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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Parts 151, 153 and 46 CFR Part 4

[USCG-2000-6927]

RIN 2115-AD98

#### Reporting Marine Casualties

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the marine casualty reporting requirements by adding "significant harm to the environment" as a reportable marine casualty. This rulemaking will help the Coast Guard track and investigate marine casualties that may result in significant harm to the environment. In addition, it will lessen the effects of marine casualties by requiring timely notification needed to ensure a timely and appropriate pollution response clean-up.

**DATES:** Comments and related material must reach the Docket Management Facility on or before January 31, 2001. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before January 2, 2001.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, USCG-2000-6927, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to 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.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs,

Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, 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, 400 Seventh Street SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, call Ensign Edward Jackson, Project Manager, Office of Standards Evaluation and Development (G-MSR), Coast Guard, telephone 202-267-6884. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG-2000-6927], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

At Coast Guard Headquarters in Washington, DC, we held a public meeting on this project on January 20, 1995 (59 FR 65522; December 20, 1994), regarding amendments contained in the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380) that require certain

U.S. and foreign-flag vessels to report marine casualties. We do not plan to hold any additional public meetings.

##### Background and Purpose

Section 4106 of OPA 90 amended 46 U.S.C. 6101 by adding "significant harm to the environment" to the list of reportable marine casualties. Additionally, that section required operators of foreign-flag tank vessels, operating in waters subject to the jurisdiction of the United States—including the Exclusive Economic Zone (EEZ)—to report marine casualties resulting in either:

(a) Material damage affecting the seaworthiness or efficiency of a vessel;

or

(b) Significant harm to the environment.

For marine casualties involving foreign-flag tank vessels in the U.S. EEZ, Congress required that reporting be consistent with generally recognized principles of international law. The 1982 United Nations Convention on the Law of the Sea (UNCLOS), Article 211(5), governs the establishment of laws and regulations by a coastal state to prevent, reduce, and control pollution from vessels in its EEZ. This article specifies that these laws and regulations are authorized if they enact international maritime or general diplomatic rules and standards.

The accepted international standard for reporting vessel pollution incidents is in the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78).

The Act to Prevent Pollution from Ships (APPS) (33 U.S.C. 1901-1915) enacts MARPOL 73/78 Annexes I, II, III, and V. Regulation 8 and Protocol I of MARPOL 73/78 provide the reporting provisions concerning reports on incidents involving harmful substances. Article 2 of MARPOL 73/78 defines an "incident" as the actual or probable discharge of a harmful substance or effluents into the sea. Regulations implementing the reporting provisions of APPS are in 33 CFR 151.15 and 151.45. However, these regulations (33 CFR 151.15 and 151.45) do not reflect current U.S. law in two respects.

First, APPS has subsequently been amended (Pub. L. 102-241). Instead of having just the master or other person-in-charge of the ship responsible for the report, the amendment makes the master, person-in-charge, owner, charterer, manager, or operator of a ship involved in an incident responsible for the report. Second, the Hazardous Materials Transportation Act of 1974 ratified Annex III of MARPOL 73/78

(packaged marine pollutants) for the United States. We will revise the current reporting requirements in 33 CFR 151.15 and 151.45 to reflect the amendment to APPS and to include items listed in Annex III.

Pursuant to 33 U.S.C. 1902, U.S. vessels must comply with the reporting requirements in Article 8 and Protocol I of MARPOL 73/78 worldwide, and if an incident occurs in U.S. navigable waters, any foreign-flag vessel must comply with the same reporting requirements. Additionally, with respect to Annex V, foreign-flag vessels must comply with these reporting requirements while in the navigable waters or EEZ of the U.S.

