

**DEPARTMENT OF TRANSPORTATION
PART 130-OIL SPILL PREVENTION AND RESPONSE PLANS**

**Subpart C—Comprehensive Oil Spill Response Plans
(FR FEBRUARY 28, 2019)**

Sec.

130.100 Applicability of comprehensive oil spill response plans.

130.105 Purpose and general format.

130.110 Consistency with the National Contingency Plan.

130.115 Consistency with Area Contingency Plans.

130.120 Information summary.

130.125 Notification procedures and contacts.

130.130 Response and mitigation activities.

130.135 Training.

130.140 Equipment testing and exercise procedures.

130.145 Plan review, update, and recordkeeping procedures.

130.150 Approval and submission procedures.

130.155 Implementation of comprehensive oil spill response plans.

Subpart C—Comprehensive Oil Spill Response Plans

§ 130.100 Applicability of comprehensive oil spill response plans.

- (a) Railroads must have current, written comprehensive oil spill response plans (COSRPs) meeting the requirements of this subpart for any route or route segments used to transport either of the following:
 - (1) Any liquid petroleum oil or other non-petroleum oil subject to this part in a quantity greater than 42,000 gallons (1,000 barrels) per packaging; or
 - (2) 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.
 - (i) Tank cars carrying liquid petroleum oil products not meeting the criteria for Class 3 flammable or combustible material in § 173.120 of this chapter, or containing residue as defined in § 171.8 of this chapter, are not required to be included when determining the number of tank cars transporting liquid petroleum oil in paragraph (a)(2) of this section.
 - (ii) [Reserved]
- (b) The requirements of this subpart do not apply if the oil being transported is otherwise excepted per § 130.2(c).
- (c) A railroad required to develop a response plan in accordance with this section may not transport applicable quantities of oil (including handling and storage incidental to transport) unless—
 - (1) The response plan is submitted, reviewed, and approved as required by § 130.150 except as described in paragraph (d) of this section; and
 - (2) The railroad is operating in compliance with the response plan.
- (d) A railroad required to develop a response plan in accordance with this section may continue to transport oil without an approval from PHMSA provided that all of the following criteria are met:
 - (1) The railroad submitted a plan in accordance with the requirements of § 130.150(a) within the previous two years;

- (2) The submitted plan includes the certification in § 130.130;
- (3) The railroad is operating in compliance with the submitted plan; and (4) PHMSA has not issued a final decision that all or part of the plan does not meet the requirements of this subpart.

§ 130.105 Purpose and general format.

- (a) Each railroad subject to this subpart must prepare and submit a plan, including resources and procedures, for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge, of oil. The plan must use and be consistent with the core principle of the National Incident Management System (NIMS) including the utilization of the Incident Command System (ICS).
- (b) Each response plan must be formatted to include:
 - (1) Core plan. Response plans with more than one response zone must include a core plan containing an information summary required by § 130.120 and information that does not change between different response zones; and
 - (2) Response zone appendix or appendices. For each response zone included in the response plan, the response plan must include a response zone appendix that provides the information summary required by § 130.120 and any additional information that differs between response zones or is not included in the core plan. In addition, each response zone appendix must identify all of the following:
 - (i) A description of the response zone, including county(s) and state(s);
 - (ii) A list of route sections contained in the response zone, identified by railroad milepost or other identifier;
 - (iii) Identification of environmentally sensitive or significant areas per route section as determined by § 130.115; and
 - (iv) The location from which the Oil Spill Removal Organization will deploy, and the location and description of the response equipment required by § 130.130(c)(6).
- (c) To meet the requirements of the response plan as required by § 130.100, a railroad may submit an applicable Annex(es) of an Integrated Contingency Plan (ICP). The Annex(es) must meet the minimum requirements of a Federal response plan required under this part. Guidance on the ICP is available from the National Response Team ([http:// www.NRT.org](http://www.NRT.org)).
- (d) To meet the requirements of the response plan as required by § 130.100, a railroad may submit a response plan that complies with a State law or regulation. The state plan must meet the minimum requirements of a Federal response plan required under this part and must include all of the following:
 - (1) An information summary as required by § 130.120;
 - (2) A list of the names or titles and 24-hour telephone numbers of the qualified individual(s) and at least one alternate qualified individual(s); and
 - (3) A certification and documentation that that railroad has identified and secured, through contract or other approved means, the private personnel and equipment necessary to respond to a worst-case discharge or a substantial threat of such a discharge.

