

**Department of Transportation
Office of the Chief Information Officer**

Response Plans for Shipments of Oil

OMB Control No. 2137-0591
Supporting Statement

Introduction

This is to request the Office of Management and Budget's (OMB) renewed three-year approved clearance for the information collection entitled, "Response Plans for Shipments of Oil," OMB Control No. 2137-0591, which is currently due to expire on November 30, 2007.

Part A. Justification.

1. Circumstances that make collection of information necessary.

Congress passed the Oil Pollution Act of 1990 (OPA-90) (Pub. L. 101-380) which amends the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.). OPA-90 is designed "to create a system in which private parties supply the bulk of any equipment and personnel needed for oil spill response in a given area." To assure that entities achieve that capability, section 4202(a)(5)(A) [33 U.S.C. 1321(j)(5)(A)] of OPA-90 specifies:

"The President shall issue regulations which require an owner or operator of a tank vessel or facility¹ described in subparagraph (B) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance."

On October 18, 1991, the President issued Executive Order 12777, Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990, which delegates, to the Secretary, authority to establish "procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities..."

The Secretary redelegated OPA-90 authority to the Administrator, Pipeline and Hazardous Materials Safety Administration (PHMSA) at 49 CFR 1.53. The

1 At Section 1001(24), OPA-90 defines "onshore facility" as any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.

Secretary's redelegation grants the PHMSA Administrator authority to establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges from, and to contain oil and hazardous substances in pipelines, motor carriers, and railways." (49 CFR, Part 130). In addition, the Administrator may require motor carriers and railways to prepare written response plans, and submit them to DOT for review and approval. This information collection supports the Departmental Strategic Goal for Safety. Several years ago major oil discharges damaged the marine environment of the United States.

2. How, by whom, and for what purpose is the information used.

General Requirement for Bulk Carriers.

Pollution Prevention and Response Plans for Shipments of Petroleum Oil in Bulk Packagings Having a Capacity of 3,500 Gallons or More.

Under these regulations, persons transporting oil in a package with a capacity of 3,500 gallons or more must have a written plan that:

- (1) Sets forth the manner of response to discharges that may occur in transportation;
- (2) Takes into account the maximum potential discharge of the contents from the packaging;
- (3) Identifies who will respond to a discharge;
- (4) Identifies the appropriate persons and agencies (including their telephone numbers) to be contacted in regard to such a discharge and its handling, including the National Response Center; and
- (5) For each motor carrier, is retained on file at that person's principal place of business and at each location where dispatching of motor vehicles occurs; and for each railroad, is retained on file at that person's principal place of business and at the dispatcher's office.

Transporters of oil are not required to prepare a separate plan for each cargo tank, tank car, and portable tank under their control. Rather, they may develop nationwide, regional, or other types of generic pollution prevention and response plans.

Since spill response plans generally are not required to be submitted to any organization of the Federal, State or local government, there has been no actual use of the information contained in a spill response plan by the government. Instead, the plans are used exclusively by motor carriers and railroads that

transport oil in the event of an unintended discharge that threatens the marine environment.

Additional Requirements for Carriers of Bulk Packagings Containing Oil (Petroleum or Non-Petroleum) in a Quantity Greater Than 1,000 Barrels (42,000 U.S. Gallons).

Pollution Prevention and Response Plans for Bulk Packagings Containing Oil (Petroleum or Non-Petroleum) in a Quantity Greater than 1,000 Barrels.

Under 33 U.S.C. § 1321(j)(5)(B)(iii) and (D), an owner or operator of a non-marine transportation facility that, because of its location could reasonably be expected to cause “substantial harm” or “significant and substantial harm” to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone, must prepare and submit a response plan to the Secretary. The response plan must, “to the maximum extent practicable,” address both a “worst case discharge” of oil from the facility and “a substantial threat of such a discharge.” Each response plan developed under the cited requirements must:

- (1) Be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;
- (2) Identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (3);
- (3) Identify, and ensure by contract or by other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;
- (4) 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 the discharge, or the substantial threat of a discharge;
- (5) Be updated periodically; and
- (6) Be resubmitted for approval of each significant change.

The primary users of the information are the carriers that transport oil in bulk packagings. To facilitate a rapid and appropriate response to a spill or other potentially threatening situation, carriers must maintain this information at their

principal place of business and at each location where loading or dispatching occurs. Though we cannot predict with certainty when and where specific spills of oil will occur, we can make plausible, nation-wide projections on their likelihood and severity.