Under APPS, and its implementing regulatory requirements found in 33 CFR part 151, the term “navigable waters” means all waters of the territorial sea of the United States that are within 3 nautical miles from the baselines from which the territorial sea of the U.S. is measured. The Coast Guard Authorization Act of 1998 extended the U.S. territorial sea to 12 nautical miles for certain laws, including 33 U.S.C. 1222 and a number of sections in Title 46 U.S. Code, including the section that defines “navigable waters” (46 U.S.C. 2101). Because that definition applies throughout subtitle II of 46 U.S. Code, Congress effectively amended the jurisdictional reach from 3 to 12 nautical miles for any statute within subtitle II that refers to “navigable waters.” APPS was not amended by the 1998 Coast Guard Authorization Act that extended the territorial sea per Presidential Proclamation 5928 of December 27, 1988.

In passing the 1998 Coast Guard Authorization Act that amended the definition of “navigable waters”, Congress clearly intended to expand the marine casualty reporting requirements found in 46 U.S.C. 6101 and its implementing regulations contained in 46 CFR part 4, out to 12 nautical miles with respect to foreign-flag vessels. Therefore, for the reasons that are more fully explained in the “Discussion of Proposed Rules” section of this notice of proposed rulemaking (NPRM), while the Coast Guard has chosen to adopt the MARPOL 73/78 and APPS standard for pollution reporting for its marine casualty regulations, in order to remain consistent with Congress’s intent that foreign-flag vessels report marine casualties occurring within U.S. “navigable waters” as that term is defined in 46 U.S.C. 2101 (17a), we will rely on 46 U.S.C. 6101 as the basis of our authority for this proposed rule.

## Discussion of Proposed Rules

### *Marine Casualty Reporting Requirements*

Current marine casualty reporting requirements for U.S.-flag vessels worldwide and foreign-flag vessels in U.S. navigable waters are contained in 46 CFR part 4. These proposed amendments would add “significant harm to the environment” as a reportable marine casualty under 46 CFR 4.05–1 for these vessels.

This proposal would also require foreign-flag tank vessels in the U.S. EEZ to report marine casualties that occur within the U.S. EEZ, which involves either—

(1) Material damage affecting the seaworthiness or efficiency of a vessel; or

(2) Significant harm to the environment.

For the purpose of this rulemaking, “significant harm to the environment” is defined as a discharge that, in U.S. navigable waters, is in violation of the Clean Water Act, 33 U.S.C. 1321. In addition, the definition includes a probable discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances (NLS) as well as an actual discharge.

Under the Clean Water Act, 33 U.S.C. 1321(c)(1), as amended by OPA 90, the Coast Guard is authorized by E.O. 12777 and 49 CFR 1.46 to ensure the effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil, hazardous substances, marine pollutants, or NLS into or on the navigable waters of the U.S., or into or on the waters of the U.S. EEZ. Pursuant to this Federal removal authority, it is reasonable to infer congressional intent that the Coast Guard be notified any time that there is a discharge or a substantial threat of a discharge into or on the navigable waters of the U.S. or EEZ in order to ensure the effective and immediate removal and mitigation or prevention of a discharge or substantial threat of a discharge.

In accordance with this congressional intent and § 4106 of OPA 90, the Coast Guard is amending the marine casualty reporting requirements to require U.S. vessels anywhere, foreign vessels in the U.S. navigable waters and foreign tank vessels in the U.S. EEZ to report a discharge or a substantial threat of discharge involving oil, hazardous substances, marine pollutants, or NLS to the Coast Guard. For the purposes of this rulemaking, we equate the term “substantial threat of a discharge” to the term “probable discharge” as used in the MARPOL 73/78 Convention.

We propose to adopt the MARPOL 73/78 standard for reporting discharges and probable discharges for three reasons.

First, we have adopted the MARPOL 73/78 requirements on pollution reporting because it represents the accepted international standard for pollution prevention and mitigation and because it is consistent with the Federal pollution reporting regulations that implement APPS (33 CFR part 151).

Second, the vast majority of the world’s tonnage sails under the flags of countries that are signatory to MARPOL 73/78. Therefore, most foreign-flag tank vessels are already required to comply with those reporting requirements.

