DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[CGD 94–032 and 94–048]

RIN 2115–AE87 and 2115–AE88

Tank Vessel and Facility Response Plans, and Response Equipment for Hazardous Substances

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is soliciting comments relating to proposed regulations requiring response plans for: certain tank vessels operating on the navigable waters of the United States or any marine transportation-related (MTR) facility that, because of its location, could reasonably be expected to cause substantial or significant and substantial harm to the environment by discharging a hazardous substance. These regulations are mandated by the Oil Pollution Act of 1990 (OPA 90), which requires the President to issue regulations requiring the preparation of hazardous substance response plans. The purpose of requiring response plans is to minimize the impact of a discharge or release of hazardous substances into the navigable waters of the United States.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council [G–LRA–2/3406] (CGD 94–032, 94–048), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LT Cliff Thomas, Standards Evaluation and Development Division (G–MES), (202) 267–1099.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in the early stages of this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this specific advance notice (CGD 94–032, 94–048), and the specific section of the action being addressed or the issue to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. All comments will be considered in drafting the notice of proposed rulemaking.

The Coast Guard plans to hold a public meeting in Washington, DC regarding this proposed rulemaking between 45 to 60 days after publication of this advance notice of proposed rulemaking (ANPRM). This meeting will be conducted for the purpose of receiving views on what should be regulated and what appropriate regulations would be. The date and time will be announced by a later notice in the Federal Register. Persons may request additional public meetings by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a meeting would be beneficial. If it determines that an additional opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold another public meeting at a time and place announced by a later notice in the Federal Register.

Drafting Information. The principal persons involved in drafting this document are LT Cliff Thomas, Standards Evaluation Division, (G–MES), LCDR Walter (Bud) Hunt, Response Division, (G–MRO), and Jacqueline Sullivan, Project Counsel, Office of the Chief Counsel.

Background and Purpose

1. General

Section 311(j)(5) of the Federal Water Pollution Control Act (FWPCA) [33 U.S.C. 1321(j)(5)], as amended by section 4202(a) of OPA 90, requires owners or operators of tank vessels, offshore facilities, and onshore facilities that could reasonably by expected to cause substantial harm to the environment to prepare and submit plans for responding, to the maximum extent practicable, to a worst case discharge, or a substantial threat of such a discharge, of oil or a hazardous substance. Section 4202(b)(4) of OPA 90 establishes an implementation schedule for these requirements with regard to oil. Under section 4202(b)(4), an owner or operator of a tank vessel or facility for which a response plan was required under 33 U.S.C. 1321(j)(5) and which handled, stored, or transported oil was required to be operating in compliance with an approved response plan by August 18, 1993. However, section 4202(b)(4) did not establish a compliance date requiring response plans for hazardous substances. For the purposes of this ANPRM, discharge and release are synonymous.

2. Oil Response Plan Regulations

The Coast Guard issued two separate interim final rules (IRS) on February 5, 1993: one requiring response plans for tank vessels carrying oil in bulk as cargo (VRP IFR) [33 CFR 155] and another requiring response plans for MTR facilities that handle, store, or transport oil in bulk (FRP IFR) [33 CFR 154]. These IFRs define many concepts such as ''marine transportation-related facility,'' ''maximum extent practicable,'' and ''worst case discharge.'' The rules also provide a specific format for response plans; however, they allow for deviations from this format as long as the required information is included and there is a cross reference sheet identifying its location. The Coast Guard is considering using these concepts or modifying them as necessary in the regulations for response plans for hazardous substances.

3. Tank Vessels

The VRP IFR for oil uses the definition of ''tank vessel'' in 46 U.S.C. 2101. The same definition applies for purposes of implementing the OPA 90 provisions for hazardous substance response plans. This definition applies the requirement for hazardous substance response plans to all tank vessels that carry hazardous substances in bulk as cargo. Offshore supply vessels (OSVs) and certain fishing and fish tender vessels are exempt from the requirements for hazardous substance response plans because, in accordance with section 5209(b) of the Coast Guard Authorization Act of 1992 [Pub L. 102–587, 106 Stat. 5039 at 5076], they are not considered tank vessels for the purposes of any law.

The VRP IFR for oil establishes three categories for tank vessels: manned vessels carrying oil as a primary cargo, unmanned tank barges carrying oil as a primary cargo, and vessels carrying oil as a secondary cargo. The Coast Guard is considering applying this scheme for categorizing tank vessels to regulations requiring hazardous substance response plans.

4. Marine Transportation Related Facilities

OPA 90 requires hazardous substance response plans for any offshore facility or any onshore facility that, because of its location, could reasonably be expected to cause substantial or significant and substantial harm to the environment by discharging a hazardous substance. In Executive Order (E.O.) 12777, the President divided the responsibility for implementing the provisions of OPA 90 regarding hazardous substance response plans among various Federal agencies. Through a series of delegations, the Coast Guard was granted the authority to implement hazardous substance response plan requirements for fixed and mobile onshore MTR facilities and for deepwater ports. The Environmental Protection Agency (EPA) was granted the authority to regulate fixed onshore non-transportation-related facilities. The Research and Special Programs Administration (RSPA) was granted the authority to regulate onshore non-marine transportation-related facilities (i.e., pipelines, motor carriers, and railways). The Department of Interior's Minerals Management Service (MMS) was granted the authority to regulate offshore facilities and associated pipelines, other than deepwater ports subject to the Deepwater Ports Act of 1974.

That segment of the MTR facility that is over water is considered to be an ''offshore facility'' under the FWPCA. Under E.O. 12777, this segment is under the purview of MMS. A memorandum of understanding (MOU) between the Department of Interior (DOI), Department of Transportation (DOT), and the EPA establishing Federal jurisdictional boundaries for offshore facilities became effective on February 3, 1994 [59 FR 9494; February 28, 1994]. To avoid any confusion caused by the definition of ''offshore facility'', MMS coordinated an effort to establish jurisdictional boundaries for oil spill prevention and control, response planning, and response equipment inspection activities. The Secretary of the Interior redelegated DOI's functions under section 2(i) of E.O. 12777 to give the EPA jurisdiction over non-transportation-related offshore facilities landward of the coast line and to give DOT jurisdiction over transportation-related offshore facilities located landward of the coast line. This MOU does not include jurisdictional boundaries for oil spill financial responsibility.

The FRP IFR for oil defines an MTR facility as any onshore facility, including piping and structures used for the transfer or oil to or from a vessel and any deepwater port subject to regulation under 33 CFR part 150. This definition includes not only large fixed onshore facilities but also tank trucks, marinas, and railroad tank cars that transfer oil to or from vessels where the vessel has a capacity of 250 barrels of oil or more. This definition, modified by substituting the phrase ''hazardous substance'' for the word ''oil'', could be applied to regulations requiring hazardous substance response plans.