To mitigate the adverse impact of actual spills, OPA-90 requires that carriers maintain a minimal level of readiness, which assures their capability to respond to possible incidents rapidly and in an appropriate manner. The essential elements of information required by this regulation are critical to the carrier's ability to demonstrate that capability.

The nature of this information is such that designated personnel engaged in the transportation of oil will know precisely what is expected of them during the prevention, mitigation, and response phases of those operations. Thus, through their crisis contingency plans carrier personnel should be sufficiently aware of the hazards presented by the materials, which they are transporting to (among other things):

- (1) Assist firefighters (and other emergency responders) in assessing the seriousness of the situation;
- (2) Recommend actions which may be taken to prevent, slow, or stop a release of materials from the packaging;
- (3) Provide advice on spill containment and retrieval; and
- (4) Direct the use of private resources to perform response functions that are outside the normal health and safety mission of public sector organizations.

This information is designed to eliminate, to the extent possible, uncertainty on the part of carrier personnel regarding their role and responsibility in potential, and actual, spill scenarios.

3. Extent of automated information collection.

In developing this information collection requirement, the Office of Hazardous Materials Standards recognized that these carriers may also be subject to OPA-90 requirements issued by the Environmental Protection Agency (EPA) for fixed facilities (e.g., storage tanks filled with diesel fuel used to support transportation operations), or another Federal department or agency (e.g., U.S. Coast Guard for mobile marine-transportation related facilities). Also, requirements of EPA and U.S. Coast Guard have common attributes (e.g., persons responsible for responding to spills, impact of spilled material to the environment, etc.) with the transportation-related response plans. Therefore, we do not require a stand-alone capability in the development of the emergency response plan for oil. It is quite

conceivable that the transportation-related aspects of a response plan may be satisfied by the mere addition of an annex to a comprehensive operations plan used at a multi-purpose facility (i.e., a complex).

The information required is particular and unique to each company and may be amenable to the use of improved information, storage, and retrieval technology. For example, the length and content of the response plans are expected to vary considerably depending on the scope of the carrier's operations. Consequently, the use of automated information collection may be used in place of hard-copy editions (e.g., machine readable forms). The Government Paperwork Elimination Act directs agencies to allow the option of electronic filing and recordkeeping by October 2003, when practicable. Electronic filing and recordkeeping is authorized; however, we do not require that they be submitted to us, so it is not applicable.

4. Efforts to identify duplication.

Based on a review performed by PHMSA, much of the required information was new and not currently available. However, some information was required under EPA's Oil Pollution Prevention regulation at 40 CFR part 112 (also known as the Spill Prevention, Control, and Countermeasures (SPCC) program), which applies to onshore, non-transportation-related facilities that: (1) have the potential to discharge oil into the navigable waters or adjoining shorelines of the U.S., and (2) meet certain storage capacity thresholds. Because certain facilities have both transportation- and non-transportation-related components, such as carrier terminals that have storage tanks, these facilities may be subject to both the PHMSA and EPA regulations. Specifically, under the Oil Pollution Prevention regulation, facilities are required to develop an SPCC plan that describes procedures and responsibilities for preventing discharges from storage tanks. In addition to the existing SPCC regulation, EPA issued OPA-90 response plan regulations similar to those required by PHMSA. Certain carriers that operate onshore facilities with associated storage tanks may be affected by both response plan regulations. Although the extent of the overlap between EPA and PHMSA response plan regulations is not calculated, the overlap is estimated to be small.

In addition, the National Response Team has made various plans required by regulatory agencies (e.g., EPA, USCG, PHMSA) more useful by developing a "One-Plan System." This concept resulted in a blending of agency-specific plan formats into a single plan that the facility operator may use to satisfy requirements of all Federal, State and local regulatory authorities.

5. Efforts to minimize the burden on small businesses.

This information collection requirement will not have a significant economic impact on a substantial number of small entities. Because of the nature of this information collection requirement, the level of effort to prepare the response plan

is estimated to vary directly with the size and complexity of the company's operation. As a result, smaller carriers are estimated to incur a lesser burden than larger carriers (i.e., the paperwork burden is not constant across all sizes and types of affected carriers).