Third, 33 U.S.C. 1902(c) and Article 5 of MARPOL 73/78 permit the United States, insofar as the United States is a party to the convention, to apply MARPOL 73/78 requirements to foreign vessels whose flag administrations are not party to MARPOL 73/78 in order to ensure that no more favorable treatment is given to these vessels than to vessels flying the flag of parties.

Application of the MARPOL 73/78 reporting standards to foreign-flag tank vessels in the U.S. EEZ would not alter the reporting requirements applicable to these vessels in U.S. navigable waters under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Federal Water Pollution Control Act (FWPCA).

MARPOL 73/78 reporting requirements, distinguished from marine casualty reporting requirements, are codified in 33 CFR 151.15 and 151.45. We propose to revise 33 CFR 151.15 and 46 CFR part 4 to indicate that the notification requirements in 33 CFR 151.15 will satisfy the reporting requirements of 46 CFR part 4. However, the reporting requirements of 46 CFR part 4 will not satisfy the notification requirements of 33 CFR 151.15. This is because the criteria and timing for the reports in these latter sections is more stringent than the reporting requirements in 46 CFR part 4.

### *Marine Casualty Investigations*

Before OPA 90, a discharge or probable discharge of oil, hazardous substances, marine pollutants, or NLS could not be investigated under the marine casualty investigation authority in 46 U.S.C. 63 and 46 CFR part 4 unless the discharge resulted from a reportable marine casualty, such as a grounding or collision. Because OPA 90 amended 46 U.S.C. 6101 by adding “significant harm to the environment” to the list of reportable marine casualties, we will

now be able to investigate probable, as well as actual, discharges that occur in the navigable waters of the U.S. and that may result in significant harm to the environment using marine casualty investigation procedures.

Coast Guard investigation of marine casualties reported by foreign-flag tank vessels in the U.S. EEZ under these proposed regulations would be done under generally recognized principles of international law. These incidents would be coordinated with the flag-state administration under the IMO Resolution A.637(16), "Cooperation in Maritime Casualty Investigations." Additionally, incidents we do not investigate would be forwarded to the flag-state administration and any other state that may be affected pursuant to Article 8 of MARPOL 73/78.

Under Article 6 of MARPOL 73/78, we may inspect the vessel to determine whether the vessel violated the provisions of MARPOL 73/78 if—

(a) The vessel is in any port or offshore terminal of the United States; or

(b) An investigation is requested by any party to MARPOL 73/78 and the vessel is in a port or offshore terminal of the United States.

#### Definitions

MARPOL 73/78 definitions for the terms "oil" and "noxious liquid substances" are currently in 33 CFR 151.05. The proposed regulations would add a definition for the term "marine pollutants," as identified in Protocol I of MARPOL 73/78, to mean those marine pollutants listed in the International Maritime Dangerous Goods Code (IMDG Code). The marine pollutants identified in the IMDG Code are located in Appendix B of 49 CFR 172.101. We would reference this section in the proposed definition. The proposed rule would add additional definitions in 46 CFR 4.03-1. Proposed new definitions in 46 CFR 4.03-1 include "noxious liquid substances," "significant harm to the environment," and "tank vessel."

#### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under § 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under § 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under

paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The following is a discussion of the expected costs and benefits of the proposed rule.

#### Industry Costs

We estimate that the proposed rule imposes an additional 1,570 hours per year of annual paperwork requirements on industry. These paperwork requirements are further discussed under the collection-of-information section. Assuming one hour of staff time has a value of \$45, an additional 1,570 hours equates to an aggregate industry cost of \$70,650 per year. Additionally, this rule proposes an estimated 186 hours of annual paperwork requirements on foreign industry. The total cost to industry, domestic and foreign, is estimated to be \$79,020 annually for a total of 1,756 hours per year.