As Coast Guard-regulated fixed onshore MTR facility is generally a segment of a larger facility or complex. The FRP IFR for oil describes a complex as a facility that contains portions which are regulated by two or more Federal agencies. Onshore non-transportation related fixed facilities, which can be part of a complex, are already covered by a web of existing statutes and regulations at the Federal, state, and local levels that address preparedness for, and response to, hazardous substance releases. One of the purposes of this ANPRM is to address any potential gaps in the coverage of these facilities and to prevent imposing duplicative, overlapping, or conflicting regulations.

OPA 90 makes the distinction between onshore facilities that could reasonably be expected to cause substantial harm to the environment (substantial harm facilities) and facilities that could reasonably be expected to cause significant and substantial harm to the environment (significant and substantial harm facilities). Response plans must be prepared and submitted for both types of MTR facilities; however, response plans for significant and substantial harm MTR facilities also must be reviewed and approved by the Coast Guard.

Under the FRP IFR for oil, all MTR facilities, including mobile facilities, that are capable of transferring oil in bulk to or from vessels with a capacity of 250 barrels or more, and MTR facilities that are specifically so designated by the Coast Guard Captain of the Port (COTP) are classified as substantial harm facilities. However, within this set of substantial harm facilities, there is a subset of significant and substantial harm facilities. Significant and substantial harm facilities are fixed onshore MTR facilities, capable of transferring oil in bulk to or from vessels with a capacity of 250 barrels or more, deepwater ports, or facilities that are specifically so designated by the COTP. Mobile MTR facilities are not considered to be significant and substantial harm facilities unless so designated by the COTP.

The terms substantial harm facility and significant and substantial harm facility, as defined in the FRP IFR for oil, could be used in the FRP response plan regulations for hazardous substances if the phrase ''hazardous substances'' were substituted for the word ''oil'' in the definitions of those terms.

The Coast Guard considered developing criteria for designation of facilities that handle, store, or transport hazardous substances as substantial harm and as significant and substantial harm facilities that would be different from those criteria used in the oil FRP IFR. The criteria considered would reflect the prospect that discharges of hazardous substances present a different type and degree of potential damage to human health and the environment than oil discharges.

EPA uses the concept of a ''reportable quantity'' to set the amount of a discharge of a hazardous substance which requires the releaser to report the discharge to the government. Section 117.1 of 40 CFR defines ''reportable quantity'' as that quantity that may be harmful and is a violation of section 311(b)(3) of the FWPCA [33 U.S.C. 1321(b)(3)] when discharged into or upon navigable waters, adjoining shorelines, the contiguous zone, or in conjunction with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331, *et seq.*] or Deepwater Ports Act of 1974 [33 U.S.C. 1501 through 1524]. Table 117.3 of 40 CFR lists the reportable quantities of substances designated as hazardous substances under section 311(b)(4) of the FWPCA [33 U.S.C. 1321(b)(4)].

One criterion considered was to designate an MTR facility that handles, stores, or transports a hazardous substance in an amount exceeding the reportable quantity of that hazardous substance as a substantial harm facility. A criterion considered in designating significant and substantial harm facilities was to identify facilities that handle, store, or transport hazardous substances above 10 times the reportable quantity. Alternately, facilities could be designated as significant and substantial harm facilities if they handle, store, or transport hazardous substances 100 times above the reportable quantity.

Using the concept of a reportable quantity to define what constitutes a substantial harm facility, and distinguishing it from a significant and substantial harm facility has the advantage of building a regulatory

structure with a concept that incorporates quantifiable values that already exist and are based on rational decisions through the rulemaking process. The added advantage is that the public, industry, and Coast Guard are familiar with these concepts. However, it may also result in selection criteria that are unnecessarily complicated and that are not consistent with those established in the FRP IFR for oil. Additionally, the reportable quantity concept may not be applicable to non-FWPCA hazardous chemicals. It is also not clear that using this criteria will appreciably increase the likelihood of predicting the harm that may occur to the environment in the event of a discharge of hazardous substances from the MTR portion of a complex facility.

The applicability criteria established in 33 CFR 154.1015 for the FRP oil regulations will be considered in drafting hazardous substances response planning regulations. These criteria build on two existing regulatory regimes which include pollution prevention regulations for oil and hazardous substances and response planning regulations for oil spills.

The applicability in 33 CFR 154.1015 is based on the ability of a facility to transfer to or from a vessel with a capacity of 250 barrels or more. The determination of substantial harm and significant and substantial harm is associated with the capacity of an MTR facility and its proximity to navigable waters, adjoining shorelines, or the exclusive economic zone (EEZ), as well as other factors such as a facility's proximity to public and commercial water supply intakes and to areas of economic importance and environmental sensitivity. Such determining factors are as relevant for hazardous substances as they were for oils.

Using the FRP applicability for oil for hazardous substances would provide that all MTR facilities that are capable of transferring to or from a vessel with a capacity of 250 barrels or more could reasonably be expected to experience a release of a hazardous substance, into or on the navigable waters, adjoining shorelines, or EEZ, which would result in substantial harm to the environment. All MTR facilities would be classified as substantial harm facilities. Fixed MTR facilities would be classified as significant and substantial harm facilities. As in the FRP IFR, the COTP would have the authority to upgrade an MTR facility classification to substantial harm or significant and substantial harm. An owner or operator of an MTR facility who does not agree with the initial classification would be provided with a process to request review of the MTR facility's classification by the COTP using the appeal process established in 33 CFR 154.1075.

5. Defining Hazardous Substances

OPA 90 does not define the term ''hazardous substance,'' but relies on the existing definition of hazardous substance in section 311(a) of the FWPCA [33 U.S.C. 1321(a)]. Section 311(a) defines ''hazardous substance'' as ''any substance designated pursuant to subsection (b)(2) [33 U.S.C. 1321(b)(2)] of this section.'' Under section 311(b)(2), the EPA Administrator is tasked with developing, issuing, and revising a list of hazardous substances which may affect natural resources or present imminent and substantial danger to public health or welfare, including but not limited to fish, shellfish, wildlife, shorelines, and beaches. The EPA Administrator has designated 296 chemicals as hazardous substances under the FWPCA. The list of hazardous substances is located at 40 CFR part 116.

