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Nontank Vessel Response Plans and Other Response Plan Requirements; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR parts 151, 155, and 160

[Docket No. USCG–2008–1070]

RIN 1625–AB27

Nontank Vessel Response Plans and Other Response Plan Requirements

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security, U.S. Coast Guard, is promulgating this nontank vessel response plan final rule to further protect the Nation from the threat of oil spills in U.S. waters. This final rule requires owners or operators of nontank vessels to prepare and submit oil spill response plans. The Federal Water Pollution Control Act defines nontank vessels as self-propelled vessels of 400 gross tons or greater that operate on the navigable waters of the United States, carry oil of any kind as fuel for main propulsion, and are not tank vessels. This final rule specifies the content of a response plan and addresses, among other issues, the requirement to plan for responding to a worst case discharge and a substantial threat of such a discharge. Additionally, this final rule updates the international Shipboard Oil Pollution Emergency Plan requirements that apply to certain nontank vessels and tank vessels. Finally, this final rule requires vessel owners or operators to submit their vessel response plan control number as part of already required notice of arrival information. This rulemaking supports the Coast Guard's strategic goals of protection of natural resources and maritime mobility.

DATES: This final rule is effective October 30, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on October 30, 2013.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1070 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2008–1070 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John Peterson, Coast Guard, Office of Commercial Vessel Compliance, Vessel Response Plan Review Team; telephone 202–372–1226, email *vrp@uscg.mil.* If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

2004 Act Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293, 118 Stat. 102)
2006 Act Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241, 120 Stat. 516)
ACP Area Contingency Plan
AMPD Average most probable discharge
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
FOSC Federal On-Scene Coordinator
FR Federal Register
FRFA Final Regulatory Flexibility Analysis
FWPCA Federal Water Pollution Control Act (33 U.S.C. 1251 through 1387)
GSA Geographic-Specific Appendix
IMO International Maritime Organization
IRFA Initial Regulatory Flexibility Analysis
ISM International Ship Management
MARPOL International Convention for the Prevention of Pollution From Ships
MEPC Marine Environment Protection Committee
NAICS North American Industry Classification System
NCP National Oil and Hazardous Substances Pollution Contingency Plan (also known as National Contingency Plan)
NM Nautical Mile
NOA Notice of arrival
NPRM Notice of proposed rulemaking
NTVRP Nontank vessel response plan
NVIC Navigation and Vessel Inspection Circular
OCS Outer continental shelf
OMB Office of Management and Budget
OPA 90 Oil Pollution Act of 1990 (Pub. L. 101–380, 104 Stat 484)
OSRO Oil spill removal organization
P&I Protection and Indemnity
PWSA Ports and Waterways Safety Act (Pub. L. 92–340, 86 Stat. 424)
QI Qualified individual

RFA Regulatory Flexibility Act
SBA Small Business Administration
§ Section symbol
SLS Saint Lawrence Seaway
SLSDC Saint Lawrence Seaway Development Corporation
SOPEP Shipboard oil pollution emergency plans
SMT Spill management team
STS Guide Ship to Ship Transfer Guide (Petroleum), Fourth Edition, 2005
U.S.C. United States Code
VRP Vessel response plan
WCD Worst case discharge

II. Executive Summary and Regulatory History

A. Executive Summary

1. Purpose and Authority

This rule implements the statutory requirement for an owner or operator of a self-propelled, nontank vessel of 400 gross tons or greater, which operates on the navigable waters of the United States, to prepare and submit an oil spill response plan to the Coast Guard. Section 311(j)(5) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)(5)), as amended by section 4202 of the Oil and Pollution Act of 1990 (OPA 90) (Pub. L. 101–380, 104 Stat 484); the Coast Guard and Maritime Transportation Act of 2004 (the 2004 Act) (Pub. L. 108–293, 118 Stat. 102); and the Coast Guard and Maritime Transportation Act of 2006 (the 2006 Act) (Pub. L. 109–241, 120 Stat. 516) sets out the statutory mandate requiring tank and nontank vessel owners or operators to prepare and submit oil or hazardous substance discharge response plans for certain vessels operating on the navigable waters of the United States.

2. Overview of Rule

This rule, which adds new 33 CFR part 155, subpart J, Nontank Vessel Response Plans (33 CFR 155.5010–155.5075) and revises portions of 33 CFR parts 151, 155 and 160, specifies the content of a vessel response plan (VRP), including the requirement to plan for responding to a worst case discharge (WCD) and a substantial threat of such a discharge as mandated in statute. The rule also specifies the procedures for submitting a VRP to the Coast Guard. This rule will improve our nation's pollution response planning and preparedness posture, and help limit the environmental damage resulting from nontank vessel marine casualties.

3. Costs and Benefits

The NTVRP final rule cost is borne by the estimated 12,000+ nontank vessel users of our Nation's waterways, with foreign-flag vessels comprising the majority of the vessels affected. The costs are also spread between U.S. and foreign nontank vessels. Approximately 40 percent of this final rule's $263 million 10-year cost is borne by domestic vessel owners/operators.

The NTVRP final rule benefits are both qualitative and quantitative. The qualitative benefits are ensuring the ability to respond effectively to oil spills, including a worst case discharge, and improving effectiveness of shore-side and onboard response activities. The quantitative benefits are preventing between 2,014 and 2,446 barrels of oil from being spilled over the 10-year period of analysis.

B. Regulatory History

On August 31, 2009, we published a notice of proposed rulemaking (NPRM) entitled Nontank Vessel Response Plans and Other Response Plans Requirements in the **Federal Register** (74 FR 49970). We received 30 comment letters on the proposed rule. On September 25, 2009, we published a notice of public meetings (74 FR 48891) that announced three public meetings. We scheduled the meetings to receive comments on the NPRM in order to allow for greater public involvement. The meetings were held in—

- Washington, DC, on October 28, 2009;
- Oakland, CA, on November 3, 2009; and
- New Orleans, LA, on November 19, 2009.

At the three public meetings, we heard from 8 speakers. In total, between the 30 comment letters and 8 speakers we received approximately 190 individual comments.

III. Basis and Purpose

General

Section 311(j)(5) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)(5)), as amended by section 4202 of the Oil and Pollution Act of 1990 (OPA 90) (Pub. L. 101–380, 104 Stat 484); the Coast Guard and Maritime Transportation Act of 2004 (the 2004 Act) (Pub. L. 108–293, 118 Stat. 102); and the Coast Guard and Maritime Transportation Act of 2006 (the 2006 Act) (Pub. L. 109–241, 120 Stat. 516) sets out the statutory mandate requiring tank and nontank vessel owners or operators to prepare and submit oil or hazardous substance discharge response plans for certain vessels operating on the navigable waters of the United States. This rule implements the statutory requirement for an owner or operator of a self-propelled, nontank vessel of 400 gross tons or greater, which operates on the navigable waters of the United States, to prepare and submit an oil spill response plan to the Coast Guard.