#### Benefits

The measures in this proposed rule are mandated by OPA 90. The primary benefit of this proposed rule is the establishment of standardized reporting requirements that address the Coast Guard's need to track and investigate events that cause "significant harm to the environment."

#### Small Entities

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

The estimated annual impact to U.S. industry of this proposed rule is \$70,650. The measures included in this proposed rule are mandated by the OPA 90. Small entities involved in "significant harm to the environment" incidents will be required to prepare a form which will take approximately one hour of staff time to complete. One hour of staff time is valued at \$45. Therefore, the cost per incident of this proposed rule is \$45. If a small entity is not involved in a "significant harm to the environment" incident, this proposed rule will have zero cost.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or

governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would 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), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Ensign Edward Jackson, Project Manager, Office of Standards Evaluation and Development (G-MSR), telephone 202-267-6884.

#### Collection of Information

This proposed rule would call 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" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions.

The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection. The Coast Guard is currently requesting a revision of a current collection of information under: *DOT No.:* 2115.

*OMB No.:* 2115-0003.

*Title:* Collection of Marine Casualty Information, Chemical Drug and Alcohol Testing Information, and Management Information System Reports.

*Summary of the Collection of Information:* The Marine Casualty Information portion of this Collection of Information would require foreign-flag tank vessels operating in the U.S. EEZ to report a marine casualty involving either "significant harm to the environment" or material damage affecting the seaworthiness or efficiency of a vessel.

This collection would also require U.S.-flag vessels operating anywhere to report a marine casualty involving

“significant harm to the environment”. This program change revises the previously approved OMB Collection 2115-0003 for the Marine Casualty Information, Chemical Drug and Alcohol Testing Information, and Management Information System Reports by increasing the total number of annual reporting and recordkeeping hour burden from 31,326 to 33,082.

This program change represents an increase in the burden hours by 1,756 for the collection of Marine Casualty Information. This collection of information would be affected by the proposed changes in 33 CFR parts 151 and 153, and 46 CFR part 4.

**Need for Information:** To help the Coast Guard track and investigate marine casualties that may result in significant harm to the environment, and lessen the effects by requiring timely notification needed to ensure a timely and appropriate pollution response clean-up.

**Proposed Use of Information:** Assist the Coast Guard's efforts to track and help determine the level of investigation needed for reportable marine casualties that may result in significant harm to the environment. The Coast Guard has submitted the requirements to the OMB for review under § 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES** by the date under **DATES**.

**Description of the Respondents:** All U.S.-flag vessel operators anywhere, or foreign-flag vessels in the navigable waters of the U.S. involved in a marine casualty involving an actual or probable discharge of oil, hazardous substances, marine pollutants, or NLS, as well as foreign-flag tank vessels operating within the EEZ that are involved in a marine casualty resulting in either material damage affecting the seaworthiness or efficiency of the vessel or “significant harm to the environment” within the EEZ.

**Number of Respondents:** The total number of casualty events used to determine the change in annual paperwork requirements for this rulemaking for both U.S.-flag vessels and foreign-flag tank vessels is 1,756. This number represents the 5-year average of U.S. flag-vessels pollution events (1,570) during the years 1993 through 1997 plus the 5-year average of marine casualty events for foreign-flag tank vessels operating in U.S. navigable waters, including the EEZ, of 186 events. The information was retrieved from the U.S. Coast Guard Marine Safety Management System Data Base.

**Frequency of Response:** Only to report “significant harm to the environment” incidents involving U.S.-flag vessels or marine casualty incidents involving foreign-flag tank vessels involved in a marine casualty resulting in material damage affecting the seaworthiness of the vessel or significant harm to the environment in waters subject to the jurisdiction of the U.S. including the EEZ.

**Burden of Response:** Approximately one hour per form.

**Estimated Total Annual Burden:** An annual recordkeeping burden of 33,082 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

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

#### **Federalism**

We have analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. Under § 3(b) of that order Federal agencies may take national action limiting the policymaking discretion of the States where there is constitutional and statutory authority for the action, and where the national activity is appropriate in light of the presence of a problem of national significance. Section 3(b) also requires Federal agencies to consult with appropriate State and local officials if there exist significant uncertainties as to whether national action is authorized or appropriate.

