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PART 7

EMERGENCY RESPONSE ASSISTANCE PLAN

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Background

It is the responsibility of the person offering for transport or importing dangerous goods for which an emergency response assistance plan (ERAP) is required to establish such a plan and to have that plan approved by Transport Canada.

The object of an emergency response assistance plan is to ensure that there is immediately available a suitable response to emergency situations involving the dangerous goods for which the plan was created. Assistance from the plan holder may be in the form of telephone advice based on the information given by the personnel at the scene of an emergency or travel to the scene with specialized personnel and equipment.

If the person offering for transport or importing dangerous goods is also the carrier, that person still needs an approved plan.

The persons designated to issue an approval of an ERAP are the people in the Transport Canada, Transport Dangerous Goods Directorate, who hold the following positions:

Director General;

Director, Compliance and Response; and

Chief, Response Operations.

EMERGENCY RESPONSE ASSISTANCE PLAN

Definitions

Definitions for the following terms, used in this Part, are provided in Part 1, Coming into Force, Repeal, Interpretation, General Provisions and Special Cases:

<i>accidental release</i>	<i>gas</i>	<i>net explosives quantity</i>
<i>Act</i>	<i>ICAO Technical Instructions SOR/2011-239</i>	<i>offer for transport</i>
<i>capacity SOR/2008-34</i>	<i>IMDG Code SOR/2011-239</i>	<i>packing group SOR/2011-239</i>
<i>class SOR/2011-239</i>	<i>imminent accidental release</i>	<i>person</i>
<i>classification</i>	<i>import</i>	<i>railway vehicle</i>
<i>consignment</i>	<i>infectious substance SOR/2011-239</i>	<i>road vehicle</i>
<i>dangerous goods</i>	<i>large means of containment</i>	<i>shipping document SOR/2011-239</i>
<i>Director General</i>	<i>liquid</i>	<i>small means of containment SOR/2011-239</i>
<i>emergency</i>	<i>means of containment</i>	<i>solid</i>
<i>emergency response assistance plan or ERAP or ERP</i>	<i>Minister</i>	<i>special provision SOR/2011-239</i>
		<i>UN number SOR/2011-239</i>

7.1 Requirement for an Emergency Response Assistance Plan (ERAP)

SOR/2008-34

Subsection (1) deals with a quantity of dangerous goods having the same UN number and that are contained in a single minimum required means of containment (see paragraph 1.3(2)(j) in Part 1, Coming into Force, Repeal, Interpretation, General Provisions and Special Cases, for an explanation of a minimum required means of containment). If the quantity of dangerous goods in a single means of containment exceeds the ERAP limit, an ERAP is required regardless of the size of the means of containment. SOR/2011-239

- (1) A person who offers for transport or imports dangerous goods that have the same UN number and that are contained in a single means of containment must have an approved ERAP if the quantity of those dangerous goods in the single means of containment exceeds the ERAP limit referred to in subsection (8).
SOR/2011-239

Subsection (2) deals with an accumulation of means of containment containing dangerous goods included in Class 3 with a subsidiary class of Class 6.1, in Class 4, in Class 5.2, Type B or Type C, or in Class 6.1 included in Packing Group I. SOR/2011-239

- (2) A person who offers for transport or imports, in a road vehicle or a railway vehicle, dangerous goods that have the same UN number, that are included in one of the following classes and that are contained in more than one means of containment must have an approved ERAP if the total quantity of those dangerous goods in all the means of containment exceeds the ERAP limit referred to in subsection (8):
- (a) Class 3, Flammable Liquids, with a subsidiary class of Class 6.1, Toxic Substances;
 - (b) Class 4, Flammable Solids, Substances Liable to Spontaneous Combustion, Substances That on Contact with Water Emit Flammable Gases (Water-reactive substances);
 - (c) Class 5.2, Organic Peroxides, that are Type B or Type C; and
 - (d) Class 6.1, Toxic Substances, that are included in Packing Group I.

