

Summary of Proposed Federal Comprehensive Oil Spill and Response Plans

On July 13, 2016 the Pipeline and Hazardous Materials Safety Administration (PHMSA), in consultation with the Federal Railroad Administration (FRA) issued a Notice of Proposed Rulemaking (NPRM) regarding Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains. The NPRM proposes to expand the applicability of comprehensive oil spill response plans (OSRPs) so that any railroad that transports a single train carrying 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist must have a current comprehensive written OSRP.

Requirements for Comprehensive Plans: Each plan must be consistent with the National Contingency Plan (NCP) and Area Contingency Plan (ACP) and must (1) address the removal of a worst-case discharge, and the mitigation or prevention of the substantial threat of a worst-case discharge of oil; (2) identify environmentally sensitive or significant areas along the route; (3) describe the responsibilities of the persons involved and of Federal, State, and local agencies in removing a discharge and in mitigating or preventing threat of discharge; and (4) identify the procedures to obtain any required federal and state authorization for using alternative response strategies.

Worst-case Discharge: Railroads must certify that they have private response resources in each response zone necessary to remove a worst-case discharge. PHMSA defines worst-case discharge as “the largest foreseeable discharge in adverse weather conditions.” The largest foreseeable discharge includes discharges resulting from fire or explosion. PHMSA proposes that the worst-case discharge from a train consist is the greater of (1) 300,000 gallons of liquid petroleum oil; or (2) 15% of the total lading of liquid petroleum oil transported within the largest train consist reasonably expected to transport liquid petroleum oil in a given response zone.

Response Resources: The railroad must identify and describe the response resources which are available to arrive onsite within 12 hours after the discovery of a worst-case discharge. The plan must identify (1) methods of initial discharge detection; (2) responsibilities of personnel to initiate and supervise response activities pending arrival of the qualified individual or other response resources; (3) the qualified individual’s responsibilities and authority; (4) procedures for coordinating with the US EPA or Cost Guard On-Scene Coordinator; (5) the oil spill response organization’s responsibilities and authority; and (6) a listing of equipment, supplies, and personnel available during the response.

Notification Procedures: Each railroad must develop and implement notification procedures which provide for: (1) immediate notification of the qualified individual or alternate; (2) a checklist of the notifications required; (3) communication methods by which notifications can be made; (4) circumstances and time frames under which notifications must be made; and (5) the information to be provided in the initial and each follow-up notification. The notification procedures must provide phone numbers at which certain persons can be contacted on a 24-hour basis, including: oil spill response organizations; insurance representatives or surveyors; the National Response Center; federal, state, and local agencies responsible for pollution control; personnel to notify for the activation of equipment and personnel resources.

Training: Railroads must certify that they conducted training to ensure that all railroad employees subject to the plan know their responsibilities and the name and procedures for contacting the qualified individual. Reporting personnel must also know the content of the information summary of the response plan, how to contact the National Response Center, and the notification procedures. Each employee subject to these requirements must be trained once every 5 years, or within 90 days of implementation of a revised plan. Records of training must be maintained by the railroad.

Plan Update Procedures: Each railroad must maintain a copy of the complete plan at the railroad's principal place of business and provide a copy of the core plan and the appropriate response zone appendix to each qualified individual. The information summary must be provided to dispatchers. Each railroad must review its plan in full at least every 5 years from the date of the last approval. In the event of new or different operating conditions or information that would substantially affect the implementation of the response plan, the railroad must immediately modify its plan and submit the change to FRA within 90 days. Examples of changes in operating conditions or information include the establishment of a new route or changes to the name of the oil spill response organization, qualified individual or emergency response procedures, among others.

Approval Procedures: Each railroad must submit a copy of its plan to FRA. If FRA determines that the plan does not meet all of the requirements, FRA will notify the railroad of any alleged deficiencies and provide the railroad an opportunity to respond, including the opportunity for an informal conference. A railroad who disagrees with the FRA determination may petition FRA for reconsideration within 30 days from the date of receipt of FRA's notice. FRA will notify the operator of its final decision. The railroad must comply with the final decision within 30 days of issuance unless FRA allows additional time.