On March 6, 2000, the Supreme Court of the United States, in the case of *United States v. Locke*, 120 S. Ct. 1135, 2000 LEXIS 1895, held that the States are precluded from regulating any of the categories covered by 46 U.S.C. 3703(a). That section of the U.S. Code (U.S.C.) covers the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of tank vessels. The Court specifically held that Congress, in enacting 46 U.S.C. 6101 and 3717(a)(4), intended the Coast Guard's regulations on the reporting of marine casualties to be the sole source of a vessel's reporting obligations.

This rule finalizes requirements for reporting marine casualties by U.S. vessels anywhere in the world, all other vessels in U.S. navigable waters and foreign tank vessels in the EEZ of the United States that involve either material damage affecting the seaworthiness of a vessel or significant harm to the environment. Under Executive Order 13132, § 3(b) the Coast Guard finds that there exists a problem of national significance, namely the need for uniform national and international standards for reporting marine casualties including those involving significant harm to the environment. This finding is supported by 46 U.S.C. 6101 in which Congress directed the Coast Guard to add to the list of reportable marine casualties those involving significant harm to the environment. The Coast Guard further finds that under the Supreme Court's decision in *United States v. Locke*, 120 S. Ct. 1135, 2000 LEXIS 1895, and under Title 46 United States Code, Sections 3703(a), 6101, and 3717 that the agency has the constitutional and statutory authority to take this action to address this existing national problem. The Coast Guard also finds that in light of Congress' specific action in passing 46 U.S.C. 3703(a), 6101 and 3717 and the Supreme Court's decision in *United States v. Locke*, 120 S. Ct. 1135, 2000 LEXIS 1895, that there exists no uncertainty as to whether national action is authorized or appropriate. Therefore, consultation with State and local officials under Executive Order 13132, section 3(b) is unnecessary and not required by that order.

#### **Unfunded Mandates**

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. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would 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 proposed rule meets applicable standards in §§ 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 proposed 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 proposed rule and concluded that, under figure 2-1, paragraph (34)(a), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. The proposed rule is a procedural regulation that does not have any environmental impact because the action does not have a significant effect on the quality of the human environment. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

**List of Subjects**

*33 CFR Part 151*

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR Part 153*

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

*46 CFR Part 4*

Administrative practice and procedure, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 151 and 153, and 46 CFR part 4 as follows:

**Title 33—Navigation and Navigable Waters**

**PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER**

1. Revise the authority citation for subpart A of part 151 to read as follows:

**Authority:** 33 U.S.C. 1321, 1903, 1908; 46 U.S.C. 6101; E.O. 12777, 3 CFR, 1991 Comp. p. 351; 49 CFR 1.46.

2. In § 151.05, add the definition of "marine pollutant", in alphabetical order, to read as follows:

**§ 151.05 Definitions.**

\* \* \* \* \*

*Marine pollutant* means a harmful substance in packaged form, as it appears in Appendix B of 49 CFR 172.101.

\* \* \* \* \*

3. Revise § 151.15 to read as follows:

**§ 151.15 Reporting requirements.**

(a) The master, person in charge, owner, charterer, manager, or operator of a vessel involved in any incident described in paragraph (c) of this section must report the particulars of the incident without delay to the fullest extent possible under the provisions of this section.

(b) If a vessel involved in an incident is abandoned, or if a report from that vessel is incomplete or unattainable, the owner, charterer, manager, operator, or their agent must assume the obligations placed upon the master or other person having charge of the vessel under provisions of this section.