§ 130.110 Consistency with the National Contingency Plan.

- (a) A railroad must certify in the response plan that it reviewed the NCP (40 CFR part 300) and that its response plan is consistent with the NCP.
- (b) At a minimum, for consistency with the NCP, a comprehensive response plan must include all of the following:
 - (1) Demonstrate a railroad's clear understanding of the Incident Command System and Unified Command and the roles and responsibilities of the Federal

On-Scene Coordinator;

- (2) Include procedures to immediately notify the National Response Center; and
- (3) Establish provisions to ensure safety at the response site.

§ 130.115 Consistency with Area Contingency Plans.

- (a) A railroad must certify for each response zone that it reviewed each applicable ACP (or Regional Contingency Plan (RCP) for areas lacking an ACP).
- (b) At a minimum, for consistency with the applicable ACP (or Regional Contingency Plan (RCP) for areas lacking an ACP), the comprehensive response plan must do all of the following:
 - (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, as defined in § 130.5, which could be adversely affected by a worst-case discharge, by reviewing and summarizing the applicable ACP or RCP;
 - (3) Incorporate appropriate strategies identified in applicable ACPs or RCPs, to protect environmentally sensitive or significant areas identified in paragraph (b)(2) of this section;
 - (4) Describe the responsibilities of the railroad and of Federal, State, and local agencies in removing a discharge and in mitigating or preventing a substantial threat of a discharge; and
 - (5) Identify the procedures to obtain any required Federal and State authorization for using alternative response strategies such as in-situ burning and/or chemical agents, as provided for in the applicable ACP and subpart J of 40 CFR part 300.

§ 130.120 Information summary.

- (a) Each person preparing a comprehensive response plan must include information summaries for the core plan and each response zone meeting the requirements of this section.
- (b) The information summary for the core plan must include all of the following:
 - (1) The name and mailing address of the railroad;
 - (2) A listing and description of each response zone, including county(s) and State(s); and
 - (3) The name or title of the qualified individual(s) and alternate(s) for each response zone, with telephone numbers at which they can be contacted on a 24-hour basis.
- (c) The information summary for each response zone appendix must include all of the following:
 - (1) The name and mailing address of the railroad;
 - (2) A description of the response zone, including county(s) and State(s);
 - (3) The name or title of the qualified individual(s) and alternate(s) for the response zone, with telephone numbers at which they can be contacted on a 24-hour basis;
4700 E:\FR\FM\28FER
 - (4) The type(s) of oil expected to be carried; and
 - (5) Determination of the worst-case discharge and supporting calculations.
- (d) The information summary should be listed first, before other information in the plan, or clearly identified through the use of tabs or other visual aids.

§ 130.125 Notification procedures and contacts.

- (a) The railroad must develop and implement notification procedures that include all of the following:
 - (1) Procedures for immediate notification of the qualified individual or alternate and

- immediate communications between that individual, and the appropriate Federal official and the persons providing personnel and equipment;
- (2) A checklist of the notifications required under the response plan, listed in the order of priority;
 - (3) The primary and secondary communication methods by which notifications can be made;
 - (4) The circumstances and necessary time frames under which the notifications must be made; and
 - (5) The information to be provided in the initial and each follow-up notification.
- (b) The notification procedures must include the names of the following individuals or organizations, with the ten-digit telephone numbers at which they can be contacted on a 24-hour basis:
- (1) The National Response Center (NRC);
 - (2) Qualified individual, or alternative;
 - (3) Federal, State, and local agencies that the railroad expects to have pollution control responsibilities or provide pollution control support; and
 - (4) Personnel or organizations to notify for the activation of equipment and personnel resources identified in § 130.130.

§ 130.130 Response and mitigation activities.

