federal register

Thursday
April 8, 1999

Part II

Department of Transportation

Coast Guard

Environmental Protection Agency

33 CFR Part 154

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

40 CFR Part 112

Oil Pollution Prevention and Response; Non-Transportation-Related Facilities; Proposed 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: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations requiring response plans for marine transportation-related facilities that handle, store, or transport animal fats or vegetable oils. Specifically, the proposal downgrades the initial classification of affected facilities, clarifies planning and equipment requirements, and further harmonizes our regulations with the Environmental Protection Agency's response planning regulations. This proposal addresses a statutory mandate and an industry petition.

DATES: Comments must reach the Docket Management Facility on or before July 7, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1999–5149), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to 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. The telephone number is 202–366–9329. The Docket Management Facility maintains the public docket for this rulemaking. 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 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: For questions on this proposed rule, contact Mr. Mark Meza, Project Manager, Office of Response (G-MOR) Coast Guard, telephone 202–267–0304; email mmeza@comdt.uscg.mil. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting written data, views, or arguments. You should include your name and address, identify this rulemaking (USCG–1999–5149) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES.** You should enclose a stamped, self-addressed postcard or envelope, if you want acknowledgment that we received your comments.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Docket Management Facility at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

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 mandates 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).

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.

This notice of proposed rulemaking (NPRM) addresses the mandate from Congress and the petition from NOPA. This NPRM proposes amendments only to response plan requirements for 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 via 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 requires 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 requires 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, having met the requirements of the EORRA and based on comments received to the IFR, the Coast Guard published its final rule (FR) on response plans for MTR facilities in the **Federal Register** (61 FR 7890). These regulations are codified in 33 CFR part 154, subparts F through I. The final rule added two new subparts to the response plan regulations (subparts H and I). Subpart H contains planning requirements for animal fat and vegetable oil facilities and subpart I contains planning requirements for other non-petroleum oils facilities. The final rule also allows 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 requires the Secretary of Transportation to submit to Congress an annual report describing how new Coast Guard regulations meet 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 meet 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. A detailed listing of the petitioners' requests follows this section.

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 states that not later than March 31, 1999, the Coast Guard shall 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 contains a similar requirement for EPA to amend, not later than March 31, 1999, its regulations to comply with EORRA. On January 16, 1998, NOPA filed, with EPA, a petition virtually identical to the one filed with the Coast Guard. In a separate notice of proposed rulemaking (NPRM), EPA proposes modifications to its response plan rules for animal fat and vegetable oil facilities. Each agency's NPRM accounts for the characteristics of facilities in its jurisdiction. To further harmonize requirements, the two agencies have worked together to develop their respective NPRMs. The Coast Guard and EPA will continue to work together to draft their respective final rules.

Petition to the Coast Guard

The petition filed by NOPA requests the following changes to our existing regulations.

(a) *Downgrading the initial classification of affected facilities from significant and substantial harm to substantial harm.* The Coast Guard proposes this change. A detailed justification for downgrading the initial classification of animal fat and vegetable oil facilities follows this section.

(b) *Relaxing the current response time for response resources to be at a spill site from 12 hours to 24 hours.* The petitioners also requested that we relax response time in high volume ports (HVPs) from 6 hours to 12 hours. The Coast Guard does not propose relaxing response times. The request could have the effect of doubling the response time in the event of a spill. This change would significantly reduce the effectiveness of a 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. Relaxing the times for delivery of dispersants limits their usefulness because dispersants, when needed, must be applied before significant emulsification and distribution of the oil.

(c) *Revising the regulations to explicitly state the alternative of taking no action if mitigation activity is more harmful to the environment.* The Coast Guard does not propose this change. Stating no action in the regulations may lead industry to conclude that no action is an option in any circumstance. The Federal On-Scene Coordinator (FOSC) already has the authority to decide on the appropriate level of response action, ranging from taking no action to taking vigorous and extensive action. Response levels are based on factors such as—

- Spill amount;
- Proximity to threatened areas;
- Type of oil;
- Weather conditions; and
- Currents and tides.