(c) The report must be made whenever an incident involves—

(1) A discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances (NLS) resulting from damage to the vessel or its equipment, or for the purpose of securing the safety of a vessel or saving a life at sea;

(2) A discharge of oil in excess of the quantities or instantaneous rate permitted in §§ 151.10 or 151.13 of this chapter, or NLS in bulk in 46 CFR 153.1126 or 153.1128, during the operation of the vessel;

(3) A discharge of marine pollutants in packaged form; or

(4) A probable discharge resulting from damage to the vessel or its equipment. The factors you must consider to determine whether a

discharge is probable include, but are not limited to—

- (i) Ship location and proximity to land or other navigational hazards;
- (ii) Weather;
- (iii) Tide current;
- (iv) Sea state;
- (v) Traffic density;
- (vi) The nature of damage to the vessel; and
- (vii) Failure or breakdown aboard the vessel of its machinery or equipment. Such damage may be caused by collision, grounding, fire, explosion, structural failure, flooding or cargo shifting or a failure or breakdown of steering gear, propulsion, electrical generating system or essential shipboard navigational aids.

(d) Each report must be made by radio whenever possible, or by the fastest telecommunications channels available with the highest possible priority at the time the report is made to—

(1) The appropriate officer or agency of the government of the country in whose waters the incident occurs; and

(2) The nearest Captain of the Port (COTP) or the National Response Center (NRC), toll free number 800-424-8802 (in Washington, DC, metropolitan area, 202-267-2675), fax number 202-479-7165, telex number 892427 for incidents involving U.S. vessels in any body of water; or incidents involving foreign flag vessels in the navigable waters of the United States; or incidents involving foreign-flag tank vessels within waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ).

(e) Each report must contain—

- (1) The identity of the ship;
- (2) The type of harmful substance involved;
- (3) The time and date of the incident;
- (4) The geographic position of the vessel when the incident occurred;
- (5) The wind and the sea condition prevailing at the time of the incident;
- (6) Relevant details respecting the condition of the vessel;
- (7) A statement or estimate of the quantity of the harmful substance discharged or likely to be discharged into the sea; and
- (8) Assistance and salvage measures.

(f) A person who is obligated under the provisions of this section to send a report must—

- (1) Supplement the initial report, as necessary, with information concerning further developments; and
- (2) Comply as fully as possible with requests from affected countries for additional information concerning the incident.

(g) A report made under this section satisfies the reporting requirements of

§ 153.203 of this chapter and of 46 CFR 4.05–1 and 4.05–2, if required under those provisions.

**§ 151.45 [Removed]**

4. Remove § 151.45.

**PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL**

5. Revise the authority citation for part 153 to read as follows:

**Authority:** 14 U.S.C. 633; 33 U.S.C. 1321, 1903, 1908; 42 U.S.C. 9615; 46 U.S.C. 6101; E.O. 12580, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.45 and 1.46.

**§ 153.203 [Amended]**

6. In § 153.203, after the words “notifies the NRC as soon as possible.” add the words “A report made under this section satisfies the reporting requirements of § 151.15 of this chapter and of 46 CFR 4.05–1, if required under that provision.”

**Title 46—Shipping**

**PART 4—MARINE CASUALTIES AND INVESTIGATIONS**

7. Revise the authority citation for part 4 to read as follows:

**Authority:** 33 U.S.C. 1231, 1321; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

8. Revise § 4.03–1 to read as follows:

**§ 4.03–1 Marine casualty or accident.**

*Marine casualty or accident* means—

(a) Any casualty or accident involving any vessel other than a public vessel that—

(1) Occurs upon the navigable waters of the United States, its territories or possessions;

(2) Involves any United States vessel wherever such casualty or accident occurs; or

(3) Involves significant harm to the environment or material damage affecting the seaworthiness or efficiency of a vessel from a foreign tank vessel operating in the waters subject to the jurisdiction of the United States including the Exclusive Economic Zone (EEZ).

(b) The term “marine casualty or accident” applies to events caused by or involving a vessel and includes, but is not limited to, the following:

(1) Any fall overboard, injury, or loss of life of any person.