Per 33 U.S.C. 1321(j)(5)(D)(i–iv), a response plan must:

- Be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;
- 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;
- Identify, and ensure by contract or other approved means 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; and
- Describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge.

This rule, which adds new 33 CFR part 155, subpart J, Nontank Vessel Response Plans (33 CFR 155.5010–155.5075) and revises portions of 33 CFR parts 151, 155 and 160, specifies the content of a vessel response plan (VRP), including the requirement to plan for responding to a worst case discharge (WCD) and a substantial threat of such a discharge as mandated in statute. The rule also specifies the procedures for submitting a VRP to the Coast Guard. This rule will improve our nation's pollution response planning and preparedness posture, and help limit the environmental damage resulting from nontank vessel marine casualties.

Key Points About This Rulemaking

This nontank vessel response plan (NTVRP) final rule implements a statutory mandate from the 2004 Act as amended by the 2006 Act. These statutes expanded response plan requirements from only tank vessels, for which regulations were initially issued in 1993, to also apply to nontank vessels. This expansion recognizes the significant increase in the quantity of petroleum and petroleum products carried as bunker for fuel and the potentially catastrophic consequences should a mishap result in tank breach. In fact, a significant number of today's

large nontank vessels carry more oil as fuel than many of the tank vessels did as cargo when the original tank vessel response plan requirements were promulgated. These statutorily-mandated requirements fill this regulatory gap and enhance the national oil response infrastructure.

The NTVRP requirements align to the maximum extent possible with the existing tank vessel response plan requirements, including common definitions and plan elements. However, while tank vessels must comply with all functional elements, we have tailored the requirements for some nontank vessels. This is best demonstrated in how required NTVRP planning elements (i.e., response services) are scaled to oil capacity. Thus, for smaller nontank vessels with commensurately smaller oil capacities, there are fewer NTVRP functional planning requirements. As such, the response services a nontank vessel owner or operator must plan for are scaled to the risk (i.e., oil capacity) of the vessel. Doing so allows us to minimize burden in carrying out the statutory mandate and focus on those vessels which present the greatest risk to the environment should a breach occur.

When fully implemented, the NTVRP final rule will serve as a useful tool for national preparedness. While the Coast Guard and the entire marine industry have worked successfully to reduce the risk of oil spills, marine casualties, accidental or not, will always be possible. Furthermore, spill volumes could be potentially catastrophic, as was seen in the case of the M/V SELENDANG AYU. In 2004, M/V SELENDANG AYU spilled about 336,000 gallons of its fuel when it ran aground off the coast of the environmentally sensitive Alaskan Aleutian islands. Similarly, in 1999 the M/V NEW CARISSA spilled about 70,000 gallons of fuel oil during a grounding on the Oregon coast that resulted in considerable environmental damage. The NTVRP final rule enhances our national preparedness posture by requiring the development and submission of oil spill response plans that cover thousands of U.S. and foreign vessels when operating on our Nation's waters. This pre-planning will create vital linkages between the shipping industry and oil spill response service providers (such as oil spill removal organizations (OSROs), salvage companies, and marine firefighting companies), ensuring that mechanisms are in place to immediately respond to an emergency. Pre-planning may also drive an increase in capacity of this vital response service infrastructure. This infrastructure would be available not only for a maritime accident, but also to respond to a natural disaster.

The NTVRP final rule cost is borne by the estimated 12,000+ nontank vessel users of our Nation's waterways, with foreign-flag vessels comprising about 75 percent of the total number of vessels affected. The costs are also spread between U.S. and foreign nontank vessels. Approximately 60 percent of this final rule's $263 million 10-year cost is borne by foreign vessel owners/operators.

For this rulemaking, the Coast Guard published an NPRM with a 90-day comment period, and held 3 public meetings around the country. We received 30 comment letters containing about 190 individual comments. While many commenters questioned why their nontank vessels should be required to comply (a statutory mandate), few commenters focused on cost. The majority of comments were suggestions to improve the requirements. To ease the burden on small nontank vessel owners and operators, at the NPRM stage we scaled the required functional planning elements (i.e., response services) to the risk (i.e., oil capacity) of the vessel. In response to NPRM public comments about the burden of training and exercise requirements, the Coast Guard further added an Alternative Training and Exercise Program to allow small vessel operations the ability to voluntarily develop and submit an alternative program. This optional program provides flexibility and may reduce economic impact on some small entities.

As an example of how the NTVRP final rule scales requirements to risk, the functional planning requirements for a nontank vessel with a large oil capacity (i.e., over 2,500 barrels or 100,000+ gallons) aligns with tank vessel response plan requirements. Over the past two decades, there has been considerable growth in the size of nontank vessels. Some nontank vessels now carry a volume of bunker oil equal to or greater than tank vessels that operated in our waters 20 years ago. It is important that nontank vessels that present this level of oil spill risk be required to plan for a worst case discharge (loss of all oil) while on our waterways, just as tank vessels must do.

In summary, the NTVRP final rule is a statutorily-mandated national preparedness document that enhances our oil spill response posture. The NTVRP final rule costs are shared between U.S. and foreign nontank vessels, and are scaled to risk. Public comment did not focus on cost, but rather on ways to improve the requirements.

IV. Background

The Coast Guard intends this rule to improve our nation's pollution response planning and preparedness posture and help limit the environmental damage resulting from nontank vessel marine casualties. For a detailed Background discussion, see Section III of the NPRM (74 FR 44970, 44971), which is available in the public docket, where indicated under **ADDRESSES**. That document provides a summary of the following topics—

- Tank and Nontank Vessels—Oil and Hazardous Substance Discharge Response Plan Legislation;
- Tank Vessels;
- Nontank Vessels;
- Access to the Navigation and Vessel Inspection Circulars (NVICs);
- Shipboard Oil Pollution Emergency Plan (SOPEP);
- Notice of Arrival Requirements and Vessel Response Plans;
- Customary International Law: Innocent Passage and Transit Passage; and
- Definition of ''United States'' for Purposes of Vessel Response Plan Requirements.