Section 1321(j)(5) of title 33 of the U.S.C., as amended by section 4202(a) of OPA 90, requires the Coast Guard to issue response plan regulations for those hazardous substances designated under the FWPCA. The Coast Guard notes that a number of dangerous chemicals other than those designated as hazardous substances are carried in bulk as cargo in the marine environment.

The International Maritime Organization (IMO) has begun to address response plan requirements for hazardous chemicals. Its intention is to use the basic guidelines for vessels contained in Regulation 26 of Annex I of MARPOL as a model for such requirements. The approach proposed here is consistent with that under consideration by IMO.

6. Maximum Extent Practicable and Worst Case Discharge

OPA 90 requires vessels and facilities to prepare and submit plans for responding, ''to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge.'' For regulatory purposes, both maximum extent practicable and worst case discharge are defined in the VRP and FRP regulations for oil. These concepts could be applied to the requirements for response plans for hazardous substances.

For vessels, the worst case discharge is defined at 33 CFR 155.1020 as ''a discharge in adverse weather conditions of a vessel's entire oil cargo.'' For facilities, the worst case discharge is defined to mean ''in the case of an onshore facility and deepwater port, the largest foreseeable discharge [of oil] in adverse weather conditions * * *'' The FRP IFR provides at 33 CFR 154.1029 a formula for calculating the worst case discharge for each facility. By substituting the phrase ''hazardous substances,'' in lieu of ''oil'', the definitions of worst case discharge for vessels and facilities could be applied to the hazardous substance regulations.

For vessels and facilities, maximum extent practicable is ''the planned capability to respond to a worst case discharge in adverse weather.'' Maximum extent practicable is tied to a quantity of equipment and personnel needed to respond to a worst case discharge. It recognizes the limits on available current technology and private response capabilities and places a limit or cap on the worst case discharge volumes for which an owner or operator must plan to respond. However, this cap does not limit the amount of response resources which owners or operators may have to provide during an actual spill response.

For oil, planning to respond to the maximum extent practicable generally implies planning for the containment and recovery of spilled oil. However, the Coast Guard recognizes that the concept of containment and recovery does not apply to all hazardous substances. Some hazardous substances that are released in the water will not be recoverable. For the hazardous substance regulations, planning to respond to the maximum extent practicable will require planning to protect the public health and safety, facility and vessel personnel, responders, and the environment. This protection may require planning for actions other than containment and recovery of discharged hazardous substances. Through rulemaking, the Coast Guard would be able to determine what types of response strategies would be required to address releases of the various types of hazardous substances. The Computer-Aided Management of Emergency Operations (CAMEO) appears to be the most effective method for determining the appropriateness of a response to a hazardous substance release. CAMEO is a computer program used by many response organizations to properly prepare for and respond to a hazardous substance release. It was developed by the National Oceanic and Atmospheric Administration (NOAA), EPA, and the National Safety Council. It is kept current by frequent updates, is widely used, and is readily available.

7. Average Most Probable Discharge and Maximum Most Probable Discharge

Although OPA 90 requires the issuance of regulations that address only the worst case discharge from a vessel or a facility, the VRP and FRP IFRs for oil require owners or operators to plan also for the average most probable discharges and the maximum most probable discharges. These concepts were developed to address the majority of the spills that occur on vessels and at facilities—spills which are significantly lower in volume than the worst case discharge volume required to be addressed in response plans by OPA 90.

In the VRP IFR for oil, the average most probable discharge is defined as a discharge of 50 barrels of oil from the vessel during transfer operations. The maximum most probable discharge is a discharge of (1) 2,500 barrels of oil for vessels with an oil cargo capacity equal to or greater than 25,000 barrels; or (2) 10 percent of the vessel oil cargo capacity if less than 25,000 barrels.

If the FRP IFR for oil, the average most probable discharge is defined as a discharge of the lesser of 50 barrels or 1 percent of the volume of a worst case discharge. The maximum most probable discharge is the discharge of the lesser of 1,200 barrels or 10 percent of the volume of a worst case discharge.

The concepts for the average and maximum most probable discharge in the VRP and FRP IFRs for oil could be applied to the regulations requiring response plans for hazardous substances; however, the definitions of the terms may need to be modified to specifically address the differences inherent in hazardous substances. These definitions in the oil regulations are based on historical spill data of the volumes of oil discharged into the marine environment. For hazardous substance response plan regulations, the definitions may need to be modified to reflect the historical data for the volumes of hazardous substances that have been released in the marine environment provided that the data is reliable.

8. Other Response Plan Requirements

Section 4202(a) of OPA 90 requires both oil and hazardous substance response plan regulations to address issues such as plan review and approval; consistency with the National Contingency Plan and Area Contingency Plans; identification of the qualified individual; identification by contract or other approved means of private response resources; description of training, equipment testing, drills, and responsibilities of vessel and facility personnel; periodic updating of plans; and resubmission and approval after each significant change of a plan. These issues and others (i.e., plan format) are addressed in the VRP and FRP IFRs for oil and could be handled similarly for the hazardous substance response plan regulations.

9. Developing Effective Response Plans

A key element in developing effective response plans for hazardous substances is the development of an approach for addressing the different types of hazardous chemicals. In addition to the 296 hazardous substances regulated by the FWPCA, there are a number of additional hazardous chemicals that are not designated as hazardous substances by the EPA under FWPCA but that are transported in bulk in the marine environment. Effective response planning should include all hazardous chemicals carried in bulk, not just those determined as hazardous substances by the EPA. The Coast Guard is interested in the views of the regulated community and the general public with respect to response plans for hazardous chemicals not regulated under the FWPCA.

Discussion of Areas of Regulation Under Consideration

Regulations covering the following areas are being considered to implement the response plan requirements of section 311(j) of the FWPCA. Comments and suggestions from interested parties are invited.

1. Response Plans

(a) Response plans for MTR facilities would be submitted to the cognizant Captain of the Port (COTP) for approval.

(b) Response plans for vessels would be submitted to the Commandant (G–MEP), U.S. Coast Guard Headquarters, Washington, DC for approval.

(c) Each plan may be required to contain the following information:

—Emergency notification procedures.
—Vessel-specific or facility-specific information.
—Name of qualified individual.
—List and location of release response and fire extinguishing equipment (including equipment on board the vessel or equipment located at the facility).
—Response personnel, job descriptions for key positions, and their training.
—Cargo or commodity hazard identification.
—Emergency response guidelines for each hazardous substance (i.e., containment, cleanup, or other appropriate response measures).
—Emergency response guidelines for different scenarios (i.e., large and small, fires and explosions, collision, grounding, salvage operations, piping failure, releases in sensitive or populated areas, offshore and shoreside releases, etc.).
—Salvage operations (vessels only).
—Lightering capabilities (vessels only).
—Waste disposal.
—Worker health and safety.
—Threats to environment or public health and safety.
—Identification of sensitive areas and resources to protect sensitive areas (facilities only).