(2) Any occurrence involving a vessel that results in—

(i) Grounding;

(ii) Stranding;

(iii) Foundering;

(iv) Flooding;

(v) Collision;

(vi) Allision;

(vii) Explosion;

(viii) Fire;

(ix) Reduction or loss of a vessel’s electrical power, propulsion, or steering capabilities;

(x) Failures or occurrences, regardless of cause, which impair any aspect of a vessel’s operation, components, or cargo;

(xi) Any other circumstance that might affect or impair a vessel’s seaworthiness, efficiency, or fitness for service or route; or

(xii) Any incident involving significant harm to the environment.

(3) Any occurrences of injury or loss of life to any person while diving from a vessel and using underwater breathing apparatus.

(4) Any incident described in § 4.05–1(a).

9. Add § 4.03–60 to read as follows:

**§ 4.03–60 Noxious liquid substance (NLS).**

*Noxious liquid substance (NLS)*

means—

(a) Each substance listed in 33 CFR 151.47 or 151.49;

(b) Each substance having an “A,” “B,” “C,” or “D” beside its name in the column headed “IMO Annex II pollution category” in table 1 of part 153 of this chapter; and

(c) Each substance that is identified as an NLS in a written permission issued under § 153.900(d) of this chapter.

10. Add § 4.03–65 to read as follows:

**§ 4.03–65 Significant harm to the environment.**

*Significant harm to the environment* means—

(a) In the navigable waters of the United States, a discharge of oil as set forth in 40 CFR 110.3 or a discharge of hazardous substances in quantities equal to or exceeding, in any 24-hour period, the reportable quantity determined in 40 CFR part 117;

(b) In other waters subject to the jurisdiction of the United States, including the EEZ—

(1) A discharge of oil in excess of the quantities or instantaneous rate permitted in 33 CFR 151.10 or 151.13 during operation of the ship; or

(2) A discharge of noxious liquid substances in bulk in violation of §§ 153.1126 or 153.1128 of this chapter during the operation of the ship; and

(c) In waters subject to the jurisdiction of the U.S., including the EEZ, a probable discharge of oil, hazardous substances, marine pollutants, or

noxious liquid substances. The factors you must consider to determine whether a discharge is probable include, but are not limited to—

(1) Ship location and proximity to land or other navigational hazards;

(2) Weather;

(3) Tide current;

(4) Sea state;

(5) Traffic density;

(6) The nature of damage to the vessel; and

(7) Failure or breakdown aboard the vessel, its machinery, or equipment.

11. Add § 4.03–70 to read as follows:

**§ 4.03–70 Tank vessel.**

*Tank vessel* means a vessel that is constructed or adapted to carry, or that carries, oil, hazardous substances, marine pollutants, or noxious liquid substances, in bulk as cargo or cargo residue.

**§ 4.05–1 [Amended]**

12. In § 4.05–1, in paragraph (a)(2), remove the number “(7)” and add, in its place, the number “(8)”; and add paragraphs (a)(8) and (c) to read as follows:

**§ 4.05–1 Notice of marine casualty.**

(a) \* \* \*

\* \* \* \* \*

(8) An occurrence involving significant harm to the environment from a discharge, or probable discharge, caused by damage to the vessel or its equipment.

(b) \* \* \*

(c) Except as otherwise required under this subpart, a report made per 33 CFR 153.203, 40 CFR 117.21, or 40 CFR 302.6 satisfies the immediate notification requirement of this section only if the marine casualty results in significant harm to the environment as defined by 46 CFR 4.03–65.

13. Add § 4.05–2 to read as follows:

**§ 4.05–2 Incidents involving foreign tank vessels.**

(a) *Within the navigable waters of the United States, its territories, or possessions.* The marine casualty reporting and investigation criteria of this part apply to foreign tank vessels operating on the navigable waters of the United States, its territories, or possessions. A written marine casualty report must be submitted under § 4.05–10 of this chapter.