SOR/2011-239

Subsection (3) deals with an accumulation of large means of containment containing dangerous goods that require an ERAP.
SOR/2011-239

- (3) A person who offers for transport or imports, in a road vehicle or a railway vehicle, dangerous goods that have the same UN number and that are contained in more than one large means of containment must have an approved ERAP if the total quantity of those dangerous goods in all the large means of containment exceeds the ERAP limit referred to in subsection (8).
SOR/2011-239

Subsection (4) deals with dangerous goods included in Class 1, Explosives, that require an ERAP.
SOR/2011-239

- (4) A person who offers for transport or imports, in a road vehicle or a railway vehicle, dangerous goods included in Class 1, Explosives, and contained in one or more means of containment must have an approved ERAP if the total quantity of explosives with an ERAP index in Col. 7 of Schedule 1 exceeds the ERAP limit referred to in subsection (8) for the explosives with the lowest index number. If the quantities of explosives are expressed in net explosives quantity and number of articles, one kilogram net explosives quantity must be counted as 100 articles and each 100 articles must be counted as one kilogram net explosives quantity.
SOR/2011-239

Subsection (5) deals with an accumulation of interconnected means of containment with a capacity greater than 225 L that contain dangerous goods included in Class 2, Gases.
SOR/2011-239

- (5) A person who offers for transport or imports dangerous goods included in Class 2, Gases, that have the same UN number, that are contained in more than one means of containment, each of which has a capacity greater than 225 L, that are a single unit as a result of being interconnected through a piping arrangement, and that are permanently mounted on a structural frame for transport must have an approved ERAP if the total quantity of those dangerous goods in the interconnected means of containment exceeds the ERAP limit referred to in subsection (8).
SOR/2011-239

- (6) A person who imports or offers for transport any of the following dangerous goods by rail in a tank car must have an approved ERAP if the quantity of the dangerous goods in the tank car exceeds 10 000 L:
SOR/2015-100

- (a) UN1170, ETHANOL with more than 24% ethanol, by volume, ETHANOL SOLUTION with more than 24% ethanol, by volume, ETHYL ALCOHOL with more than 24% ethanol, by volume, or ETHYL ALCOHOL SOLUTION with more than 24% ethanol, by volume;
- (b) UN1202, DIESEL FUEL, GAS OIL or HEATING OIL, LIGHT;
- (c) UN1203, GASOLINE, MOTOR SPIRIT or PETROL;
- (d) UN1267, PETROLEUM CRUDE OIL;
- (e) UN1268, PETROLEUM DISTILLATES, N.O.S., or PETROLEUM PRODUCTS, N.O.S.;
- (f) UN1863, FUEL, AVIATION, TURBINE ENGINE;
- (g) UN1987, ALCOHOLS, N.O.S.;
- (h) UN1993, FLAMMABLE LIQUID, N.O.S.;
- (i) UN3295, HYDROCARBONS, LIQUID, N.O.S.;
- (j) UN3475, ETHANOL AND GASOLINE MIXTURE, with more than 10% ethanol, ETHANOL AND MOTOR SPIRIT MIXTURE, with more than 10% ethanol, or ETHANOL AND PETROL MIXTURE, with more than 10% ethanol; and
- (k) UN3494, PETROLEUM SOUR CRUDE OIL, FLAMMABLE, TOXIC.

SOR/2014-306

*Subsection (7) deals with dangerous goods included in Class 6.2, Infectious Substances, that require an ERAP.
SOR/2011-239*

- (7) A person who offers for transport or imports any quantity of the following Class 6.2, Infectious Substances, or any substance that exhibits characteristics similar to these substances, must have an approved ERAP:
- (a) Crimean-Congo Hemorrhagic fever virus;
 - (b) Ebola virus;
 - (c) Foot and mouth virus cultures;
 - (d) Guanarito virus;
 - (e) Hendra virus;
 - (f) Herpes B virus (Cercopithicene Herpesvirus-1) cultures;
 - (g) Junin virus;
 - (h) Kyasanur Forest virus;
 - (i) Lassa virus;
 - (j) Machupo virus;
 - (k) Marburg virus;
 - (l) Nipah virus;
 - (m) Omsk hemorrhagic fever virus;
 - (n) Russian Spring-Summer encephalitis virus;
 - (o) Sabia virus; and
 - (p) Variola (smallpox virus).