(d) Response plans would be required to be consistent with the National Contingency Plan (NCP) [40 CFR part 300], as required by 33 U.S.C. 1321(c)(2), and the Area Contingency Plan (ACP) as required by section 311(j)(4) of the FWPCA [33 U.S.C. 1321(j)(4)], as amended by section 4202(a) of OPA 90.

All plans may be required to follow a general format. Certain aspects of the response plan for vessels, such as on board emergency response procedures would be ''generic'' in form, regardless of the vessel's port of call. These generic aspects would form the main ''core'' of the response plan. Information that is unique to a port of call, however, such as clean up contractors or local contracting representatives, would be included in the response plan as appendices.

(e) A qualified individual would have to be identified in the response plan. A ''qualified individual'' is a representative of a vessel or facility with written authority to engage in contracting with response companies and to activate necessary funds from the owner or operator to carry out cleanup activities. This individual should have sufficient training to direct response contractors pending the arrival of a company representative. The qualified individual must have the means for immediate communication with the appropriate Federal official and the persons providing personnel and equipment for release response.

(f) A communications network, such as a release response telephone list, would be required to identify which parties must be contacted (i.e., Federal agencies, contractors, a call-up tree) and how those communications would be established.

(g) Vessel and facility owners or operators would be required to identify and ensure by contract or other approved means, the availability of private personnel and equipment necessary to respond to a release. When

appropriate, the Coast Guard would provide guidelines regarding what type and amounts of equipment are required for an average most probable, maximum most probable, and worst case discharge.

The Coast Guard would maintain an oversight and enforcement role in verifying the contractual availability of equipment and personnel between pollution contractors and owners or operators of tank vessels or facilities. The local COTP representative would determine that local contractors possess the necessary qualifications and resources to address hazardous substance releases for which they are contracted. In addition, the Coast Guard could review the contract arrangements between the vessel or facility and contractor for the interim period when the response plans are submitted but not yet approved.

(h) The plan would be required to address training, equipment testing, periodic unannounced drills, and the response actions of vessel or facility personnel. The regulations would specify criteria describing acceptable levels for approval. For vessels, response actions and persons assigned would be listed in the ship's station bills and muster list, which is currently required under 46 CFR subpart 35.10—Fire and Emergency Requirements.

(i) Response plans would be submitted for initial approval as well as for approval of each significant change. Significant changes would include changes in a vessel's or facility's configuration; changes in hazardous substance handled, stored, or transported; changes in the name and authority of a person in charge; changes of the owners or operators (depending on who received approval of the plan); or changes in the identification of cleanup operators.

(j) Response plans would be required to be updated periodically.

2. Response Equipment

The response planning requirements for the response equipment would address the following areas:

(a) The type, quantity, and capacity of response equipment to be carried on tank vessels or staged at locations ashore.

(b) The periodic inspection of response equipment, including the standards of inspection.

(c) The method for enforcement, whether through required recordkeeping or other means.

The regulations regarding vessel and facility response plans for discharges of hazardous substances may closely parallel those regulations for vessel and facility response plans for discharges of oil. Because the physical properties of these various hazardous substances are different from those of oil, alternative cleanup measures will need to be considered.

3. Federal Response and Contingency Plan Requirements

OPA 90 is the latest of a series of statutes that regulate hazardous chemicals. An onshore facility is required to comply with numerous planning requirements associated with the handling, storage, transportation, and manufacturing of various hazardous chemicals. The following discussion is a brief summary of the various Federal planning requirements for hazardous chemicals.

Section 311(j)(5)(c) of the FWPCA [33 U.S.C. 1321(j)(5)(c)], as amended by the Oil Pollution Act of 1990 (OPA 90), sets forth certain minimum requirements for vessel and facility response plans for FWPCA hazardous substances. The plans must—

—Be consistent with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and Area Contingency Plans (ACPs);

—Identify the qualified individual having full authority to implement response actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing response personnel and equipment;

—Identify and ensure by contract or other approved means the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

—Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent a discharge or the substantial threat of a discharge;

—Be updated periodically; and

—Be resubmitted for approval of each significant change.

In the case of onshore facilities, the OPA 90 Conference Report recognizes that a ''substantial number of facilities that handle, store or transport hazardous substances are subject to emergency planning requirements under the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Occupational Safety and Health Act, and other Federal statutes.'' [H.R. Rep. No. 101–653, 101st Cong. 2nd Sess. 1990 at p. 151] Additionally, the Conference Report recognizes that chemical emergency planning requirements are in effect for communities under the Emergency Planning and Community Right to Know Act (EPCRA). The Report also states that the President should select onshore facility response plans in a manner that will avoid duplicative or conflicting response plan review requirements and should ensure that such plans are coordinated with the community emergency planning effort under EPCRA.

Resource Conservation and Recovery Act (RCRA)

EPA regulations at 40 CFR part 264, subpart D issued under RCRA establish requirements for owners and operators of hazardous waste facilities to use in developing facility-specific contingency plans. The plans must include response procedures; a list of all persons qualified to act as a facility emergency coordinator; a list of all emergency equipment and, when required, decontamination equipment at the facility; evacuation plans, when evacuation could be necessary; and arrangements upon which local police departments, fire departments, hospitals, contractors, and State and local emergency response teams have agreed to coordinate emergency services. The regulations pertain to facilities that treat, store, or dispose of hazardous wastes as defined in 40 CFR 261.3. Hazardous wastes include characteristics wastes (*see* 40 CFR part 261, subpart C) and listed wastes (*see* 40 CFR part 261, subpart D).

EPCRA or Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA)

EPCRA requires Local Emergency Planning Committees (LEPCs) to develop local emergency response plans for their community and review them at least annually. Under EPCRA, facilities are required to notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) if they have ''extremely hazardous substances'' (*see* 40 CFR part 355 for a list of the 360 ''extremely hazardous substances'') present above threshold planning quantities. In addition, upon request of the SERC or LEPC, the facility is required to provide the LEPC with any information necessary to develop and

implement the LEPC plan. Local emergency response plans must identify regulated facilities; describe procedures, equipment, and personnel to respond to releases; and include evacuation plans. Because of this requirement that certain facilities participate in emergency planning under EPCRA, it is likely that some overlap may exist with OPA 90 response plan requirements. In addition, under some state EPCRA laws facilities are required to prepare contingency plans.