(b) *Outside the U.S. navigable waters and within the Exclusive Economic Zone (EEZ).* The owner, agent, master, operator, or person in charge of a foreign tank vessel involved in a marine casualty must report under 33 CFR 151.15, immediately after addressing

resultant safety concerns, whenever the marine casualty involves, or results in—

(1) Material damage affecting the seaworthiness or efficiency of the vessel; or

(2) An occurrence involving significant harm to the environment as a result of a discharge, or probable discharge, resulting from damage to the vessel or its equipment. The factors you must consider to determine whether a discharge is probable include, but are not limited to—

(i) Ship location and proximity to land or other navigational hazards;

(ii) Weather;

(iii) Tide current;

(iv) Sea state;

(v) Traffic density;

(vi) The nature of damage to the vessel; and

(vii) Failure or breakdown aboard the vessel, its machinery, or equipment.

Dated: October 24, 2000.

**Joseph J. Angelo,**

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

[FR Doc. 00-27943 Filed 11-1-00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-00-227]

RIN 2115-AA97

#### Safety Zone: Coast Guard Activities New York Annual Fireworks Displays

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish 12 permanent safety zones for annual fireworks displays located in the Port of New York/New Jersey. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in a portion of the affected waterways.

**DATES:** Comments and related material must reach the Coast Guard on or before December 18, 2000.

**ADDRESSES:** You may mail comments and related material to Waterways Oversight Branch (CGD01-00-227), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents

indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354-4012.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-00-227), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### Background and Purpose

The Coast Guard proposes to establish twelve permanent safety zones, in eight separate locations, that will be activated for fireworks displays occurring at the same location and time on an annual basis. The eight proposed locations are north of Bar Beach in Hempstead Harbor; Pier 14, Manhattan, in the East River; Highlands, NJ on Sandy Hook Bay; Kingston, NY on Rondout Creek; Tottenville, Staten Island, in the Arthur Kill; Red Bank, NJ on the Navesink River; the Burlington Bay Breakwater, VT; and Rensselaer, NY on the Hudson River. There are four annual fireworks displays at the proposed location off Pier 14 in the East River and two annual displays at the proposed location in Hempstead Harbor. Establishing permanent safety zones by notice and comment rulemaking gives the public the opportunity to comment on the

proposed zones, provides better notice than promulgating temporary rules annually, and decreases the amount of annual paperwork required for these events. The Coast Guard has received no prior notice of any impact caused by the previous events.

#### Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 165.161 by adding six new locations, revising the effective dates for two current locations, and removing three locations from the section because they are now permanent fireworks safety zones regulated by 33 CFR 165.168. The two current locations with revised effective dates are Highlands, NJ, and Kingston, NY. The three locations that are being removed are Glen Cove, NY, Yonkers, NY, and Elizabeth, NJ.

The proposed sizes of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 6-12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in these areas. The twelve proposed safety zones are:

#### North Hempstead, NY Fireworks, Hempstead Harbor

The proposed safety zone includes all waters of Hempstead Harbor within a 300-yard radius of the fireworks barge in approximate position 40°49'54"N 073°39'14"W (NAD 1983), about 360 yards north of Bar Beach, Hempstead Harbor. There are two annual fireworks displays in Hempstead Harbor. Aside from being on different days, the proposed safety zone for each display is the same. The proposed safety zone is effective annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Friday before Memorial Day and the Saturday after Labor Day. If the event is cancelled due to inclement weather, then this proposed safety zone is effective from 8 p.m. (e.s.t.) until 1 a.m. (e.s.t.) on the Saturday before Memorial Day and the Sunday after Labor Day. The proposed safety zone closes a portion of southern Hempstead Harbor and would prevent marine traffic from transiting a portion of this area. Vessel traffic will be able to transit through the northern 6,000 yards of Hempstead Harbor as this location is in the extreme southern end of Hempstead Harbor. It is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area.