Furthermore, in drafting OPA-90, it was clearly Congress' intent that certain small facilities be subject to the same response planning requirements as large facilities. Specifically, in discussing the selection of facilities that could cause "substantial harm" to the environment (i.e., those subject to the information collection activities), the OPA-90 Conference report states:

"The criteria should not result in the selection of facilities based solely on the size or age of storage tanks. Specifically, the selection criteria should not necessarily omit those smaller facilities that are near major drinking water supplies or that are near environmentally sensitive areas." H.R.Rep. No. 101-653, 101st Cong. 2nd Sess. 1991, p. 150.

6. Impact of less frequent collection of information.

The statutory requirements of OPA-90 specify that after August 18, 1993 facility operators (e.g., carriers) may not handle, store, or transport oil unless a response plan is on file. Thus, this information collection requirement provides carriers with an appropriate level of direction and guidance which clearly communicates what they must do to be in compliance with OPA-90. Absent this regulatory direction and guidance, many carriers may determine that the possible consequences of transporting oil in violation of OPA-90 statutory requirements are so severe as to cause them to otherwise suspend that part of their operations.

PHMSA recognizes the need to minimize the burden of any information collection to the extent permitted under the requirements of OPA-90. Section 4202(a)(5)(C)(vi) of OPA-90, requires carriers to maintain a current written response plan, and submit and resubmit for approval, each significant change (49 CFR 130.31(b)(6)). For purposes of this information collection requirement, a carrier is expected to conduct, at least annually, a review of its response plan and revise it, where appropriate.

PHMSA determined that requiring carriers to review and update response less frequently than once a year would undermine the intent of OPA-90, which is to ensure that carriers have an up-to-date plan. For example, contact lists of spill response personnel may require revision every year, and possibly more frequently. Because the majority of information collection activities involve initial preparation of the response plan, reducing the frequency of the annual information collection activities would not significantly reduce the overall burden of the information collection activities required under this regulation.

7. Special circumstances.

This collection of information is generally conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2), with the following qualifications:

- a. Except as noted above concerning requirements for periodic (at least annually) updating of response plans to accurately reflect information like the identification and telephone numbers of response personnel, carriers are not required to report information to the agency more often than quarterly.
- b. This information collection requirement is mandated by a regulation published in the Federal Register on June 17, 1996. Because it is a regulation of general applicability, no respondent, or potential respondents (e.g., new carriers and carriers that are expanding their operation to include bulk transportation of oil), may rightfully claim that it must provide the required information in fewer than 30 days.
- c. No respondent is required to prepare and maintain more than one copy of a comprehensive response plan to the Federal Railroad Administrator or the Federal Highway Administrator. Neither is a respondent (carrier) required to maintain more than one copy of its response plan at its principal place of business or dispatch offices.
- d. A respondent (carrier) is required to maintain the spill response plan only as long as it is engaged in the bulk transportation of oil. There is no requirement to retain a plan beyond the date a carrier ceases such transportation.

8. Compliance with 5 CFR 1320.8.

A 60-Day notice and request for comments was published in the Federal Register on February 26, 2007 under Docket No. PHMSA-2007-27181 (Notice No. 07-1) (72 FR 8421) inviting public comment on the request for renewal of this information collection. The comment period closed on April 27, 2007. No comments pertaining to this information collection were received.

A 30-Day notice and request for comments was published in the Federal Register on May 23, 2007 under Docket No. PHMSA-2007-27181 (Notice No. 07-2) (72 FR 29033) inviting public comment on the request for renewal of this information collection. The comment period closed on June 22, 2007. No comments pertaining to this information collection were received.

9. Payments or gift to respondents.

There is no payment or gift provided to respondents associated with this collection of information.

10. Assurance of confidentiality.

PHMSA believes that none of the required information is confidential. All information to be collected complies with the Freedom of Information Act, the Privacy Act of 1974, and OMB Circular A-108.

11. Justification for collection of sensitive information.

Not applicable. Information is not of a sensitive nature.

12. Estimates of burden hours for information requested.

Estimate of Annual Burden Hours: 10,560 hours.

Estimate of Annual Cost for Burden Hours: \$382,800.00.

Number of Affected Carriers.