(d) *Relaxing the requirement for equipment exercises from semiannual to annual.* The Coast Guard does not propose this change. Such action would reduce by half the number of exercises for an animal fat or vegetable oil facility. Such action would make these exercises too infrequent. Semiannual equipment exercises ensure facilities maintain their ability to respond to spills.

(e) *Clarifying the provision that facilities may use public fire fighting resources under the terms of cooperative agreements.* The current wording in the regulations permits public resources that are supported by local municipal, county, city, or state organizations, as well as other resources, which may be supported by industry. However, under a separate regulatory project (USCG–1998–3497), the Coast Guard is reviewing the possible conditions under which the industry as a whole needs fire fighting resources, and may propose further guidelines based on that review. Therefore, the Coast Guard will retain the current wording in subpart H because it is sufficiently clear to meet the intent of the petitioner's request. We may revise the regulations in the future based on our ongoing review.

(f) *Allowing a facility, as a condition of participating in Area Exercises, be the lead exercise developer and final decision authority on exercise design.* The Coast Guard does not propose this change. The Coast Guard anticipates that the facility would, of necessity, be a key participant, and often the lead, in planning for an Area Exercise. However, to require their leadership and final approval would unduly limit the authority of the FOSC and constrain the Area Committee in fulfilling its statutory responsibilities.

(g) *Eliminating the requirement for annual plan reviews while retaining the requirement to report changes to plans as they occur.* The Coast Guard does not propose this change. The Coast Guard concluded that thorough and regular review of plans is desirable and necessary. Formal plan reviews ensure plan holders keep critical information such as phone contacts, reporting requirements, and equipment inventories up-to-date.

Discussion of Proposed Rule

The Coast Guard proposes the following three changes to our existing regulations.

(a) *Downgrading the initial classification of affected facilities from significant and substantial harm to substantial harm.* Initially, the Coast Guard would consider all animal fat and vegetable oil facilities as substantial harm facilities and the Captain of the Port (COTP) would have the authority to upgrade each facility to a significant and substantial harm based on the criteria in our proposed 33 CFR 154.1216(b). The Coast Guard's Marine Safety Information System (MSIS) database collects information on various marine activities. By using MSIS to review facility spill history between 1992 and 1998, we found that 28 of 31 spills (90%) of animal fats and vegetable oils were less than 1,000 gallons; 23 of 28 (82%) were less than 100 gallons. While animal fats and vegetable oils are just as damaging to the environment as other oils, when spilled in bulk, we propose to reclassify animal fat and vegetable oil facilities from significant and substantial harm to substantial harm taking into account this history of spills of very small amounts.

(b) *Requiring planning for an average most probable discharge (AMPD).* The spill history 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 154.1020. Accordingly, we

propose requiring AMPD planning. By proposing AMPD planning, the Coast Guard will further harmonize our regulations with EPA's. The Coast Guard does not think requiring AMPD planning will increase planning burdens for animal fat and vegetable oil facilities. Under 33 CFR 154.545, we already require oil facilities to plan for AMPD volumes. Animal fat or vegetable oil facilities may use the requirements under 33 CFR 154.545 to satisfy our proposed AMPD planning requirements. Our proposed 33 CFR 154.545(e) explicitly allows this option.

(c) *Requiring at least 1,000 feet of boom.* 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 154.1020. Current regulations also require a minimum of 200 feet of boom for mobile and fixed substantial harm animal fat or vegetable oil facilities. We consider 200 feet inadequate for fixed animal fat or vegetable oil facilities. The Coast Guard proposes requiring, to be on scene within one hour, the greater of 1,000 feet of boom or twice the length of the longest vessel that regularly conducts operations at a fixed facility. The Coast Guard estimates that fixed animal fat and vegetable oil facilities already have access to at least 1,000 feet of boom through existing worse case discharge (WCD) volume planning. We do not propose any changes to the minimum requirement of 200 feet of boom for mobile facilities.