Clean Air Act

Under section 112(r) of the Clean Air Act (CAA), as amended, owners and operators of stationary sources with ''regulated substances'' above specified threshold quantities will be required to prepare risk management plans (RMPs), which must include a hazard assessment (including, among other things, an evaluation of worst-case accidental releases), a prevention program, and a response program. Owners and operators are to provide a copy of the RMPs to the State, local planning and response authorities, and the Chemical Safety and Hazard Investigation Board. The list of ''regulated substances'' promulgated under section 112(r) authority includes a diverse array of toxins (77), flammables (63), and high explosives [*see* 59 FR 4493; January 31, 1994].

Section 112(r)(7) of the CAA requires that the hazard assessment evaluate worst case accidental releases, estimate potential release quantities, and determine downwind effects including potential exposures to affected populations. Owners or operators must also develop an emergency response program that includes specific actions to be taken in response to a release including procedures for notifying the public and response agencies, emergency health care, and employee training measures. EPA is currently developing regulations to implement the new CAA RMP requirements. In addition, some states already have RMP rules in place that require facilities to develop emergency plans.

In addition, section 112(r)(1) of the CAA, as amended, indicates that stationary sources have a general duty in the same manner and to the same extent as under the Occupational Safety and Health Act to—

—Identify hazards that may result from accidental releases of regulated substances or other extremely hazardous substances;

—Design and maintain a safe facility, taking such steps as are necessary to prevent releases; and

—Minimize the consequences of accidental releases which do occur.

Section 112(r)(1) imposes upon owners and operators of facilities emergency response duties for a broad range of hazardous chemicals not restricted to a named list. Also under CAA section 112(r)(9), the EPA Administrator may issue an administrative order to seek such judicial relief as is necessary to abate an actual or threatened accidental release when the Administrator determines there may be an imminent and substantial endangerment to human health or the environment.

Occupational Safety and Health Act (OSHA)

OSHA has several sets of standards that envision some form of emergency response planning for facilities that handle, store, or transport hazardous substances. These requirements are directed mostly at the protection of facility employees and emergency responders. The OSHA Process Safety Management Standard (*see* 29 CFR 1910.119) requires the preparation of emergency response plans under 29 CFR 1910.38(a) or 29 CFR 1910.120 for employers to prevent or minimize the consequences of catastrophic releases of certain chemicals in the workplace. Employers must develop formal process safety management program for facility processes that involve a listed highly hazardous substance at or above the threshold quantity. The list of highly hazardous substances (*see* 29 CFR 191.119) includes 125 toxic and reactive chemicals as well as several mixtures. The program covers employee participation, process safety information, process hazard analysis, operating procedures, training, contractors, pre-start up review, mechanical integrity, hot work permits, management of change, incident investigation, emergency planning and response, and compliance audits.

The EPA/OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard (see 29 CFR 1910.120) establishes requirements for employers and organizations to protect the safety and health of workers involved in such operations. The operations covered by this standard are cleanups at uncontrolled hazardous waste sites, corrective actions and routine hazardous waste operations at RCRA treatment, storage, or disposal (TSD) facilities, and emergency response operations without regard to location. Employers must implement a written safety and health program that includes an organizational work plan, site evaluation and control, information and training, personal protective equipment, monitoring, medical surveillance, decontamination procedures, and an emergency response program. The HAZWOPER list of substances is broad and includes all 296 FWPCA hazardous substances.

Coordination of Planning Requirements

The issue of coordinating multiple contingency planning requirements in an attempt to minimize duplication on the regulated community is a focal point of the recently published Presidential review of Federal agency authorities and coordination responsibilities for release prevention, mitigation, and response required by section 112(r)(10) of CAA. EPA's Chemical Emergency Preparedness and Prevention Office, in cooperation with the National Response Team, conducted a study titled *A Review of Federal Authorities for Hazardous Materials Accident Safety* (EPA550–R–93–002) to fulfill the Congressional mandate. The review concludes that, while achieving its statutory goals, the existing regulatory scheme is both complex and costly.

With respect to contingency planning, the report notes that the previously mentioned statutes were enacted independently of one another resulting in inconsistent components in the regulatory process. Some planning requirements are more stringent than others; some require specific technical features; and some require submission of the contingency plans for Federal or State and local review. Also, because different statutes address slightly different hazards using different lists of substances, the number and type of facilities required to develop these plans varies. Moreover, there is seldom harmony in the required formats or elements of particular plans. Although the study team did not find many actual conflicts among planning requirements, there were numerous differences in terminology and emphases: these differences have resulted in facilities preparing multiple plans to ensure compliance.

To provide relief for the redundant and overlapping federal response planning requirements faced by facility operators, under the leadership of the Environmental Protection Agency (EPA), the National Response Team is producing guidance on an integrated planning approach which would ultimately result in the ability to prepare one plan to cover multiple federal response planning requirements, thereby reducing burden and cost for the regulated community. The ''One Plan'' guidance is being developed

through a cooperative effort among numerous NRT agencies, state and local officials, and industry and community representatives. Response plans developed in accordance with One Plan guidance will be acceptable to the federal agencies responsible for reviewing and/or approving response plans developed to comply with the following regulations:

(a) EPA Oil Pollution Prevention Regulation (Spill Prevention, Control and Countermeasure and Facility Response Plan Requirements)—40 CFR part 112;

(b) MMS Facility Responses Plan Regulation—30 CFR part 254;

(c) RSPA Pipeline Response Plan Regulation—49 CFR part 194;

(d) USCG Facility Response Plan Regulation—33 CFR part 154, Subpart F;

(e) EPA Risk Management Programs Regulation—40 CFR part 68 (proposed);

(f) OSHA Emergency Action Plan Regulation—29 CFR 1910.38(a);

(g) OSHA Process Safety Standard—29 CFR 1910.119;

(h) OSHA HAZWOPER Regulation—29 CFR 1910.120; and

(i) EPA Resource Conservation and Recovery Act Contingency Planning Requirement—40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52.

The integrated contingency planning approach is an effective way to ensure response procedures are coordinated throughout the facility and to avoid duplicative and potentially conflicting plans. The One Plan format does not change the actual planning requirements imposed by federal statute. The Coast Guard fully expects that any future hazardous substance response planning requirements resulting from this ANPRM will be accommodated within a facility's ''One Plan''.