SOR/2011-239

- (8) A quantity of dangerous goods exceeds the ERAP limit if the dangerous goods have an index number in Col. 7 of Schedule 1 and
- (a) if a solid, have a mass that is greater than the index number when that number is expressed in kilograms;
 - (b) if a liquid, have a volume that is greater than the index number when that number is expressed in litres;
 - (c) if a gas, including a gas in a liquefied form, are contained in a means of containment that has a capacity greater than the index number when that number is expressed in litres; or
 - (d) if an explosive
 - (i) not subject to special provision 86, have a net explosives quantity that is greater than the index number when that number is expressed in kilograms, or
 - (ii) subject to special provision 86, are in a quantity that is greater than the number of articles listed for the explosive.

SOR/2011-239

- (9) For the purposes of subsections (1) to (7), a person, other than a manufacturer or producer, who offers for transport or imports dangerous goods for which an approved ERAP is required, is not required to apply for approval of an ERAP in accordance with section 7.2 if the person shows on a shipping document
- (a) the ERAP reference number and the telephone number to call to activate the approved ERAP held by a manufacturer, producer or distributor of the dangerous goods, and
 - (i) the approved ERAP applies to the dangerous goods, the mode of transport, the means of containment and the area in which the dangerous goods are to be transported,
 - (ii) the person who holds the approved ERAP gives permission in writing for the approved ERAP to be used and for the reference number of that approved ERAP and the telephone number to call to activate the approved ERAP to be shown on the other person's shipping document, and

- (iii) the person who holds the approved ERAP agrees to respond to an emergency on behalf of the other person; or

The written permission required under subparagraph (a)(ii) from the person who holds an approved ERAP to another person to use that ERAP is required only once. However, the written permission may be in a notation on a shipping document that indicates that the holder of the approved ERAP gives permission, for example, to a carrier to use the approved ERAP.

- (b) the ERAP reference number and the telephone number to call to activate the approved ERAP held by any other person, if the dangerous goods originate outside Canada and
 - (i) the dangerous goods are transported through Canada to a destination outside Canada, and
 - (ii) the person who offers for transport or imports the dangerous goods complies with the conditions set out in subparagraphs (a)(i) to (iii).

A distributor is not referred to in the portion of subsection (9) before paragraph (a) because a manufacturer or producer must always have an approved ERAP if one is required. This is not the case for a distributor, who may hold an approved ERAP but may also use the approved ERAP of a manufacturer or producer.

SOR/2011-239

- (10) The person who holds an approved ERAP and gives permission to another person to use that ERAP in accordance with subsection (9) must
 - (a) when that permission is given, notify the Director General in writing of the name of the person who will use the approved ERAP and the ERAP reference number; and
 - (b) when that permission is rescinded, notify the Director General in writing.

SOR/2011-239

- (11) Whether or not another person's ERAP number is shown on a shipping document in accordance with subsection (9), the person who is required to have an approved ERAP in accordance with subsection 7(1) of the Act remains responsible for emergency response assistance as required under the Act.

SOR/2011-239

- (12) Any substance that would require an ERAP if its classification were determined in accordance with Part 2, Classification, requires an approved ERAP if its classification from the ICAO Technical Instructions, the IMDG Code or the UN Recommendations is used as permitted under subsection 2.2(4) of that Part.

SOR/2014-152

7.2 Applying for Approval of an ERAP

The level of detail of the information required in paragraph (2)(h) of this section should be appropriate for a fire department evaluating an emergency situation. The person who provides the information must include an analysis of how a release could occur (e.g., damage to a valve, a manway cover, a frangible disk or a container wall) and how any released dangerous goods could react. Transport Canada has developed a brochure to give guidance on this topic.

- (1) A person must apply, in writing, to the Minister or a designated person for the approval of an ERAP.
- (2) The application for an ERAP approval must be signed by the person submitting it and must include the following information:
 - (a) the name and address of the place of business of the applicant;
 - (b) the telephone number, including the area code and, if applicable, the electronic mailing address and facsimile number of the applicant;
 - (c) the classification of the dangerous goods to which the ERAP relates;
 - (d) the type and size of the means of containment used to transport the dangerous goods to which the ERAP relates;
 - (e) the geographical area covered by the ERAP;
 - (f) the telephone number, including the area code, to call to have the ERAP activated immediately;