Additionally, Section III of the NPRM contains a ''Discussion of Proposed Rule'' divided into two pieces. The first piece provides a broad overview of changes to our SOPEP regulations, tank vessel oil spill response plan regulations, nontank vessel oil spill response plan regulations, and notice of arrival regulations. The second piece, following the overview, discusses specific sections of the regulatory text.

To amplify the Background section in the NPRM, we provide the following discussion on jurisdiction.

Jurisdiction

This rule applies in the navigable waters of the United States as defined in 33 CFR 2.36(b)(1), including the waters in 46 U.S.C. 2101(17a). The breadth of the territorial sea for purposes of this rule is as stated in 33 CFR 2.22(a)(1), i.e., 12 nautical miles (nm) from the baseline.

Foreign vessels subject to this rule must comply with all requirements in the rule, including the requirement to have a plan with a geographic-specific appendix (GSA) for all Captain of the Port (COTP) zones through which the vessel transits on its voyage to and from a U.S. port or place, e.g., lightering zone. Coastal COTP zones extend to the outer limits of the U.S. exclusive economic zone (EEZ). Thus, a foreign-flag vessel bound to or from a U.S. port or place

must have a GSA for each COTP zone through which the vessel transits on that voyage as required by 33 CFR 155.5035(i).

The requirement to have a GSA for each COTP zone through which the foreign vessel passes, on a voyage to or from a U.S. port or place, is not predicated on application of this rule to the outer limits of the EEZ. The requirement for a GSA for each COTP zone through which the foreign vessel transits, on its way to and from a U.S. port or place, exists because a foreign vessel that is subject to the requirements of the rule must comply with all such requirements of the port State consistent with international law. In the NPRM, we explained the international law allowing a port State to exercise jurisdiction over and apply its laws to foreign vessels in its ports. 74 FR 44973, August 31, 2009. We also explained the rights of foreign vessels and limits on the authority of a coastal State to impose its laws on such vessels, contained in the doctrines of innocent passage through the territorial sea and transit passage through straits used for international navigation. 74 FR 44973, August 31, 2009.

V. Summary of Changes From NPRM

The Coast Guard revised a number of sections to alleviate the burden of the rule in response to public comments or to clarify requirements. Unless noted otherwise, the comments and the details of changes made in the final rule are discussed below in Section VI Discussion of Comments and Changes.

The Coast Guard revised the following sections to allow nontank owners or operators to submit their VRP electronically: §§ 151.27, 151.28, 155.1065, 155.1070, 155.5065, and 155.5070. For a more detailed discussion of this change, please see VI.A.13 Electronic copies—§§ 155.1030(i), 155.5030(g).

In response to comments, the Coast Guard revised paragraphs 151.28(h) and 155.5070(a) to remove the annual plan review reporting requirement.

The Coast Guard revised § 155.5010 to add a note to the section that states that additional oil spill planning standards are found in 30 CFR part 254 for nontank vessels that are mobile offshore drilling units.

The Coast Guard revised the following sections to clarify applicability for secondary carriers: §§ 155.1015 and 155.5015. For a more detailed discussion of this change, please see VI.A.1 Applicability.

The Coast Guard revised § 155.5025 to clearly state the requirements for one-time port waivers for remote areas. For a more detailed discussion of this change, please see VI.A.11 One-time port waivers § 155.5025.

The Coast Guard removed the revised definition ''vessels carrying oil as secondary cargo'' that we proposed in the NPRM in § 155.1020. Utilization of the description of a nontank vessel found at § 155.5015(a) for the applicability of these rules makes a separate definition redundant. The current definition for ''vessels carrying oil as secondary cargo'' defined in § 155.1020 will apply to new 33 CFR part 155, subpart J, as appropriate. For a more detailed discussion of this change, please see VI.A.5 Definitions §§ 155.1020, 155.5020.

The Coast Guard revised the definition for ''nontank vessels'' in §§ 155.1020 and 155.5020 for clarity and for purposes of consistency. Both of these definitions now utilize the description found in the applicability section provided in 33 CFR 155.5015(a). For a more detailed discussion of this change, please see VI.A.5 Definitions—§§ 155.1020, 155.5020.

In response to comments, the Coast Guard revised §§ 155.1030(i) and 155.5030(g) to allow vessels to carry electronic copies onboard. For a more detailed discussion of this change, please see VI.A.14 Portions of the plan carried on vessel—§§ 155.1030(i), 155.5030(g)(1).

In response to comments, the Coast Guard removed the words ''original'' and ''notarized'' from §§ 155.1030(i)(1), 155.1030(i)(2), and 155.5030(g). The Coast Guard will not require vessels to have original, notarized copies of the VRP onboard. For a more detailed discussion of this change, please see VI.A.13 Electronic copies—§§ 155.1030(i), 155.5030(g).

In response to comments, the Coast Guard amended the requirement to allow vessels to identify their insurance provider instead of insurance representatives in §§ 155.1035(e)(3) and 155.5035(e)(3). For a more detailed discussion of this change, please see VI.A.7 Insurance providers—§§ 155.1035(e)(3), 155.5035(e)(3).

In response to comments, the Coast Guard added the requirement that vessels must state their 24-hour point of contact/local agent before arriving in a port if they have not done so in their VRP in §§ 155.1035(e)(4) and 155.5035(e)(4). For a more detailed discussion of this change, please see VI.A.8—Local agent §§ 155.1035(e)(4), 155.5035(e)(4).

The Coast Guard revised §§ 155.1070 and 155.5075 to align appeal procedures between 33 CFR part 155, subpart D, Tank Vessel Response Plans for Oil and new 33 CFR part 155, subpart J, Nontank Vessel Response Plans.

In response to comments, the Coast Guard revised the following sections to clarify salvage and marine firefighting applicability for nontank vessels: §§ 155.4010, 155.4015, 155.4020, 155.4025, 155.4030, 155.4035, and 155.4052. For a more detailed discussion of these changes, please see VI.A.22 Salvage and marine firefighting resources—§ 155.5050(i).

In response to comments, the Coast Guard revised the definition of ''cargo'' in § 155.5020 for clarity. For a more detailed discussion of this change, please see VI.A.5 Definitions—§§ 155.1020, 155.5020.

The Coast Guard revised the definition of ''navigable waters of the United States'' in § 155.5020 for clarity and to ensure that the applicability of these rules, as mandated in statute, is understood.

In response to comments, the Coast Guard added the definition of ''transfer'' to § 155.5020. The Coast Guard added the definition to clarify that the term transfers means those that take place to and from vessels for the purposes of 33 CFR part 155, subpart J. For a more detailed discussion of this change, please see VI.A.5 Definitions—§§ 155.1020, 155.5020.

