



AMERICAN PETROLEUM INSTITUTE

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Standards and Rulemaking Division  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue SE, Washington, DC 20590

SUBJECT: Department of Transportation (DOT) Notice: Hazardous Materials: Oil Spill Response Plans for High-Hazard Flammable Trains, Docket No. PHMSA-2014-0105 (HM-251B)

The American Petroleum Institute (API) offers the following comments on the Department of Transportation's Advanced Notice of Proposed Rule Making (ANPRM) [PHMSA-2014-0105 (HM-251B)], "Hazardous Materials: Oil Spill Response Plans for High-Hazard Flammable Trains." API is a national trade association that represents over 600 members involved in all aspects of the oil and natural gas industry, including producers, refiners, suppliers, pipeline operators and marine transporters, as well as service and supply companies that support all segments of the industry.

Over the past five years, North America, and the United States in particular, has seen a domestic energy renaissance from the increased production of oil and natural gas. This has had a dramatic impact on the nation by providing significant growth in jobs, GDP and investment in infrastructure. In 2011, the petroleum industry became a major investor in the public and private sectors, supporting \$1.2 trillion in U.S. Gross Domestic Product (GDP). Today, the industry supports roughly 8 percent of the entire U.S. economy, up from 7.7 percent in 2012, and it has been a significant job creator in communities across the nation, supporting 9.8 million jobs accounting for 5.6 percent of total U.S. employment.<sup>1</sup> This growth has led to a marked increase in the need for reliable, flexible infrastructure and the changing movements of crude oil and petroleum products across North America. To support this growth, API members, and the industry as a whole, have made significant investments in our nation's infrastructure to ensure production, operations and the movement of crude, natural gas and their products can continue in a safe, efficient and environmentally responsible manner. Safety and environmental responsibility are fundamental principles across the oil and natural gas industry, as demonstrated by the standards, programs, and record of the industry, and as companies comply with the

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<sup>1</sup> <http://www.api.org/~media/Files/Policy/SOAE-2014/API-2014-State-of-American-Energy-Report.pdf>



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requirements in the Oil Pollution Act of 1990 (OPA 90). Taken as a whole, these principles have contributed to a dramatic decrease in crude oil releases.

API members, as a means to transport crude oil from the new and developing shale basins across North America, have made significant investments in the tank cars and infrastructure to utilize the more than 138,000 domestic railroad miles available for freight rail traffic.<sup>2</sup> API members have long standing relationships with the railroads throughout North America and have frequently coordinated resources and responses when incidents have occurred involving crude oil and petroleum products. The oil and rail industries have long, proven records of the safe handling and transportation of crude oil and other hazardous flammable liquids and we continue to believe these products can be moved safely by rail.

To this end, our comments focus on the oil industry's experience implementing OPA '90 and the existing programs that DOT and the Federal Rail Administration (FRA) can reference for response planning that will support the safe, efficient, environmentally responsible transportation of crude oil by rail. Since the implementation of OPA '90, the oil industry, along with regulators (including USCG, EPA, BSEE and PHMSA), have learned many lessons and developed many practices that have improved the planning, exercises and response to spills of crude oil and petroleum products, whether from pipelines, marine vessels, or fixed facilities. Our comments will address these issues specifically, and do not address costs to the railroads for implementation of additional spill response planning measures.

### ***Thresholds for Comprehensive Oil Spill Response Plans (Question 1)***

When considering appropriate thresholds for comprehensive oil spill response plans (OSRPs), DOT should choose a threshold that is reasonable and practical. The interpretation of reasonable and practical depends on how, specifically, DOT defines the comprehensive OSRP requirements. Onerous planning requirements with an extremely low threshold could exponentially increase the cost and burden on the railroads, while vague planning requirements triggered by a baseless threshold would be equally challenging. Ambiguous planning requirements could lead to uncertainty as to how and under what conditions plans should be developed. As a result, significant variation among plans could inhibit appropriate planning and resource allocations. Additionally, if FRA becomes the entity responsible for reviewing and approving plans, plan variations will introduce a significant administrative challenge as the agency works to establish a capable program. It is our recommendation that DOT simultaneously consider planning requirements and the thresholds that trigger those plans based on risk considerations and the practicality of implementing the OSRPs.

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<sup>2</sup> <https://www.aar.org/StatisticsAndPublications/Documents/AAR-Stats.pdf>



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**Clarity of OSRP Requirements (Question 2)**

The current PHMSA spill response plan requirements applicable to the railroads do not provide the clarity needed to develop comprehensive, responsive and consistent spill response plans. Detailed guidance is required to provide a baseline threshold for companies to measure their plans against. The current set of regulations provides vague requirements with no measurable outcome or standard of performance. While flexibility is always necessary and overly prescriptive measures rarely have the desired effect, some level of industry specific guidance should be provided to help companies determine whether their plans are adequate and effective. When the Federal Water Pollution Control Act was amended by OPA 90, one of the new requirements for the industry was the creation of Facility Response Plans (FRP).<sup>3</sup> FRPs provide a layer of planning that addresses specific prevention and response issues for facilities that handle oil and have the potential to cause “substantial harm” to the environment. Five different regulations were promulgated or amended to oversee these facilities and to guide the development of their respective FRPs depending on their operations, location, and regulating authority (Table 1).