- (g) a description of the emergency response capabilities available to the person offering for transport or importing dangerous goods including
 - (i) the number of persons qualified to give, by telephone, technical advice about the dangerous goods,
 - (ii) the number of persons qualified and available to give advice and assistance at the site of an emergency,
 - (iii) a list of the specialized equipment that can be transported to and used at the site of an emergency,
 - (iv) a general description of the response actions capable of being taken at the site of an emergency,
 - (v) a description of the transportation arrangements to bring specialized emergency response personnel and equipment to the site of an emergency, and
 - (vi) a description of the communications systems that can be made available at the site of an emergency;
- (h) a potential accident assessment including
 - (i) a general analysis of how an accidental release of dangerous goods could occur,
 - (ii) a general description of the potential consequences of an accidental release of dangerous goods, and
 - (iii) a description of the action the applicant is expected to take in the event of an accidental release or an imminent accidental release of dangerous goods; and
- (i) a copy of any formal agreement with a third party for the provision of assistance.

7.3 Approval or Refusal of an ERAP

- (1) When an ERAP application is approved, the Minister or the designated person must give the applicant, in writing, a reference number for the ERAP.

Under subsection 7(3) of the Act, the Minister or a designated person may approve an ERAP pending an investigation if the Minister or the designated person has no reason to suspect that the plan is incapable of being implemented or will be ineffective. An ERAP application that does not include all the information required by subsection 7.2(2) could be approved for a specified period pending an investigation.

- (2) If an ERAP application is refused, the Minister or the designated person must notify the applicant, in writing, of the refusal and the reasons for the refusal.

7.4 Applying for Approval of a Renewal or Revision of an ERAP

A person who applies for approval of a renewal or revision of an ERAP must submit to the Minister or a designated person, in writing, the following information:

- (a) the name and address of the place of business of the applicant;
- (b) the telephone number, including the area code and, if applicable, the electronic mailing address and the facsimile number of the applicant;
- (c) for renewal of an ERAP, certification that the information provided in the original application in accordance with paragraphs 7.2(2)(c) to (i) or in the most recent renewal is still accurate and complete; and
- (d) for a revision of an ERAP, a description of the proposal for the revision stating how the proposed revision will ensure that the ERAP is capable of being implemented and will be effective in responding to an accident that occurs while the dangerous goods are being transported.

7.5 Approval or Refusal of a Renewal or Revision of an ERAP

- (1) When an application for renewal or revision of an ERAP is approved, the Minister or the designated person must give the applicant, in writing, a reference number for the ERAP.
- (2) If an application for renewal or revision of an ERAP is refused, the Minister or the designated person must notify the applicant, in writing, of the refusal and the reasons for the refusal.

7.6 Revoking an ERAP Approval

- (1) The Minister or a designated person must notify the affected person, in writing, of the revocation of an ERAP approval under subsection 7(4) of the Act and the reasons for the revocation.
- (2) A revocation takes effect when it is signed or at a later date if one is indicated in it. However, after the effective date of the revocation, any non-compliance with the Act that is a result of the revocation must not be enforced against a person unless the person has received the original, signed revocation or an electronic copy of it, or reasonable steps have been taken to make the person aware of the revocation.

7.7 Requesting a Review of a Decision to Refuse or Revoke an ERAP Approval

- (1) A person may request a review of the decision to refuse or revoke an ERAP approval within 30 days after being notified of the decision.
- (2) The request must be made, in writing, to the Minister or a designated person and must include the following information:
 - (a) the name and address of the place of business of the person requesting the review; and
 - (b) the reasons why the decision should be reversed.

7.8 Processing a Request for a Review

The Minister or, in the case of an approval that was refused or revoked by a designated person, the Director General may issue an approval that was refused or reissue a revoked approval, if the Minister or Director General determines on the basis of available information, including information provided with the request for review, that the ERAP is capable of being implemented and will be effective in responding to an accident that occurs while the dangerous goods are being transported.

7.9 Notification of a Decision on Review

The Minister or the Director General must notify in writing the person who made the request for a review of the decision on the review and the reasons for it.

7.10 Compensation for Authorized Implementation of an Approved Emergency Response Assistance Plan (ERAP)

In accordance with section 7.2 of the Act, section 7.10 sets out compensation for a person with an approved emergency response assistance plan (ERAP) and who is authorized by the Minister to implement it to respond to a security (terrorist) incident.

If a person with an approved ERAP is contacted by the Minister and agrees, the Minister could authorize the person to respond to a security (terrorist) incident on behalf of the Government of Canada. The Minister would select an ERAP based on the appropriateness of the plan and the ability of the person to respond in a timely manner. Should the person agree to respond, the Government would pay the expenses, specified in section 7.10, that are associated with the response action, including those related to death, disability or injury. The person would have personal liability protection under section 20 of the Act.