The Coast Guard revised the definition for ''worst case discharge'' (WCD) in § 155.5020 to maintain alignment between new subpart J and tank regulations in 33 CFR part 155, subpart D. The Coast Guard may change these requirements in a future rulemaking. For a more detailed discussion of this change, please see VI.A.5 Definitions—§§ 155.1020, 155.5020.

The Coast Guard revised the following sections to improve clarity: §§ 151.09, 151.26, 155.1015, 155.4010, 155.5015, 155.5020, 155.5023, 155.5025, 155.5030, 155.5035, 155.5050, and 155.5067. In these sections, the Coast Guard reworded sentences that might be confusing and broke up paragraphs into smaller paragraphs to make them easier to read. We also restructured the subparagraphs of §§ 155.5035(i), 155.5050(e), 155.5050(j), and 155.5050(k) to improve clarity.

The Coast Guard revised § 155.5030(d) to allow vessel owners or operators to submit one plan to represent multiple vessels, as this reduces administrative burden on the regulated entities and is consistent with earlier guidance of Navigation and Vessel Inspection Circular (NVIC) 01–05.

In response to comments, the Coast Guard amended § 155.5030(g)(1) to

require vessels to only carry those VRP sections onboard their vessels the Coast Guard deemed necessary to initiate notifications and crew response. For a more detailed discussion of this change, please see VI.A.14 Portions of plan carried on vessel—§§ 155.1030(i), 155.5030(g)(1).

In response to comments, the Coast Guard revised §§ 155.5055 and 155.5060 to clarify the new Alternative Training and Exercise Program. The Coast Guard created a new § 155.5061 to detail the new Alternative Training and Exercise Program. For a more detailed discussion of this change, please see VI.A.23 Training and Exercises—§§ 155.5055, 155.5060.

The Coast Guard revised §§ 155.5065 and 155.5075 to update the Coast Guard Headquarters' mailing address.

VI. Discussion of Comments and Changes

The Coast Guard received 30 letters commenting on the proposed rule. The majority of these letters contained multiple comments. In total, we received approximately 190 individual comments. All comments and summaries of public meetings are available in the public docket for this rulemaking, where indicated under **ADDRESSES**.

Below, we summarize the comments received, by letter and at the public meetings, and the changes we made to the regulatory text in response. We discuss the items that address a specific section in the regulatory text first. We then discuss general items that relate to a topic not found in the regulatory text. Finally, we discuss miscellaneous comments and comments that are beyond the scope of this rulemaking project.

A. Regulatory Text Comments

The Coast Guard received comments on specific regulatory text sections. Below we have organized the comments and our responses in order of regulatory text citation.

1. Applicability—§§ 151.09, 155.5015

The Coast Guard received 21 comments on §§ 151.09 and 155.5015, Applicability. We have grouped the applicability comments into the following topics: General applicability, tonnage threshold, fuel amount, offshore supply vessels, fuel type, vessels built before 1982, and blue water (ocean going)/brown water (inland) vessels.

General Applicability

The Coast Guard received one comment on general applicability. The commenter stated that the statute does not require that the entirety of the tank vessel regulation necessarily be applied to all covered nontank vessels.

The Coast Guard agrees as reflected by this rulemaking. The law in 33 U.S.C. 1321(j)(5)(D) states that tank and nontank vessels must submit VRPs. The statutory definition does not detail the specific content of a VRP. The Coast Guard proposed and is now promulgating a separate NTVRP subpart (new 33 CFR part 155, subpart J) in recognition of, and in response to, the differences between nontank vessels and tank vessels.

Tonnage Threshold

The Coast Guard received four comments on the tonnage threshold.

Commenters stated that the tonnage threshold for NTVRP requirements should be 400 gross tons as measured under the domestic regulatory system, as opposed to the international system.

The Coast Guard understands the commenters' concerns. The tonnage threshold for NTVRP requirements may be measured under the domestic regulatory system if not measured under the convention measurement system. In July 2006, Congress amended the definition of nontank vessel in the 2006 Act. Section 608 of the 2006 Act clarified the tonnage applicability for NTVRP, setting the tonnage threshold as 400 gross tons or greater, as measured under the convention measurement system in 46 U.S.C. 14302 (international) or the regulatory measurement system of 46 U.S.C. 14502 (domestic) for vessels not measured under 46 U.S.C. 14302.

One commenter also stated that if the Coast Guard decides to base the NTVRP applicability on international tonnage thresholds, then existing vessels without international tonnage assignments should be allowed to use their regulatory tonnage to determine whether the regulations apply to the vessel.

As stated above, this option already exists in the regulatory text under § 155.5015(a)(4). To clarify, if your vessel is not currently measured under the convention measurement system (46 U.S.C. 14302) then the vessel tonnage measurement as taken under 46 U.S.C. 14502 would apply to determine if your vessel must prepare an NTVRP.

One commenter suggested the tonnage limit be raised to 1,600 gross tons.

The Coast Guard disagrees. The Coast Guard must work within the parameters set forth by the law, which sets the tonnage threshold as 400 gross tons or greater. The Coast Guard has no discretion in regards to this requirement as it is established in law at 33 U.S.C. 1321(a)(26).

Fuel Amount

The Coast Guard received five comments on fuel amount. Commenters stated the amount of fuel a vessel carries should be the limiting factor when defining the applicability for the NTVRP final rule.

The Coast Guard disagrees. The 2004 Act and 2006 Act mandate that NTVRPs be used for all nontank vessels except those specified in § 155.5015(d). The Acts provide no additional opportunity for exemption. The law does not afford the Coast Guard any discretion in determining the applicability of the NTVRP rules. However, the Coast Guard has taken steps to tier these NTVRPs based on the vessels' perceived risk. Table 155.5050(p) indicates how the Coast Guard tiers the required response resources to the total amount of a vessel's oil capacity.

Offshore Supply Vessels

The Coast Guard received one comment on offshore supply vessels. The commenter stated that the Coast Guard cannot require offshore supply vessels to comply with 33 CFR part 155, subpart J since they are specifically exempted under 33 CFR part 155, subpart D. The commenter stated that since this rulemaking deals exclusively with nontank vessels, vessels that are covered by the tank vessel section of 33 CFR part 155 are outside the scope of the current rulemaking.