Analysis reveals that there may be a significant degree of overlap between the types of facilities and chemicals that would be regulated under prospective OPA 90 requirements and those under existing response planning requirements. However, the specific intent of OPA 90, with respect to hazardous substances, is to address the discharge or substantial threat of a discharge of a limited number and type of substances (i.e., FWPCA hazardous substances) to U.S. surface waters. The other regulatory programs discussed previously, for the most part, have slightly different emphases in terms of the type of chemicals covered, the primary media considered (e.g., air, land, water), and the general purpose of the regulation (i.e., protection of the environment, protection of workers, etc.).

The existence of these related planning requirements provide an opportunity for the promulgation of regulations which allow a certain degree of flexibility in the way owners or operators meet the OPA 90 statutory requirements. The Coast Guard requests comment on specific examples of how existing Federal and State planning requirements can be shown to satisfy one or more of the OPA 90 mandates. The Coast Guard also requests comment on which OPA 90 requirements may not be adequately addressed in existing plans and how such requirements can be implemented in the least burdensome manner. For example, if the Coast Guard accepted a plan prepared to meet State or other Federal requirements (or the Federal baseline standard mentioned previously) as long as it was adopted to meet OPA 90 requirements and cross-referenced in an appropriate manner, would owners or operators still choose to develop a separate plan?

The Coast Guard will provide the responses to this ANPRM to other Federal agencies so that these agencies may develop options to satisfy the OPA 90 mandate while minimizing the burden on facility owners and operators.

Assessment

At this early stage in the rulemaking process, the Coast Guard anticipates that any final rule may be considered a significant regulatory action under section 3(f) under E.O. 12866. The Coast Guard anticipates that any final rule will also require an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11030; February 26, 1979).

This rulemaking may have a substantial effect on States that have or are developing response plan requirements. It may also affect domestic and international shipment of hazardous substances to and from the United States and may generate substantial public interest and controversy. The primary economic impact of these regulations would be on those tank vessel and facility owners that would have to comply with any new requirements. These vessels would include approximately 270 tank vessels and 540 tank barges carrying hazardous materials: these figures represent the number of these vessels that called in United States waters in 1990. The Coast Guard estimates that this regulation would affect 300 MTR facilities. In addition, these regulations may also impact private hazardous substance release response contractors and spill cooperatives.

Several alternative methods of implementing the rulemaking for vessel response plans have been identified. These include the following: (1) Requiring response plans for specific tank vessels based on factors such as vessel route, capacity, or product carried; (2) requiring generic response plans for all tank vessels, with port specific appendices; and (3) requiring individualized response plans for each tank vessel and each facility.

The full extent of the economic and operational impact cannot be quantified at this time. A primary purpose of this advance notice is to help the Coast Guard to develop the rule and determine the cost of any new requirements, to the extent that they exceed current legal and regulatory requirements or current industry practice. The Coast Guard anticipates that the public response to this advance notice will assist it in writing proposed rule and a draft regulatory impact analysis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) Small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Because specific requirements have not yet been proposed, the Coast Guard is currently unable to determine the effect of regulations upon small entities. Accordingly, an Initial Regulatory Flexibility Analysis discussing the impact of this anticipated rulemaking on small entities has not been prepared. However, the Coast Guard anticipates that there is a potential significant impact on a substantial number of small businesses, small not-for-profit organizations, and State and local governments. The Coast Guard expects that the comments received on this advance notice will assist it in determining the number of affected small entities, and in weighing the impacts of various regulatory alternatives for the purpose of drafting these regulations.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of

Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

The Coast Guard cannot yet estimate the paperwork burden associated with this rulemaking because no regulations have been drafted. However, at a future stage, the Coast Guard may require that tank vessel and facility owners and operators maintain records of response plan approvals and equipment inspections which would be available upon request to the Coast Guard as well as developing and maintaining response plans. The Coast Guard expects that comments received on this advance notice will assist it in estimating the potential paperwork burden, as required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Once estimated, the Coast Guard will submit this proposed recordkeeping requirement to the Office of Management and Budget (OMB) for approval.

Federalism

This advance notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Based on the information available to it at this time, the Coast Guard is unable to determine whether this rulemaking would have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Some standardization of vessel response plan requirements is necessary because affected vessels move from port to port in the national marketplace and separate regulations and plans for each port would be economically burdensome and potentially unsafe.

Some standardization of the MTR facility response plans may also be necessary. MTR facilities may be regulated by other Federal agencies, and some States may impose their own response planning requirements. OPA 90 prohibits Federal preemption. Many facilities operate in the national marketplace and excessive variation in the requirements would be economically burdensome and potentially unsafe. The Coast Guard specifically seeks public comment on the federalism implications of this proposal.

Environment

The Coast Guard considered the environment impact of this anticipated rulemaking and expects that it should have a positive impact on the environment by ensuring that hazardous substance response planning has been conducted by owners or operators of tank vessels and facilities for the purpose of enhancing preparedness to contain and recover releases of these products. Before a proposed rule is published, an environment analysis will be prepared in accordance with Coast Guard requirements, COMDTINST M16475.1B. That document, which will describe the anticipated environmental effects of the proposed rulemaking, will be placed in the docket for inspection or copying at a location indicated in the proposed rule. The Coast Guard invites comments addressing possible effects this proposal may have on the human environment, or on potential inconsistencies with any Federal, State, or local law or administrative determinations relating to the environment. A final determination regarding the possible need for an environmental assessment will be made after receipt of relevant written comments.

Questions

To adequately address the issues discussed in this advance notice, additional information is needed. Responses to the following questions would be particularly useful in developing a future Notice of Proposed Rulemaking (NPRM).

Reponse Plans

1. Are there any historical data existing on hazardous substance discharges in the marine environment (e.g., causes of discharges, resulting injuries or fatalities, number of hazardous substances discharged, volume of discharges, need to evacuate, and resulting natural resource and property damage? If so, where can such data be found? Are there any restrictions on the accessibility of this data?

2. Are there any data regarding the effectiveness of hazardous substance response planning in terms of preventing occurrences of casualties and incidents, reducing the volume of releases after the occurrences of casualties and incidents, improving containment and recovery, if possible, and avoiding injuries and fatalities)?

3. How many companies operate tank vessels that carry, or facilities that store or transport hazardous substances? On the average, how many vessels or facilities are operated by a single company?

4. How should response plans for non-FWPCA hazardous chemicals which are carried in bulk (e.g., noxious liquid substances as listed in Annex II of MARPOL) be addressed?

5. How many different types of hazardous substances are carried during a single voyage? How many different types of hazardous substances are handled, stored, or transported by a single MTR facility?