- (a) Each railroad must certify that it has identified and secured, by contract or other means, the private response resources in each response zone necessary to remove and control, to the maximum extent practicable, a worst case discharge. The certification must be signed by the qualified individual or an appropriate corporate officer.
- (b) Each railroad must identify and describe in the plan the response resources that are available to arrive onsite within 12 hours of the discovery of a worst-case discharge or the substantial threat of such a discharge. It is assumed that resources can travel according to a land speed of 35 miles per hour, unless the railroad can demonstrate otherwise.
- (c) Each plan must identify all of the following information for response and mitigation activities:
 - (1) Methods of initial discharge detection;
 - (2) Responsibilities of, and actions to be taken by, personnel to initiate and supervise response activities pending the arrival of the qualified individual or other response resources identified in the response plan that are necessary to ensure the protection of safety at the response site and to mitigate or prevent any discharge from the tank cars;
 - (3) The qualified individual's responsibilities and authority;
 - (4) Procedures for coordinating the actions of the railroad or qualified individual with the actions of the U.S. EPA or U.S. Coast Guard On-Scene Coordinator responsible for monitoring or directing response and mitigation activities;
 - (5) The Oil Spill Removal Organization's responsibilities and authority; and
 - (6) For each Oil Spill Removal Organization identified under this section, a listing adequate for the worst case discharge listed in the plan of:
 - (i) Equipment, supplies, and personnel available, and the location there of, including equipment suitable for adverse weather conditions and the personnel necessary to continue operation of the equipment and staff the Oil Spill Removal Organization during the response, in accordance with appendix C of 33 CFR part 154; or
 - (ii) In lieu of the listing of equipment, supplies, and personnel, a statement that the Oil

Spill Removal Organization has been classified by the United States Coast Guard under 33 CFR 154.1035 or 155.1035.

§ 130.135 Training.

- (a) A railroad must certify in the response plan that it has conducted training to ensure that:
 - (1) All railroad employees subject to the plan know—
 - (i) Their responsibilities under the comprehensive oil spill response plan; and
 - (ii) The name of, and procedures for contacting, the qualified individual or alternate on a 24-hour basis;
 - (2) All railroad employees with responsibilities as reporting personnel in the plan also know—
 - (i) The content of the information summary of the response plan;
 - (ii) The toll-free telephone number of the National Response Center; and
 - (iii) The notification process required by § 130.105; and
 - (3) The qualified individual or, as an alternative, the person acting in an Incident Commander role, may be trained in the Incident Command System at the Incident Commander Level.
- (b) Employees subject to this section must be trained at least once every five years or, if the plan is revised during the five-year recurrent training cycle, within 90 days of implementation of the revised plan. New employees must be trained within 90 days of employment or change in job function.
- (c) Each railroad must create and retain records of current training of each railroad employee engaged in oil spill response, inclusive of the preceding five years, in accordance with this section, for as long as that employee is employed and for 90 days thereafter. A railroad must make the employee's record of training available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation. The record must include all of the following:
 - (1) The employee's name;
 - (2) The completion date of the employee's most recent training;
 - (3) The name and address of the person providing the training; and
 - (4) A certification statement that the designated employee has been trained, as required by this subpart.
- (d) Nothing in this section relieves a person from the responsibility to ensure that all personnel are trained in accordance with other regulations. As an example, response personnel may be subject to the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120, including volunteers or casual laborers employed during a response who are subject to those standards pursuant to 40 CFR part 311. Hazmat employees, as defined in § 171.8 of this chapter, are subject to the training requirements in subpart H of part 172 of this chapter, including safety training.

§ 130.140 Equipment testing and exercise procedures.

- (a) Testing. The plan must include a description of the methods used to ensure that equipment testing meets the manufacturer's minimum recommendations or equivalent.
- (b) Exercises. A railroad must implement and describe an exercise program for COSRPs following the National Preparedness for Response Exercise Program (PREP) Guidelines, which can be found using the search function on the USCG's web page 2 .SGM 28FER2 (<https://homeport.uscg.mil>). These guidelines are also available from the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20875 (fax: 301-386-5394, stock number USCG-X0241). As an alternative, a railroad

choosing not to follow PREP Guidelines must have an exercise program that is equivalent to PREP. The plan must include a description of the exercise procedures and programs the railroad uses to assess whether its response plan will function as planned, including the types of exercises and their frequencies.

- (c) Recordkeeping. Railroads must keep records showing the exercise dates and times, and the after action reports that accompany the response plan exercises. Railroads must provide copies of these records to Department of Transportation representatives upon request.

§ 130.145 Plan review, update, and recordkeeping procedures.