Table 1. Federal Regulations that Govern Facility Response Plans

<b>Regulation</b>	<b>Primary Authority</b>
30 CFR Part 254 – Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line	BSEE
33 CFR Part 154 Subpart F – Response Plans for Oil Facilities	USCG
40 CFR Part 112.20 – Facility Response Plans	USEPA
49 CFR Part 130 – Oil Spill Prevention and Response Plans	PHMSA
49 CFR Part 194 – Response Plans for Onshore Oil Pipelines	PHMSA

The five regulations share the common objective of protecting the public and the environment from harmful discharges of oil on water and on land. The US Coast Guard and EPA programs provide exhaustive detail as to how the regulated community is required to format FRPs, communicate with regulators, planning standards for contracted response resources, and training and exercise requirements. Consequently, these regulations can serve as good models for the rail industry, PHMSA and FRA to examine as 49 CFR 130 is scrutinized for possible revision.

In addition, EPA Spill Prevention, Control and Planning (SPCC) requirements apply to non-transportation related facilities that “have an aggregate aboveground oil storage capacity greater than 1,320 U.S. gallons or a completely buried storage capacity greater than 42,000 U.S. gallons

<sup>3</sup> 33 USC 1321(j)(5)



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and there is a reasonable expectation of an oil discharge into or upon navigable waters of the U.S. or adjoining shorelines.” It should be noted that interstate or inter-facility oil pipeline systems, ships, barges, and rail cars or tanker trucks carrying oil between facilities are not covered by the SPCC rule. Facilities that are required to develop an SPCC Plan must separately determine if they are required to develop a Facility Response Plan (FRP). An SPCC-regulated facility must develop an FRP if the facility has a total oil storage capacity greater than or equal to 1 million gallons and “because of its location, could be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines . . . .” See 40 C.F.R. Part 112.20.

The two EPA-regulated planning rules were intended to address critical environmental and operational issues both before and after a spill. However, these planning requirements are focused primarily on features and operations for facilities that are fixed to a specific geographic location. Consequently, some of their elements (especially from the SPCC planning requirements) may not translate well for railroads. While aspects of 40 C.F.R. § 112 may not directly apply to the rail industry, the degree of detail that EPA wrote into the regulations could serve as a model for PHMSA. The language in 49 C.F.R. § 130 could be more detailed so that the public and rail industry operators have a clearer expectation regarding what should be included in railroad Basic and Comprehensive Oil Spill Response Plans.

While the EPA and USCG regulations are very prescriptive, BSEE has taken a different approach in its recently organized 30 CFR Part 254 with a format that guides offshore facility operators through a step-by-step process to identify what should be included in their FRPs. Table 2 provides an overview of this step-by-step, formatted regulation.

**Table 2.** Select Section Titles in 30 CFR Part 254

<b>Title</b>	<b>Section</b>
Who must submit a spill-response plan?	254.1
When must I submit a response plan?	254.2
May I cover more than one facility in my response plan?	254.3
How do I submit my response plan to the BSEE?	254.7
How must I format my response plan?	254.21
What information must I include in the “Introduction and plan contents” section?	254.22
Exercises for your response personnel and equipment.	254.42
What information must I include in the “Emergency response action plan” section?	254.23
Determining the volume of oil of your worst case discharge scenario.	254.47

Although applicable primarily to fixed facilities, BSEE uses this structured format with 33 different sections organized in 4 subparts on 14 pages to explain their requirements for offshore



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facility response planning. PHMSA's current regulation, 49 CFR Part 130, outlines requirements for transportation of oil by motor vehicles or rolling stock. However, the process for developing comprehensive OSRPs, described in six brief provisions, provides little instruction as to how the railroads must develop or implement their plans. In addition, 49 CFR Part 130 requires compliance with the National Contingency Plan (40 CFR 300), which in turn cites 49 CFR Part 130 for the response plan requirements. PHMSA should consider revising 49 CFR Part 130 to provide better specificity to the regulated community and should look to EPA, USCG and BSEE for examples and practices that would work with the operational requirements of the railroads. Direct adoption of programs that have been designed for specific industries, geographic areas or fixed facilities will likely not work in the context of railroads which present a diverse operating environment, while the current, vague language in PHMSA's regulations do not provide the structure necessary to develop truly comprehensive OSRPs for railroads.