PHMSA consulted several resources (i.e. Truck Inventory and Utilization Survey; Statistical Trends in Railroad Hazardous Materials Transportation Safety; Flows of Selected Hazardous Materials by Rail; and USDOT/Maritime Administration Inventory of American Intermodal Equipment) to determine the number of respondents subject to these information collection requirements. We estimate that the number of carriers required to prepare and maintain a basic response plan required by 49 CFR 130.31(a) is approximately 7,400 motor carriers and approximately 600 freight railroads. This regulation was initially imposed in 1993 and PHMSA believes there is substantial compliance by affected entities. Thus, the affected businesses are required only to periodically update spill response plans. PHMSA estimates there is a 1% turnover of the approximately 8,000 affected entities; thereby requiring the preparation of 80 new response plans per year.

The number of potential carriers required to prepare and submit for approval comprehensive response plans required by 49 CFR 130.31(b) is estimated as two (2) railroads that engage in the transportation of 15 specifically identified tank cars capable of being loaded with a quantity of oil greater than 42,000 gallons. However, since this regulatory requirement was promulgated, the one shipper of oil in the subject tank cars has elected to limit loadings to a quantity not greater than 42,000 gallons. Consequently, no railroad has prepared and submitted a comprehensive response plan to the Federal Railroad Administrator.

Summary of Paperwork Burdens.

The paperwork requirements in 49 CFR 130.31 consist primarily of the initial preparation of response plans. These requirements are:

Response Burden. All affected carriers are required to prepare a basic (49 CFR 130.31(a)) response plan which is to be updated at least annually; though many changes may amount to nothing more than updating contact lists of key personnel and their phone numbers. These plans are for the use of carriers at their own facilities and do not have to be submitted to DOT for review or approval.

Carriers that transport bulk packagings containing oil in quantities greater than 42,000 gallons must prepare and submit comprehensive (49 CFR 130.31(b)) response plans to DOT/FRA or FHWA, as appropriate. In addition, significant changes to the comprehensive response plan must be submitted to DOT for review and approval. However, as noted above, it appears that no carriers are in this category of potential respondents.

Estimates of Annual Burden Hours.

Estimate of Annual Burden Hours: 10,560 hours (2,640 + 7,920).

Estimated burden hours for the approximately 80 new carriers per year subject to this requirement are based on the following considerations:

Two (2) persons per carrier are engaged for approximately 15.5 hours in the preparation of response plans.

The total number of hours spent in preparing the plans is estimated at 33 hours per plan. 2 persons per carrier x 15.5 hours each = 33 hours.

80 new carriers x 33 hours/carrier = 2,640 burden hours.

Estimated burden hours for the approximately 7,920 carriers per year subject to this requirement are based on the following considerations:

One (1) person per carrier is engaged for approximately 1 hour in the update of a response plan.

The total number of hours spent in updating each plan is estimated at 1 hour per plan.

7,920 carriers x 1 hour / plan = 7,920 burden hours.

2,460 burden hours + 7,920 burden hours = 10,560 total annual burden hours.

Estimate of Annual Cost for Burden Hours: \$382,800.00.

The hourly wage for the persons involved in the preparation or update of the response plans is estimated to be approximately \$36.25 per hour.

10,560 burden hours x \$36.25 average hourly wage = \$382,800.

13. Estimate of total annual costs to respondents.

There is no cost burden to respondents except those identified in item 12 above.

14. Estimate of cost to the Federal government.

Federal Government costs associated with requirements for carriers to prepare basic plans are related to the preparation of administrative guidelines, and responding to written and telephonic inquiries from the regulated community. Those costs are negligible.

15. Explanation of program changes or adjustments.

There is no change in burden under this renewal request.

16. Publication of results of data collection.

There is no publication for statistical use and no statistical techniques are involved.

17. Approval for not displaying the expiration date of OMB approval.

Approved OMB number is prominently displayed in the text of 49 CFR 171.6.

18. Exceptions to certification statement.

There is no exception to PHMSA's certification of this request for information collection approval.

Part B. Collections of Information Employing Statistical Methods.

1. Describe potential respondent universe and any sampling selection method to be used.

Not applicable.

2. Describe procedures for collecting information, including statistical methodology for stratification and sample selection, estimation procedures, degree of accuracy needed, and less than annual periodic data cycles.

Not applicable.

3. Describe methods to maximize response rate.

Not applicable.

4. Describe tests of procedures or methods.

Not applicable.

5. Provide name and telephone number of individuals who were consulted on statistical aspects of the information collection and who will actually collect and/or analyze the information.

Not applicable.