- (a) For purposes of this part, copy means a hardcopy or an electronic version. Each railroad must:
- (1) Maintain a copy of the complete plan at the railroad's principal place of business;
 - (2) Provide a copy of the core plan and the appropriate response zone appendix to each qualified individual and alternate; and
 - (3) Provide a copy of the information summary to each dispatcher in response zones identified in the plan.
- (b) Each railroad must include procedures to review the plan after a discharge requiring the activation of the plan in order to evaluate and record the plan's effectiveness.
- (c) Each railroad must update its plan to address new or different conditions or information. In addition, each railroad must review its plan in full at least every 5 years from the date of the last approval.
- (d) If changes to the plans are made, updated copies of the plan must be provided to every individual referenced under paragraph (a) of this section.
- (e) If new or different operating conditions or information would substantially affect the implementation of the response plan, the railroad must immediately modify its plan to address such a change and must submit the change to PHMSA within 90 days in accordance with § 130.111. Examples of changes in operating conditions or information that would substantially affect a railroad's response plan are:
- (1) Establishment of a new railroad route, including an extension of an existing railroad route, construction of a new track, or obtaining trackage rights over a route not covered by the previously approved plan used for trains which require a comprehensive plan in accordance with § 130.100(a);
 - (2) The name of the Oil Spill Removal Organization;
 - (3) Emergency response procedures;
 - (4) The qualified individual;
 - (5) A change in the NCP or an ACP that has significant impact on the equipment appropriate for response activities (e.g., identification of ESAs as described by § 130.115);
 - (6) A change in the type of oil transported, if the type affects the required response resources (e.g., a change from crude oil to gasoline); and
 - (7) Any other information relating to circumstances that may affect full implementation of the plan.
- (f) If PHMSA determines that a change to a response plan does not meet the requirements of this part, PHMSA will notify the operator of any alleged deficiencies, and provide the railroad with an opportunity to respond—including an opportunity for an informal conference—to any proposed plan revisions, as well as an opportunity to correct any deficiencies.
- (g) A railroad that disagrees with a determination that proposed revisions to a plan are deficient may petition PHMSA for reconsideration within 30 days from the date of receipt of PHMSA's notice. After considering all relevant

material presented in writing or at an informal conference, PHMSA will notify the railroad of its final decision. The railroad must comply with the final decision within 30 days of issuance, unless PHMSA allows additional time.

§ 130.150 Approval and submission procedures.

- (a) Each railroad must submit an electronic copy in an industry standard format (e.g., Adobe Acrobat, Microsoft Word, or hypertext markup language (HTML)) of the COSRP required by this part. Copies of the response plan must be submitted via commercial carrier to: Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 2nd Floor, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Alternatively, the railroad may arrange for secure electronic transfer of the file to PHMSA or email a copy of the plan to PHMSA. OPA90@dot.gov.
- (b) If PHMSA determines that a response plan requiring approval does not meet all the requirements of this part, PHMSA will notify the railroad of any alleged deficiencies and provide the railroad an opportunity to respond-- including the opportunity for an informal conference—to any proposed plan revisions, as well as an opportunity to correct any deficiencies.
- (c) A railroad that disagrees with PHMSA's determination that a plan contains alleged deficiencies may petition PHMSA for reconsideration within 30 days from the date of receipt of PHMSA's notice. After considering all relevant material presented in writing or at an informal conference, PHMSA will notify the operator of its final decision. The railroad must comply with the final decision within 30 days of issuance, unless PHMSA allows additional time.
- (d) PHMSA will approve the response plan if PHMSA determines that the response plan meets all requirements of this part. PHMSA may consult with the U.S. Environmental Protection Agency (EPA) or the U.S. Coast Guard (USCG), allowing a Federal On-Scene Coordinator (OSC) to identify concerns regarding a plan's compliance with the statutory and regulatory requirements.
- (e) If PHMSA receives a request from a Federal OSC to review a response plan, PHMSA will give a copy of the response plan to the Federal OSC provided that any requests for the plan are referred to PHMSA. PHMSA may consider Federal OSC comments on: Response techniques; protecting fish, wildlife and environmentally sensitive environments; and consistency with the ACP. PHMSA remains the approving authority for the response plan.
- (f) A railroad may ask for confidential treatment in accordance with the procedures in § 105.30 of this chapter.

§ 130.155 Implementation of comprehensive oil spill response plans.

If, during transportation of oil subject to this subpart, a discharge of oil occurs—into or on the navigable waters; on the adjoining shorelines to the navigable waters; or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States—the person transporting the oil must implement the plan required by § 130.100 in a manner consistent with the National Contingency Plan, 40 CFR part 300, or as otherwise directed by the Federal On-Scene Coordinator.