### ***Elements of OSRPs (Question 3)***

As described in the response to question 2, the requirement to conform to the National Contingency Plan (NCP) provides little guidance for the regulated community. It is suggested that DOT work with the regulated community to understand the operating environment, its unique conditions and challenges, and current planning practices to determine what elements, if any, are missing. DOT should also consider expanding the explanation it provides for what specific information needs to be documented in the OSRPs. Specific, formatted plan requirements that are consistent and complementary with other legal spill prevention rules will significantly reduce the administrative burden for FRA, as well as for the regulated community. As also described in the response to question 2, there are several models that can be referred to in order to develop what would be equivalent to a Facility Response Plan for a railroad.

DOT should also consider adopting the "Response Zone" concept currently required for pipeline operators. Specifically, the information requirements listed in 49 C.F.R. § 194.107(c)(1)(i)-(ix), such as details about the geography, response resources, and governmental jurisdictions that exist for delineated segments of a pipeline would provide a more structured planning formula for emergency responders if adopted by the rail industry. Additionally, greater consistency in structure and formatting across OSRPs would benefit LEPCs and SERCs as well as other emergency responders and planners who benefit from seeing the same formatted and detailed information when reviewing plans from different rail operators.

As support for local and regional responders, DOT should consider incorporating emergency responder information sharing requirements into its comprehensive OSRP regulations. Similar to the existing framework under SARA Title III where facilities that handle certain threshold level amounts of hazardous materials must provide information necessary for developing and





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implementing State and local chemical emergency response plans (40 C.F.R. Part 355), PHMSA could require that operators who must prepare comprehensive OSRPs share relevant information with the SERC of any State (or LEPC of any locality) likely to be affected by a release along the route. In addition, DOT could consider adopting some aspects of the PHMSA's pipeline public awareness program requirements (49 C.F.R. Part 195.440) related to information sharing with government organizations. For example, PHMSA requires that pipeline operator public awareness plans include provisions to educate appropriate government organizations regarding the possible hazards associated with unintended releases, steps to take in the event of a release and reporting procedures, and activities to advise affected municipalities.

### ***“Call to Action” (Question 8)***

API members have partnered with the rail industry, through the members of the Association of American Railroads, to answer the Secretary's "Call to Action." This partnership, while demonstrating our mutual commitment to the safe transportation of crude oil and petroleum products by rail, has also served as a constructive method to share information and best practices to support both industries continued operations. The partnership has committed to engaging first responders through training and outreach to prepare them if an incident involving crude oil moved by rail were to occur. Oil and rail companies are also sharing experiences related to resource procurement and prepositioning, exercise development and planning, and participation in area contingency planning processes. As DOT develops regulation, it should consider how its requirements can support and enhance these types of collaboration, as opposed to developing potentially inconsistent processes that impede communication. Emergency response planning should focus on developing the capacity and capabilities to prevent, mitigate or respond to an event. It should not be overtaken by compliance requirements that do not support those goals.

Partnership is not just limited to private sector interaction. As has been demonstrated throughout the oil and gas industry, in those rare instances of a response to a crude oil release incident (whether by rail or otherwise), the most effective responses are those where there is effective coordination and collaboration between the private sector (as the responsible party) and the public sector. The response model established under National Incident Management System (NIMS) was specifically designed to encourage and rely upon this public/private engagement both prior to and during a response. Any DOT rule focusing on OSRPs for the rail industry should continue to support and strengthen the public/private partnership in an effort to develop a strong national emergency response culture for incidents involving crude oil and petroleum products moved by rail.



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***Sharing OSRPs (Question 9)***

Incorporation of Local Emergency Planning Committees (LEPC) and State Emergency Response Commissions (SERCs) into industry emergency response planning processes and development of FRPs is recommended. Rural areas typically rely on volunteer firefighters as first responders, and LEPCs will be the governmental entity most involved in their planning and preparedness activities. Most state DOTs maintain lists of hazmat contractors that may be relevant, but it is important for the rail industry to identify and document what kinds of response capabilities exist for geographic regions. The most likely strategy for rural first responders will be to isolate those at risk from a rail accident and secure the area until appropriately trained teams arrive. Consequently, it may be appropriate for the rail industry to share their Comprehensive OSRPs with LEPCs and SERCs so that these organizations can better understand the time and extent of resources needed to properly address a rail incident in a remote jurisdiction.

As discussed earlier, the requirements defined by DOT and PHMSA for the rail industry should take into account the operating conditions of the railroads and should be developed for those operating conditions specifically. While other agencies, such as USCG and EPA, can offer useful guidance on the process and administration of OSRPs, they should not necessarily comment on the specific aspects that relate to rail operations. Federal multiagency review would also likely be an administrative burden for DOT that could be bureaucratically prohibitive to developing an OSRP process that should be implemented in a reasonable time frame, given the public's and the administration's desire for more comprehensive spill response plans.

Thank you for the opportunity to comment on this Advanced Notice of Proposed Rule Making. As has been the case, API and its members are committed to the safe, efficient and environmentally responsible movement of crude oil and petroleum products by rail, and we look forward to continuing to work with our public sector partners, specifically DOT and PHMSA, as the rulemaking evolves further.

Regards,

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