The Coast Guard disagrees that offshore supply vessels, as defined in 46 U.S.C. 2101, are covered by 33 CFR part 155, subpart D. Offshore supply vessels are explicitly excluded, rather than exempted, from subpart D applicability by 33 CFR 155.1015(c). Subpart D was specifically drafted in this manner to comply with the Congressional mandate set forth in the Coast Guard Authorization Act of 1992 (Pub. L. 102–587), which provides that offshore supply vessels ''are deemed not to be a tank vessel for the purposes of any law.'' Now that the Coast Guard must promulgate VRP requirements for nontank vessels, offshore supply vessels that meet the definition of a ''nontank vessel'' in FWPCA (33 U.S.C. 1321) are included in the requirements of this final rule.

Exemptions

The Coast Guard received five comments on exemptions. Commenters suggested that the Coast Guard exempt the following nontank vessels: Those that operate in waters with OSRO coverage, are a small passenger vessel

that operates less than 20 miles from shore, carry #2 diesel, or are a vessel constructed with a double bottom.

The Coast Guard disagrees. The Coast Guard must work within the parameters set forth by the 2004 Act and the 2006 Act, which require that this final rule apply to certain nontank vessels 400 gross tons or greater. While we cannot exempt these vessels, we have lessened the regulatory burden for them, where possible. For example, vessels that carry non-persistent oils, such as #2 diesel, do not need to meet the requirements regarding dispersants. We make no allowance for type of hull construction. A spill of any size poses a threat to the environment, and planning to mitigate the effects of a spill is beneficial no matter the type, construction, size, or fuel type of a vessel.

Vessels Built Before 1982

The Coast Guard received two comments on vessels built before 1982. Commenters stated that vessels built before July 18, 1982, as stated under the historical notes of 46 U.S.C. 14301, engaging on foreign or domestic voyages, are not required to use convention measurement as the basis for application under this law. One commenter requested that the Coast Guard alter the definition of nontank vessel to include this applicability law.

The Coast Guard disagrees. The Coast Guard must work within the parameters set forth by the 2004 Act and the 2006 Act. In July 2006, Congress amended the definition of nontank vessel in the 2006 Act. Section 608 of the 2006 Act clarified the tonnage applicability of this statutory requirement and therefore, for this rule, set the tonnage threshold at 400 gross tons or greater, as measured under the convention measurement system in 46 U.S.C. 14302. In other words, if a nontank vessel has already been measured under 46 U.S.C. 14302, the Coast Guard must use this tonnage measurement for purposes of applying the VRP requirements, regardless of whether the vessel engages on domestic or foreign voyages or when the vessel's keel was laid. Only if a nontank vessel has not previously been measured under 46 U.S.C. 14302, and otherwise meets an exception under 46 U.S.C. 14301(b), may the Coast Guard consider the vessel's measurement under the regulatory measurement system of 46 U.S.C. 14502 for purposes of applying the VRP requirements. The historical notes to 46 U.S.C. 14301 are thus irrelevant in this context because the Coast Guard has received a specific, more recent legislative mandate on how nontank vessel tonnage should be measured for purposes of section 311 of the FWPCA (33 U.S.C. 1321).

Blue Water/Brown Water Vessels

The Coast Guard received three comments on blue water (ocean going) and brown water (inland) vessels. Commenters stated that these regulations should not apply to vessels that operate on rivers, such as river towboats and passenger vessels.

The Coast Guard disagrees. The law requires all vessels, 400 gross tons or greater, to have NTVRPs regardless of the operating environment in the navigable waters of the United States. Risk of damages from an oil spill exist no matter where the operating environment.

2. Shipboard Oil Pollution Emergency Plan (SOPEP)—§§ 151.09, 155.5030(h)

The Coast Guard received one comment on §§ 151.09 and 155.5030(h), regarding SOPEP. The commenter stated that the Coast Guard should either exempt vessels on international voyages required to have a SOPEP plan from the NTVRP requirement or bring the SOPEP requirements into alignment.

The Coast Guard agrees in part. The Coast Guard included a ''combined plan'' provision in the proposed rule, in the applicability section of our SOPEP regulations located in 33 CFR 151.09(d)(2). The amended applicability states that if a U.S.-flag nontank vessel holds a Coast Guard-approved NTVRP and provides evidence of compliance with new 33 CFR part 155, subpart J, then the Coast Guard considers the SOPEP regulations met, as listed in 33 CFR 151.26 through 151.28. Amending our SOPEP regulations to reflect changes to the international standard negates the need for more than one oil spill response plan to be kept onboard a vessel.

3. Annual Review—§§ 151.28, 155.1070

The Coast Guard received one comment on §§ 151.28 and 155.1070, regarding annual reviews. The commenter suggested the Coast Guard remove the requirement that vessels send a letter to the Commandant saying that the annual review has taken place.

The Coast Guard agrees. The Coast Guard has removed the requirements in paragraphs 151.28(h) and 155.5070(a) to report annual reviews. This aligns those paragraphs with the requirements for tank vessel response plans in § 155.1070.

4. Incorporation by Reference—§ 155.140

The Coast Guard received one comment on § 155.140, Incorporation by reference. The commenter asked why the Coast Guard proposes to incorporate, by reference, the *Ship to Ship Transfer Guide (Petroleum), Fourth Edition, 2005 (STS Guide),* since the Coast Guard has already incorporated the second edition of the same publication by reference. The commenter also asked how the Coast Guard intends to impose the provisions in the *STS Guide,* since this publication only provides advice and guidance and does not contain mandatory language.

The Coast Guard incorporates the fourth edition of this reference because it is the most recent version of the *STS Guide.* Newer versions of documents incorporated by reference do not automatically update in the regulations when a new version is published. The Coast Guard offers this reference as a planning guideline to help the regulated entity comply with § 155.5035(c)(5)(i). The Coast Guard understands 33 CFR part 155, subpart D incorporates the second edition of the *STS Guide;* the Coast Guard will address that in a future rulemaking.

The regulatory text incorporating this reference suggests that this reference ''should'' be used to outline the format and content of procedures for ship-to-ship transfers of fuel in an emergency. While we recommend that the nontank owner or operator use this reference as a guide for ship-to-ship procedures in emergencies, this recommendation is optional to allow the nontank owner or operator flexibility.

5. Definitions—§§ 155.1020, 155.5020

The Coast Guard received 10 comments on definitions.

Cargo

The Coast Guard received one comment on the definition of ''cargo.'' The commenter requested the Coast Guard clarify the term cargo with regard to this rulemaking.

The Coast Guard has clarified the definition of cargo by aligning the definition in new 33 CFR 155.5020 more closely with the definition of cargo in 33 CFR part 155, subpart D.