An ERAP response to a security (terrorist) incident involving a release of dangerous goods would occur once it has been determined that all terrorist-related hazards other than the dangerous goods have been eliminated.

Under the Act, industry is responsible for responding to safety or security incidents involving dangerous goods that are offered for transport, imported, handled or transported by a known person who has an approved ERAP for those dangerous goods. This existing response program and associated activities do not change because of these Regulations, which are intended to provide emergency response in the event that there is a security (terrorist) incident involving a release of dangerous goods by unknown persons.

- (1) If a person agrees to implement an approved ERAP in accordance with paragraph 7.1(b) of the Act, the following expenses are authorized for the purposes of compensation under section 7.2 of the Act:
- (a) expenses related to the death, disability or injury of the person or to the death, disability or injury of any of the person's employees or contractors if
 - (i) the person, the employee or the contractor is killed, disabled or injured during the implementation of the approved ERAP, and
 - (ii) the death, disability or injury is the result of an act or omission that was committed by the person in good faith and without negligence;
 - (b) the cost of the person's employees or contractors who are reasonably required to implement the approved ERAP;
 - (c) the cost of using the person's tools and other equipment, such as vehicles, pumps, hoses and generators, that are reasonably required to implement the approved ERAP;
 - (d) travel expenses, such as those incurred for meals, accommodation, fuel, oil and flights, for persons who are reasonably required to implement the approved ERAP;
 - (e) rental fees for heavy equipment, such as cranes, bulldozers, pumps, compressors and generators, that is reasonably required to implement the approved ERAP;
 - (f) other overhead costs that can be reasonably attributed to the implementation of the approved ERAP;
 - (g) the cost of repairing tools and other equipment that are damaged during the implementation of the approved ERAP;
 - (h) the cost of replacing
 - (i) single-use equipment and supplies, such as packaging, personal protective equipment, personal protective clothing, chemicals and other consumables, that are reasonably required to implement the approved ERAP,
 - (ii) tools and other equipment that are lost during the implementation of the approved ERAP, and
 - (iii) tools and other equipment that are damaged beyond repair during the implementation of the approved ERAP;
 - (i) the cost of repairing or replacing personal property or movables or real property or immovables that have to be damaged to implement the approved ERAP;
 - (j) the cost of defending any legal action for which there is no personal liability under paragraph 20(c) of the Act; and
 - (k) the cost of cleaning up after an incident, including handling and disposal costs for dangerous goods and contaminated materials.
- (2) The following expenses are not authorized for the purposes of compensation under section 7.2 of the Act:
- (a) the cost of purchasing new equipment to implement the approved ERAP; and
 - (b) the cost of lost business or production during the implementation of the approved ERAP.

SOR/2011-210

7.11 Compensation Limits

- (1) Compensation under paragraph 7.10(1)(a) is limited to the compensation that would be paid in relation to the dead, disabled or injured person if the person were insured under
- (a) the Public Service Management Insurance Plan;
 - (b) the Public Service Health Care Plan, with hospital coverage at level III; and
 - (c) the Public Service Dental Care Plan.
- (2) Compensation under paragraph 7.10(1)(h) in relation to the replacement of the items listed in subparagraphs (i), (ii) and (iii) is limited to the cost of an item of equivalent capability and quality.

- (3) Compensation under paragraph 7.10(1)(i) in relation to damaged property is limited to the fair market value of the property immediately before it is damaged by the person who implements the approved ERAP.

SOR/2011-210

7.12 Claims for Compensation

Claims for compensation must be submitted with supporting documentation to the Director General no later than three months after completion of the emergency response work.

This section is intended to accommodate more than one claim because the emergency response work may include mitigation of the danger at multiple sites or may include multiple sequential mitigation actions that take time.

SOR/2011-210

7.13 Emergency Response Assistance Plan for Emergency Response Contractors

A person who is not a manufacturer, producer or distributor of dangerous goods that require an ERAP, but who specializes in emergency response, may apply to have an ERAP approved under section 7.2 of this Part for the purpose of responding, in accordance with paragraph 7.1(b) of the Act, to an actual or anticipated release of dangerous goods.

SOR/2011-210