHS, with the assistance of EPA, consulted with CEQ pursuant to NEPA regulations found in 40 CFR 1506.11 to develop alternative NEPA arrangements for implementation of this rule. These alternative

arrangements, which take the place of an Environmental Impact Statement, provide that Coast Guard and DHS will consider the potential for significant impacts to the human environment from this rule during implementation of the rule. The Alternative Arrangements were posted to the Deepwater Horizon Web site ([http://www.dhs.gov/xabout/laws/gc\\_1283521666674.shtm](http://www.dhs.gov/xabout/laws/gc_1283521666674.shtm)) on July 13, 2010, and remain available to interested parties at this Web site. The Alternative Arrangements are also available in the docket as indicated under **ADDRESSES** above.

Under the alternative arrangements, each COTP consults with the Area Committee and pertinent Regional Response Teams to determine what assets may be made available to address the SONS using the Area Contingency Plans (ACP). Each ACP includes an annex containing a Fish and Wildlife and Sensitive Environments Plan prepared in consultation with the U.S. Fish and Wildlife Service and NOAA and other interested natural resource management agencies and parties (including coastal zone management agencies). The annex addresses fish and wildlife resources and their habitat, and other areas the Area Committee recommends be considered sensitive environments. The annex provides the information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments. Determination of the needed response resources considers local and regional factors such as environmental risks, logistic limitations, and unique local or regional circumstances.

The determination by each COTP regarding available assets in the area includes considering the development of equipment relocation and backfilling (*i.e.*, cascade plans) which will expand the interlocking response back up of the various OSROs, and integrates military resources which have previously been kept independent of supporting the civilian OSROs. The COTP also considers available information on the availability of current response resources, particularly in areas with large vessel traffic lanes, heavy vessel traffic, oil refineries, oil storage and pipeline facilities, seasonal risks associated with weather, and trends associated with weather, currents and tides.

Dated: December 2, 2010.

**Robert Papp,**  
Admiral, U.S. Coast Guard, Commandant.

**Lisa P. Jackson,**  
Administrator, U.S. Environmental Protection Agency.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

[EPA EPA-HQ-OAR-2005-0161; FRL-9241-4]

RIN 2060-AQ31

**Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing amendments to certain of the Renewable Fuel Standard program regulations that were published on March 26, 2010, and that took effect on July 1, 2010 (“the RFS2 regulations”). Following publication of the RFS2 regulations, promulgated in response to the requirements of the Energy Independence and Security Act of 2007, EPA discovered some technical

errors and areas within the final RFS2 regulations that could benefit from clarification or modification. In a direct final rule and parallel notice of proposed rulemaking published on May 10, 2010, EPA included language to amend the regulations to make the appropriate corrections, clarifications, and modifications. However, EPA received adverse comment on a few provisions in the direct final rule and, on June 30, 2010, withdrew those provisions prior to their effective date of July 1, 2010. In today’s action, EPA is addressing the comments received on the portions of the direct final rule that were withdrawn and is taking final action regarding the withdrawn provisions based on consideration of the comments received.

**DATES:** This final rule is effective on January 1, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2005-0161. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

generally available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, ID No. EPA-HQ-OAR-2005-0161, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-9744.

**FOR FURTHER INFORMATION CONTACT:** Megan Brachtel, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality (6405J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., 20460; telephone number: (202) 343-9473; fax number: (202) 343-2802; e-mail address: [brachtel.megan@epa.gov](mailto:brachtel.megan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected by this final rule include those involved with the production, importation, distribution, and sale of transportation fuels, including gasoline and diesel fuel and renewable fuels such as ethanol and biodiesel. Regulated categories and entities affected by this action include:

Category	NAICS codes <sup>a</sup>	SIC codes <sup>b</sup>	Examples of potentially regulated parties
Industry .....	324110	2911	Petroleum refiners, importers.
Industry .....	325193	2869	Ethyl alcohol manufacturers.
Industry .....	325199	2869	Other basic organic chemical manufacturers.
Industry .....	424690	5169	Chemical and allied products merchant wholesalers.
Industry .....	424710	5171	Petroleum bulk stations and terminals.
Industry .....	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry .....	454319	5989	Other fuel dealers.

<sup>a</sup>North American Industry Classification System (NAICS).

<sup>b</sup>Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this action, you should carefully examine the applicability criteria of Part 80, subpart M of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person in the **FOR FURTHER INFORMATION CONTACT** section above.

**II. Renewable Fuel Standard (RFS2) Program Amendments**

EPA issued final regulations implementing changes to the Renewable Fuel Standard program required by EISA on March 26, 2010, at 75 FR 14670 (“the RFS2 regulations”). Following publication of the RFS2 regulations, EPA discovered some technical errors and areas that could benefit from clarification or modification and, in parallel proposed and direct final rules published on May 10, 2010 (75 FR 26049, 75 FR 26026), included amendments to the regulations to correct these deficiencies. EPA received adverse comment on a few of the amendments and therefore, on June 30,

2010, withdrew the portions of the direct final rule that were the subject of adverse comment (75 FR 37733). The withdrawn provisions consist of the following:

—Certain of the amendments to § 80.1401, specifically those which moved the definitions of “actual peak capacity,” “baseline volume,” and “permitted capacity” from § 80.1403(a), revised the definition of “actual peak capacity” to clarify how it is calculated, and revised the definition of “permitted capacity” to clarify the dates by which permits used to establish a facility’s permitted capacity must have been issued or revised;