The Coast Guard has revised the definition for ''worst case discharge'' (WCD) for 33 CFR part 155, subpart J. The Coast Guard determined that the requirements for nontank vessels carrying oil as secondary cargo should align as closely as possible with the requirements for vessels subject to subpart D. Subpart D vessels must plan for a discharge of a vessel's entire oil cargo, but do not currently plan for the additional discharge of the same vessel's entire fuel oil. This WCD definition revision ensures that a nontank vessel

carrying oil as cargo will likewise plan for the discharge of the vessel's entire oil cargo, unless that vessel carries more fuel oil than oil cargo. In the latter case, the owner or operator must instead plan for the discharge of a vessel's entire fuel oil, like other nontank vessels (which do not carry oil as cargo) under subpart J. The Coast Guard intends to revise the WCD definition to include both fuel oil and oil cargo for all vessels subject to subparts D and J in a future rulemaking project.

Contract or Other Approved Means

The Coast Guard received one comment on the definition of ''contract or other approved means.'' The commenter requested that the Coast Guard change the proposed definition of ''contract or other approved means'' to take into account the particular circumstances of domestic passenger vessels. The commenter stated the requirement to obtain written consent from the entity creates a potential administrative and financial burden on the small capacity vessel planner, who is otherwise entitled to the lesser response planning requirement.

The Coast Guard disagrees. Resource providers need to know if they are listed in a plan so that they can respond effectively. The planholder [1] needs to know if the required response equipment provider has the necessary resources for a response in a specific area of operation.

Inactive Vessel

The Coast Guard received one comment on the definition of ''inactive vessel.'' The commenter requested the final rule specifically consider dry bulk carriers an inactive vessel when they are temporarily out of service for winter lay-up or long term lay-up.

The Coast Guard disagrees. If a vessel maintains fuel onboard while in a laid-up status for a season, it does not meet the definition of an inactive vessel, which requires emptying of tanks of fuel, among other requirements. In addition, a laid-up vessel that retains fuel onboard still presents a risk to the environment. Therefore, the vessel must plan for response resources in the event of a spill, to mitigate environmental damage.

Inland Rivers

The Coast Guard received six comments on the term ''inland rivers.'' Commenters urged the Coast Guard to use the term ''rivers and canals'' as defined in the existing tank vessel response requirements in 33 CFR 155.1020, instead of the proposed term ''inland rivers,'' which is undefined.

The Coast Guard agrees that there is no definition for ''inland rivers.'' The Coast Guard has replaced each instance of the term ''inland rivers'' with the term ''inland area'' as that term is defined in, and aligned with, subpart D. ''Inland area'' includes rivers and canals as a subset.

Transfer

The Coast Guard received one comment on the definition of ''transfer.'' The commenter recommended the Coast Guard add a definition of transfer to only include transfers on and off the vessel.

The Coast Guard agrees with this comment. The Coast Guard has added the definition of transfer to the NTVRP final rule. The definition refers only to transfers that take place to and from vessels.

Worst Case Discharge

In response to a comment on the definition of ''cargo,'' as discussed above, the Coast Guard revised the definition of ''worst case discharge.'' For a more detailed discussion of this change, please see the ''cargo'' section above.

6. Qualified Individual (QI)—§§ 155.1035, 155.5035

The Coast Guard received six comments on qualified individual (QI). Commenters recommended revising § 155.5035(e)(2) to include naming the company that provides QI services, as well as identifying a QI and alternate.

The Coast Guard disagrees; 33 U.S.C. 1321(j)(5) has a statutory requirement for the QI and alternate QI. 33 U.S.C. 1321(j)(5)(D) states that a QI has ''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.'' The Coast Guard interprets QI to mean an individual, not a company, who has the appropriate training and knowledge to conduct such an act as described above.

One commenter requested the Coast Guard remove the requirement that the QI be shore-based from the definition of a QI. The commenter added that the proposed rule offers no justification as to why the QI be shore-based, particularly in the case of a domestic passenger vessel that consistently operates on a well-defined route in a specific geographic location.

The Coast Guard disagrees. The QI's functions should not be performed by the same person who is embarked on the very same vessel, especially when coordinating a response to a spill from a vessel. A shore-based QI will not be distracted by events on a vessel spilling oil. The Coast Guard requires an alternate QI in the event that the QI is unavailable. It is unreasonable to assume that any one person can be available 24 hours per day, 365 days a year.

One commenter asked the Coast Guard to clarify the role the QI assumes in a salvage situation. The commenter added that the QI will notify the salvor but does not engage the salvor, and that the salvage contract is between the owner or master and the salvor.

The Coast Guard clarifies the role of a QI during a salvage situation as follows. The Coast Guard expects the QI to activate response resources following notification of a spill or threat of a spill; when there is a salvage and marine firefighting situation, the Coast Guard expects the QI to notify the listed primary salvage and marine firefighting resource provider. No change to the regulatory text is necessary.

7. Insurance Provider—§§ 155.1035(e)(3), 155.5035(e)(3)

The Coast Guard received two comments on §§ 155.1035(e)(3) and 155.5035(e)(3), regarding insurance providers. Commenters requested that the Coast Guard revise 33 CFR 155.1035(e)(3) and 155.5035(e)(3) to ask for the identification of the vessel's insurance provider instead of ''insurance representatives.''

The Coast Guard agrees and has amended the requirement to state that the vessel may list an insurance provider as a contact under § 155.5035(e)(3). The Coast Guard also amended the same requirement in subpart D in § 155.1035(e)(3).

8. Local Agent—§§ 155.1035(e)(4), 155.5035(e)(4)

The Coast Guard received one comment on §§ 155.1035(e)(4) and 155.5035(e)(4), regarding local agents. The commenter requested that the Coast Guard revise 33 CFR 155.1035(e)(4) and 155.5035(e)(4) to allow vessels to identify the local agent prior to arrival in port and note the local agent in the Notice of Arrival (NOA).

The Coast Guard agrees and has amended the requirement to state if a 24-hour point of contact, i.e., local agent, is not named specifically in the VRP, then the vessel owner or operator

[1] ''Planholder'' is a term used by the maritime industry in common parlance to refer the vessel ''owner'' or ''operator'' (as defined in 33 CFR 155.1020) responsible for submitting and maintaining a Vessel Response Plan on file with the Coast Guard.

must name the 24-hour point of contact prior to the vessel's arrival in port. The Coast Guard also amended the same requirement in subpart D in § 155.1035(e)(4).