Changes Proposed by EPA

In its NPRM, EPA proposes tables to calculate planning volumes for animal fat or vegetable oil facilities. EPA's proposed tables are similar to existing tables in both agencies' regulations. Current Coast Guard and EPA regulations allow animal fat and vegetable oil facilities to determine how to calculate planning volumes. The Coast Guard and EPA allowed this self-determination because, when drafting the final rules, neither the Coast Guard nor EPA had the necessary data on animal fats and vegetable oils to create such tables. In addition, the agencies determined that current guidelines and practices provided the regulated industry with flexibility in meeting required planning criteria. Since then, EPA has obtained scientific studies and information on the behavior of animal fats and vegetable oils, and has used these studies to develop the proposed tables. These tables are based on the behavior of animal fats and vegetable oils and on their chemical and physical properties. The tables separate oils based on their specific gravity. Oils with a specific gravity greater than one generally sink below the water surface. As proposed by EPA, the owner or operator of a facility handling, storing, or transporting an oil with a specific gravity greater than one, is responsible for determining appropriate resources to mitigate such an oil spill. Proposed resources should include:

- Equipment to locate oil on the bottom or suspended in the water;
- Containment boom or other equipment to contain any oil floating on the surface; and
- Dredges, pumps or other equipment to recover oil from the bottom and shoreline.

At this time, the Coast Guard does not propose the tables. The Coast Guard seeks public comment on the appropriateness of the tables for the Coast Guard's distinct regulated community and geographic areas.

EPA has documents containing information used to create their proposed tables. EPA has provided copies of these documents to us to include in the Coast Guard docket. EPA has cited these documents in the notice of denial of petition to amend the facility response plan rule [62 FR 54508 (October 20, 1997)] and in their NPRM on Oil Pollution Prevention and Response at Non-Transportation-Related Facilities published elsewhere in today's **Federal Register**.

TABLE 1.—REMOVAL CAPACITY PLANNING

Spill location	Rivers and canals			Nearshore/inland Great Lakes		
Sustainability of on-water oil recovery	3 days			4 days		
Specific gravity (S.G.) of AF/VO oil	Percent natural loss	Percent recovered floating oil	Percent recovered onshore	Percent natural loss	Percent recovered floating	Percent recovered onshore
S.G.<0.8	40	15	45	50	20	30
0.8≤S.G.<1.0	20	15	65	30	20	50

TABLE 2.—EMULSIFICATION FACTORS

Specific gravity (S.G.) of AF/VO oil	Factor
S.G.<0.8	1.0
0.8≤S.G.<1.0	2.0

Planning Volume = WCD × T1 × T2;

Where

WCD = Worst case discharge volume defined in 33 CFR 1029.

T1 = Value from Table 1.

T2 = Value from Table 2.

Regulatory Evaluation

The Office of Management and Budget (OMB) has informally reviewed the proposed rule and has made a preliminary determination that the rule is not a significant regulatory action under section 3(f) of Executive Order 12866. OMB may reassess the significance depending on the comments received. This proposed rule is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A draft assessment is available in the docket for inspection or copying where indicated under **ADDRESSES.** A summary of the assessment follows:

Summary of Costs

As a result of research conducted by the Coast Guard Marine Safety Offices, the Coast Guard estimates that there are 80 fixed facilities affected by this proposed rule. This proposed rule includes three measures that impact industry. The first measure, downgrading animal fat or vegetable oil facilities from significant and substantial harm to substantial harm would not result in any additional costs to the industry. The second measure, requiring average most probable discharge planning, could result in minor additional costs to the industry by increasing the amount of information a facility has to report. The Coast Guard estimates that owners or operators of facilities will spend 4 hours changing their response plans. The additional cost per response would be $140 ($35 per hour × 4 burden hours). The total estimated annual cost for all 80 facilities would be $11,200 (80 facilities × $140 per response plan). Finally, the Coast Guard does 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, we estimate 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, the Coast Guard estimates that 100 percent of the regulated, fixed facilities already meet this requirement.