6. What are appropriate hazardous substance storage and throughout thresholds for selecting facilities that could cause substantial harm to the environment and for selecting the subset of those facilities that could reasonably be expected to cause significant and substantial harm to the environment? Should the Coast Guard use the capacity of a vessel calling at an MTR facility as a means of selecting facilities that could reasonably be expected to cause significant and substantial harm to the environment?

7. Should the CAMEO program be used to determine the appropriate response strategies for the various hazardous substances which may be involved in a potential release? What alternative guidance is available? Would you consider it more appropriate? If so, why?

8. For MTR facilities that are part of an onshore non-transportation related fixed facility complex, are there potential conflicts in the areas of hazardous substances regulated and the amount of a worst case discharge?

9. Are there potential gaps in existing Federal regulatory coverage for hazardous substance response plans for the onshore non-transportation fixed facility portion of an MTR complex?

10. What information should be required in the tank vessel and facility response plans?

11. Should the information provided in response plans for vessels carrying hazardous substances and for facilities handling hazardous substances vary depending on the type of substances transported? How should substances be classified? Should each class of hazardous substance have a different plan? Should vessel owners and facility owners have a separate plan for each product they handle or should they have product groups within the plan? How would response strategies differ for the various types of hazardous substances?

12. Should all FWPCA hazardous substance be regulated at the same threshold or should thresholds for individual substances be set based upon the specific considerations associated with each substance? Should the threshold level be based upon the reportable quantity (i.e., quantities of hazardous substances that may be harmful as set forth in 40 CFR 117.3, the

discharge of which is a violation of section 311(b)(3) of the FWPCA [33 U.S.C. 1321(b)(3)] and requires notice as set forth in 40 CFR 117.21 for the substance) or a multiple of the reportable quantity? What would be an appropriate multiplier for such a determination?

13. How should the concept of ''responding to the maximum extent practicable'' be applied for purposes of planning the response to a worst case discharge of a hazardous substance? Should it be the same for hazardous substances as it is for oil in 33 CFR parts 154 and 155?

14. How many U.S. companies provide response services for hazardous substance releases and in what geographic areas would these services be available? What response capabilities do these services have in terms of amount and type of equipment and personnel available?

15. How should the concept of ''contracts or other approved means'' be applied for the purposes of planning the response to a worst case discharge of a hazardous substance? What aspects of hazardous substance spill response may warrant treatment different form oil spill responses? What role do public responders (e.g., local fire department personnel) play in response to releases of FWPCA hazardous substances and how should their involvement be reflected in the planning requirements?

16. What format should be used for the response plans?

17. For vessel response plans, what information should be required in the ''core plans'' and in port specific annexes?

18. How often should the response plans be reviewed and updated by vessel and facility owners and the Coast Guard? Should there be any other reviewing entity? Should the frequency of review be dependent on the type of substance transported?

19. Where should the response plans be kept on an unmanned tank barge or a tank barge that is at anchor or underway? Should the plans be kept on board a towboat when engaged in towing a barge with a hazardous substance in bulk as cargo?

20. Are there vessels and facilities which have voluntarily prepared response plans addressing a potential release of a hazardous substance? Are there response plans for hazardous substances which were prepared in response to other U.S. or international regulations or policies?

21. Should the owner or operator of a facility that has already prepared an emergency or contingency plan under Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) [Pub. L. 99–499, 100 Stat. 1613] or other applicable statute (EPCRA, RCRA, CAA, and HAZWOPER) be permitted to amend that plan to incorporate hazardous substance response plan provisions to comply with the requirements of OPA 90?

22. If requested, the owner or operator of a facility must submit Tier Two information forms to local authorities with jurisdiction over the facility under Title III of SARA. Could the Title III, Tier Two form be supplemented to comply with the requirements of OPA 90 regulations?

23. Should the term ''qualified individual'' be define differently from its definition in oil response plan regulations? If so, why?

24. In addition to navigating the vessel, should the vessel crew be required to do more than attempt to control or stop the discharge and report it to the proper authorities?

25. Should hazardous substance response contractors listed by a vessel or a facility (as a condition of approval of the vessel's or facility's plan) be required to develop a local response plan consistent with the Area Contingency Plan?

26. How should worst case discharges be determined for an MTR facility? Should it be the same for hazardous substances as it is for oil? If not, upon what should this determination be based? Should worst case discharge quantities be based on probable accident or incident scenarios and resulting releases?

27. How should adverse weather be defined and considered in determining a worst case discharge of a FWPCA hazardous substance? How might weather concerns differ when responding to a hazardous substance discharge versus an oil discharge? For example, could a lack of wind, rain, and strong currents result in a riskier situation when a discharge of a hazardous substance is involved because of the potential for the substance to accumulate due to lack of dispersion?

28. What should the definition of average most probable and maximum most probable discharge be for vessels and facilities?

29. Do discharges that are smaller than a worst case discharge dictate different response strategies and resource commitments?

30. What is an appropriate response action for releases of hazardous substances as defined in the National Contingency Plan [40 CFR 300.5] as minor, medium, major, or catastrophic releases, or for a worst case discharge, as defined in section 311(a) of the FWPCA [33 U.S.C. 1321(a)], as amended by section 4201 of OPA 90? How would the appropriate response action be determined? Would it be measured by distance from the release, distance from the closest equipment launching facility, type of substance discharged, or by another means? Should response action planning requirements reflect consideration of the hazardous substance properties and hazards?

31. Should vessel damage stability and general arrangement plans be maintained off the vessel as well as on board for salvage and firefighting purposes? Where should they be located (i.e., Coast Guard Marine Safety Center, local COTP, classification societies)? How accessible should they be?

32. Should each vessel owner be required to maintain a response plan for each U.S. port of call? Should the vessel owner or agent representative in each port maintain a local plan which would be sufficient for the vessels calling under his control?

33. What involvement, if any, should State or local authorities have in the review or approval of vessel and facility response plans?

34. Using the definition of ''tank vessel'' in 46 U.S.C. 2101, what impact will these regulations have on vessels that carry limited quantities of hazardous substances in bulk as cargo or cargo residue (passenger, cargo, or miscellaneous vessels)? Should any vessels be exempt from these requirements? If so, what types, tonnages, and capacities should these exemptions cover and why?

35. For certain classes of materials should the response plan include evacuation and public notification procedures for areas affected by the release as appropriate? How should plans address threats to public health and safety, including bodies of water used for drinking supplies? How should plans address threats to air quality?

36. Should a facility be required to plan for possible releases of all hazardous substances carried by vessels calling at the facility even if the facility does not typically handle those substances?

37. What type of response equipment should be required at facilities? To what size discharge, if any, should the facility be prepared to respond?