9. Deviation From Approved Plan—§ 155.5012

The Coast Guard received two comments on § 155.5012, deviation from an approved plan. Two commenters stated that deviation from an approved plan should be permitted at any time by any Coast Guard official. This would allow for a more expeditious or effective response result, regardless of whether there is a Federal On-Scene Coordinator (FOSC) present. One commenter stated that there may be some cases in which this deviation would improve the response results and those on-scene should have the flexibility to make such a deviation.

The Coast Guard disagrees. Section 1144 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324; 110 Stat. 3901), also known as the ''Chaffee Amendment,'' amended the FWPCA (33 U.S.C. 1251 through 1387) regarding the use of spill response plans by stating that the ''owner or operator may deviate from the applicable response plan if the President or the FOSC determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.'' The regulations at § 155.5012 follow the plain language of the statute, permitting the President or FOSC to make the decision to deviate from an approved plan.

10. Interim Authorization—§ 155.5023

The Coast Guard received four comments on interim authorization. Commenters stated that the Coast Guard should remove the 2-year limit for interim operating authorization.

The Coast Guard disagrees. This requirement remains consistent with the requirements in subpart D. The FWPCA (33 U.S.C. 1321(j)(5)(G)) mandates the 2-year limit.

11. One-Time Port Waivers—§ 155.5025

The Coast Guard received one comment on one-time port waivers. The commenter stated that the one-time port waiver process needs to be clearly defined for remote areas.

The Coast Guard agrees. We have revised 33 CFR 155.5025 to clearly state the requirements for one-time port waivers. In remote areas, the COTP will closely scrutinize one-time port waiver requests to ensure that the contracted response resources meet the requirements to the maximum extent practicable. Additional information on the response resources required for a particular vessel can be found in 33 CFR Part 155, Appendix B. As new response resources become available, COTPs have the authority to require those assets be incorporated into VRPs before granting one-time port waiver requests. The COTP can only authorize a one-time port waiver for a vessel owner's or operator's NTVRP for only one transit into that specific COTP zone, for the lifetime of the NTVRP. However, for vessels regularly transiting remote areas that lack resources, vessel owners or operators may submit a request for Alternative Planning Criteria approval under 33 CFR 155.5067.

12. Geographic Area—§ 155.5030

The Coast Guard received one comment on § 155.5030, regarding the geographic areas covered by the rulemaking. The commenter recommended that the Coast Guard treat the Great Lakes (Ninth Coast Guard District) as a single system/geographic area, with regard to the requirement for GSAs and for all other geographic specific requirements in the NPRM.

The Coast Guard agrees. The Ninth Coast Guard District is considering a consolidated Great Lakes Area Contingency Plan (ACP). This consolidated Great Lakes ACP may treat the Great Lakes as one geographical area, which should allow owners or operators to submit one GSA. No change to the regulatory text is necessary.

13. Electronic Copies—§§ 155.1030(i), 155.5030(g)

The Coast Guard received six comments on § 155.5030(g), electronic copies. Commenters recommended that the Coast Guard allow vessels to keep electronic copies of the NTVRP approval letter onboard, as opposed to a hard copy. One commenter also recommended deleting the terms ''original'' and ''notarized'' from § 155.5030(g)(1).

The Coast Guard agrees and has changed §§ 155.1030(i), 155.5030(g) 151.27, and 151.28 to allow for electronic copies onboard vessels. The Coast Guard has also removed the terms ''original'' and ''notarized'' from §§ 155.1030(i)(1), 155.1030(i)(2), and 155.5030(g)(1).

14. Portions of Plan Carried on Vessel—§§ 155.1030(i), 155.5030(g)(1)

The Coast Guard received two comments on § 155.5030(g)(1), the portions of an NTVRP that must be carried on a vessel. One commenter stated the Coast Guard should include a similar provision to the current provision in 33 CFR 155.1040(i) for tank vessels, which would include a larger fleet or umbrella plan. This would allow the vessel to only carry the information that the crew needs to initiate notifications and response.

The Coast Guard agrees. Vessels do not need to maintain the whole NTVRP onboard the vessel, whether the vessel is part of a fleet or not. The vessel need only carry those sections necessary to initiate notifications and crew response. The Coast Guard believes the sections needed for a response include general information and introduction, notification procedures, shipboard spill mitigation procedures, list of contacts, training procedures, exercise procedures, GSA, and vessel appendix. The Coast Guard has amended §§ 155.5030(g)(1) and 155.1030(i) to require vessels carry those sections deemed necessary to initiate notifications and crew response, listed in the previous sentence, onboard the vessel.

15. MARPOL VRP Requirements—§ 155.5030(h)

The Coast Guard received one comment on § 155.5030(h), International Convention for the Prevention of Pollution from Ships (MARPOL) response plan requirements. The commenter stated the Coast Guard should permit (but not mandate) the vessel owner to create one response plan, meeting the requirements of both MARPOL and the NTVRP requirements.

The Coast Guard agrees. The Coast Guard included this provision in the proposed rule in 33 CFR 155.5030(h). This paragraph states that SOPEP information may be combined with a Coast Guard NTVRP as long as the vessel meets the additional requirement listed in § 155.5035(k). We did not change this provision in the final rule.

16. Protection and Indemnity (P&I) Club—§ 155.5035

The Coast Guard received seven comments on § 155.5035, regarding Protection and Indemnity (P&I) clubs. Commenters stated the tank VRP regulations do not require including details of a P&I Club and local correspondent and therefore should not be included in the requirements for NTVRP.

The Coast Guard disagrees. The tank vessel regulations require the listing of applicable insurance representatives or surveyors for the vessels' area of operations in § 155.1035(e)(3). The P&I Club is the insurance provider most likely to cover liabilities arising from oil spills and so listing of the P&I Club and local correspondent contact details is

most valuable to the Coast Guard. The rule states the nontank vessel owner or operator should submit P&I Club information, as required by § 155.5035(b)(5)(i)(O), as applicable. In cases where a nontank vessel owner or operator does not have P&I Club coverage, the Coast Guard does not require the submission of the coverage information.

One commenter asked the Coast Guard to clarify whether membership in a P&I Club gives nontank vessel owners or operators the ability to list, in their NTVRPs, the response resource providers that are available through their P&I membership. The commenter stated that if it is not the Coast Guard's intent to allow listing the response resource providers available through their P&I membership, the Coast Guard should amend the rule to allow it. The same commenter also requested the Coast Guard clarify what further proof, if any, in the way of submitted paper work, the Coast Guard will require the nontank vessel to submit to confirm they have the required coverage via the P&I relationship to the National Response Corporation and/or Marine Spill Response Corporation response resources for their nationwide OSRO coverage.