The proposed rule would decrease costs to the government. Those facilities downgraded from significant and substantial harm to substantial harm would not need Coast Guard approval of their response plans. Therefore, the workload of Coast Guard field units would decrease.

Summary of Benefits

The proposed rule would further harmonize Federal agency regulations, formalize discharge planning for smaller and more common spills, and maintain an adequate quantity of boom at the facilities. The downgrade in classification of affected facilities to substantial harm further harmonizes Coast Guard and EPA regulations. The Coast Guard found that 28 of 31 spills (90%) of animal fats and vegetable oils were less than 1,000 gallons; 23 of 28 (82%) were less than 100 gallons. Planning for the average most probable discharge would address these smaller, more frequent spills. Finally, the Coast Guard proposes that fixed facility owners and operators have ready access to 1,000 feet of boom or twice the length of the longest vessel that regularly conducts operations at the facility. This requirement ensures that adequate boom is readily available for most discharges and that existing levels of boom are maintained.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considers whether this proposed rule, if adopted, 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.

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

The Coast Guard has identified 80 fixed animal fat and vegetable oil facilities that would be affected by this proposed rule. The proposed additional level of response planning would result in only minor additional informational reporting burdens. Each of the 80 affected facilities would incur 4 additional hours of information reporting burden. This would result in an additional cost of $140 per facility (4 hours × $35 per hour). The Coast Guard chose to require facilities to plan for AMPD spills because the spill history of these facilities shows a pattern of relatively small spill volumes.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment to the Docket Management Facility at the address under **ADDRESSES** explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. 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 202–267–0756.

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 proposed rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c) ''collection of information'' 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: Response Plans For Marine-Transportation-Related Facilities Handling Non-petroleum Oils.

Summary of Collection: This proposed rule contains collection-of-information requirements in the following section: § 154.1220 and § 154.1225.

Need for Information: This proposed rule would 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: The proposed use of this information is to ensure that such facilities are prepared to respond in the event of a spill incident. The information would 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: 80 facilities.

Frequency of Response: Annual.

Burden of response: 4 hours per respondent.

Estimated Total Annual burden: 320 hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

The Coast Guard solicits public comment on the proposed 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 submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit

their comments both to OMB and to the Docket Management Facility where indicated under **ADDRESSES** by the date under **DATES.**

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

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(a) and (e), of Commandant Instruction M16475.lC, this proposed 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. ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following Executive Orders in developing this NPRM and reached the following conclusions:

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

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

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

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

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 proposes to amend 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 § 154.1020, 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 § 154.1020, 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 and 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 will 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 2.05–25.

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

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 meets the requirements of this subpart and all sections of subpart F of this part, as appropriate, except §§ 154.1015, 154.1016, 154.1017, 154.1028, 154.1035, 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 meets the requirements of 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) to read as follows:

§ 154.1225 Specific response plan development and evaluation criteria for fixed facilities that handle, store, or transport animal fats and 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 make sure 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 specified in § 154.1240, that are available by contract or by a method described in § 154.1228(a).

(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) 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.

* * * * *

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 expect 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.

(d) For a fixed facility, the owner or operator must also identify—

(1) By contract, 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 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 an incident; and

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

(e) For a mobile facility, the owner or operator must also—

(1) Meet the requirements of § 154.1041;

(2) Have at least 200 feet of containment boom and the means of deploying and anchoring the boom within 1 hour 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;

(3) Have adequate sorbent material capable of being at the site of an incident within 1 hour of its discovery;

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

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

Dated: March 24, 1999.

J.C. Card,

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

[FR Doc. 99–8274 Filed 4–2–99; 12:33 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–6319–1]

RIN 2050–AE64

Oil Pollution Prevention and Response; Non-Transportation-Related Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and advance notice of proposed rulemaking.

SUMMARY: EPA proposes to amend the Facility Response Plan (FRP) requirements in the Oil Pollution Prevention and Response regulation,