38. Should dispersion modeling (air and water) be required? Should a minimum standard be set? What models are available to estimate the dispersion of hazardous substances in the air or water?

39. Following an incident, what requirements should be in place for

taking samples of the water and the air? Should response plans include requirements for air and water sampling?

Carriage and Inspection of Response and Firefighting Equipment

40. What types and how much hazardous substance response equipment and firefighting equipment currently are carried on board tank vessels or located at facilities?

41. Should all vessels required to have response plans also be required to carry response equipment? Should some vessels be exempt from equipment requirements?

42. What firefighting equipment would be necessary to have on board a vessel or staged at a facility to respond to a possible fire associated with the discharge of hazardous substances? Would the type of equipment needed vary dependent upon the type of substance discharged? What are the various firefighting options?

43. What equipment other than response and firefighting equipment (e.g., transfer equipment, rescue equipment, and monitoring equipment) should be addressed in response plans to prevent or mitigate a potential hazardous substance release?

44. What response equipment is appropriate for vessels or manned tank barges to carry, if any? Would the type of response equipment needed vary dependent upon the type of substances carried?

45. What response equipment should be carried on board unmanned tank barges, if any?

46. What are the appropriate capabilities of the equipment?

47. Should MTR facilities be required to have response equipment staged at the facility?

48. If facilities are not required to stage equipment at the facility, how much time should be allowed to bring response resources to the facility?

49. How large a discharge should the response equipment be capable of handling?

50. What equipment-inspection requirements are appropriate?

51. What equipment needs to be inspected?

52. Should the inspection be the responsibility of the owner or operator and who should be required to maintain a record of that inspection?

53. Should spot inspections of the equipment be made by Coast Guard personnel as part of the vessel and facility inspection?

54. Should third-party inspection be used?

55. What action should be taken if required equipment is missing or in disrepair?

56. What inspection requirements are appropriate for equipment maintained by a cooperative or an independent organization?

57. Should the required equipment be approved by the Coast Guard?

58. Should the area of the vessel's operation or the regional availability of support equipment affect the on board equipment-carriage requirements?

59. Should tank barges in the same tow or fleeting area be permitted to share equipment?

60. How should response equipment be deployed on unmanned tank barges? Who should deploy the response equipment?

61. If containment boom is required, how much should be carried? Should it be sufficient to completely encircle the vessel?

62. Should plans require an assessment of a local port's municipal capabilities to respond to a hazardous substance release, including firefighting capabilities?

63. What involvement, if any, should State or local authorities have in the approval or inspection of response equipment?

64. Are there methods available to rate the capabilities of the response and containment equipment?

65. Should frequency of inspections be the same as in the existing oil response planning regulations?

66. How would compliance with this proposed regulation impact compliance with other existing hazardous substance requirements?

67. Is there sufficient response equipment available to respond to a worse case discharge? What, if any, caps should be placed on equipment requirements?

68. Where is response equipment currently located? How should required response times take into consideration the location of the equipment? Are the response times established in the VRP and FRP IFRs for oil appropriate for hazardous substance response planning in rivers and canals, inland, nearshore, offshore, ocean, and Great Lakes waters? If not, what other response times are appropriate?

Training

69. At the present time, what type of training do vessel and facility personnel receive in the worker safety and response aspects to hazardous substance releases? How many vessel and facility personnel receive such training?

70. What training in the use of response equipment should be required for vessel and facility personnel?

71. Should the Coast Guard or another entity certify providers of this training?

72. Who should be required to have response training (i.e., licensed, unlicensed, deck or engine department personnel on board vessels) among the vessel's crew and the facility's employees?

73. Should mariners be required to have their licenses or merchant mariners' documents endorsed to show that the mariners have completed emergency response training?

74. How can mariners and facility personnel demonstrate completion of emergency response training?

75. What training in the implementation of the required response plans should be included?

76. What specialized firefighting training should be required for the crew of vessels carrying hazardous substances and personnel of facilities that handle, store, or transport hazardous substances? How will the training vary dependent upon the type of substances transported by the vessel or handled, stored, or transported by the facility?

77. What level of training will be required for qualified individuals and responders?

78. Should hazardous substance response contractors be separately classified by the Coast Guard? if yes, what should the criterion be?

Drills

79. Should drills be required in accordance with existing regulations, i.e., as required in 33 CFR parts 154 and 155?

80. Should the Coast Guard adopt the National Preparedness for Response Exercise Program (PREP) guidelines for hazardous substances?

81. Should there be a requirement to maintain a record of drills conducted? Assuming records of drills will be required, where should they be maintained? Should they be maintained on board vessels and at facilities?

82. How should drill performance be measured?

83. What should the drill requirements be and should they be different for different classes of substances?

84. How should drill performance be measured? What should be considered acceptable performance (i.e., notification time, response mobilization time, etc.)?

Economic Issues

85. What would be the economic impact of requiring each tank vessel and facility to develop and implement a hazardous substance release response plan? How would this impact vary

dependent upon the type of hazardous substances transported or handled?

86. How much would it cost to develop a hazardous substance response plan, as described in this ANPRM, for single tank vessel or facility? How would this cost vary depending upon the size and type of tank vessel or facility? How would this cost vary by type of hazardous substance transported, handled, or stored?

87. Would the per vessel or per facility cost to develop a response plan for a fleet or tank vessels or group of facilities be lower than the cost to prepare a response plan for a single vessel or facility?

88. What would be the cost to owners and operators of vessels and facilities to annually review and update response plans?

89. What would be the economic impact for tank vessel or facility owners or operators of maintaining on board or on site specialized firefighting equipment?

90. What would be the economic impact on tank vessel or facility owners or operators of reviewing and updating hazardous substance release response plans?

91. What would be the economic impact on tank vessel or facility owners or operators of maintaining on board or on site hazardous substance release response equipment?

92. What would be the economic impact of these requirements on small entities, as defined by section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)]?

93. What would be the economic impact for tank vessel and facility owners or operators of maintaining contracts with release response companies in each port they utilize?

94. What would be the economic impact on the cleanup industry of enhancing hazardous substance response capabilities?

95. How much would it cost annually for a facility or tank vessel to retain the services of a hazardous substance spill response contractor to address its worst case discharge? How would this cost vary by size and type of facility or vessel?

96. What would be the economic impact of requiring tank vessel and facility owners or operators to train and drill personnel in worker safety and release response?

Comments are not limited to the preceding questions and are invited on any aspect of implementing the response planning requirements for hazardous substance releases and the carriage of response and firefighting equipment.

Dated: April 24, 1996.

Robert E. Kramek,

Admiral, U.S. Coast Guard, Commandant.

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