The Coast Guard agrees in part. While the Coast Guard does not allow third-party contracts, such as through a P&I Club, with OSROs, the Coast Guard will accept contracts signed on behalf of a vessel owner or operator by an authorized agent or power of attorney. The contract must still be between the vessel owner or operator and the resource provider rather than with a third party. The Coast Guard requires that an NTVRP contain a list of resource providers available by contract or other approved means.

17. Shipboard Spill Mitigation Procedures—§ 155.5035(c)(1)

The Coast Guard received seven comments on § 155.5035(c)(1), shipboard spill mitigation procedures. Commenters requested that the Coast Guard remove the personnel protection issues, protective equipment, threats to health and safety, containment and other response techniques, and isolation procedures requirements listed under § 155.5035(c)(1)(v)–(ix). The commenters requested that the Coast Guard remove these requirements because they are not in NVIC 01–05 or tank VRP regulations.

The Coast Guard disagrees. We understand that the requirements listed in 33 CFR 155.5035(c)(1)(v)–(ix) are not in the tank regulations or NVIC 01–05. The International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) published Resolution MEPC.86(44) in 2000. Resolution MEPC.86(44) amended the Shipboard Oil Pollution Emergency Plan requirements reflected in Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended (MARPOL Annex I). Resolution MEPC.86(44) added criteria under the ''Mitigating Activities'' section. In order to align our domestic and current international requirements, the Coast Guard included those additional requirements and mirrored them in our domestic NTVRP requirements under § 155.5035(c)(1)(v)–(ix). U.S. vessels operating on international routes are required to comply with both international and U.S. requirements. Likewise, foreign vessels calling on U.S. ports are also following these international requirements. Adding them to the NTVRP requirements consolidates shipboard and shore based spill requirements in one location, better facilitating the response during an actual casualty and potentially making compliance easier. The Coast Guard agrees that the tank VRP regulations should be brought up-to-date with the amendments; the Coast Guard will address that in a future rulemaking.

18. International Ship Management (ISM) Checklist—§ 155.5035(c)(2)

The Coast Guard received 10 comments on § 155.5035(c)(2), the International Ship Management (ISM) checklist. The commenters recommended that the Coast Guard remove the requirements for planholders to create vessel-specific checklists produced under the ISM Code as listed under § 155.5035(c)(2). Commenters stated that this requirement goes beyond what the tank VRP regulations and NVIC 01–05 require. Commenters stated that the ISM Code does not apply to inland towing vessels and many coastal towing vessels, so they shouldn't have to create an ISM checklist. Commenters also stated the ISM Code doesn't apply to many offshore vessels and tugboats, so they shouldn't have to create an ISM checklist.

The Coast Guard agrees in part. As proposed in the NPRM, § 155.5035(c)(2) requires that the crew follow procedures to mitigate or prevent any discharge or substantial threat of a discharge. These procedures can reference specific vessel checklists required by the ISM Code or they can be in some other form that will ensure the crew considers all appropriate factors when addressing a specific casualty.

Additionally, 33 CFR 155.5035(c)(2) states ''or other means that will ensure consideration of all appropriate factors when addressing a specific casualty.'' In cases where the Coast Guard does not require vessels to comply with the ISM Code, they may use other means during the planning process to meet the requirements of this section. Although the tank VRP regulations do not require a checklist produced under the ISM Code, the Coast Guard aligned this regulation with Regulation 37 of MARPOL Annex I, which requires checklists or other means that will ensure the master considers all appropriate factors when addressing specific casualties. The Coast Guard agrees that the tank VRP regulations should be brought up-to-date with the amendments; the Coast Guard will address that in a future rulemaking.

19. Dispersants—§§ 155.5035(i), 155.5050

The Coast Guard received six comments on §§ 155.5035(i) and 155.5050, dispersants. Commenters stated that vessels using non-persistent oils for fuel, such as diesel, should be exempt from including dispersant resources in their plans.

The Coast Guard agrees and has already included that exemption in the proposed rulemaking. Currently the Coast Guard has no existing provision requiring nontank vessels carrying non-persistent or group I oil, such as gasoline, diesel, and jet fuel, to plan for or contract with dispersant resource providers. The dispersant section in § 155.5050(j) applies to only nontank vessels carrying groups II through IV petroleum oil.

One commenter recommended that the Coast Guard should modify the rule to allow the planholder to comply with aerial reconnaissance and dispersal requirements by sub-contract through OSROs and/or the spill management team (SMT) already identified in the VRP.

The Coast Guard agrees that the planholder will be able to use contracted OSRO/SMT as identified in the VRP. The Coast Guard will accept this as long as the vessel demonstrates sufficient proof of aerial tracking to the Commandant (CG–CVC). The Coast Guard proposed this provision in the NPRM and has not made any changes to the final rule.

Two commenters suggested the Coast Guard create a mechanism for providing updates via the **Federal Register** and/or through the Homeport Internet site for those new areas that are pre-authorized

for dispersant use. These commenters also suggested the Coast Guard establish a 12-month time period for affected industry members to amend their VRPs for vessels in these newly added areas.

The Coast Guard agrees, and in a previous rulemaking established a 24-month period for vessel owners and operators to update VRPs to include dispersant resource providers (74 FR 45004, 45009). The Coast Guard plans to publish any changes to preauthorization as a notice, when authorized, in the **Federal Register**. Furthermore, Homeport has a library of all ACPs, which contains areas preauthorized for dispersant use. The Coast Guard will note any updates to dispersant preauthorization in the ACP or regional contingency plan. The Homeport Web site is *http://homeport.uscg.mil/*. ACPs are maintained on the ''Safety and Security'' section of each COTP sub-site in Homeport. COTP sub-sites are found under the ''Port Directory'' tab.

One commenter stated that the proposed regulation did not consider the fact that dispersants presently stockpiled in the United States are not as effective on heavy or intermediate fuel oils as they are on crude oils.

The Coast Guard clarifies our consideration of a dispersant's effectiveness as follows. We would like to emphasize that these regulations only intend to make dispersant equipment available; the efficacy of dispersants currently stockpiled in the United States is beyond the scope of this rulemaking.

20. Contracts With Providers—§ 155.5050(d)

The Coast Guard received 10 comments on § 155.5050(d), regarding contracting with providers. Commenters recommended that the Coast Guard require direct contracts for average most probable discharge (AMPD) coverage between the vessel and the provider. As an alternative, commenters suggested the Coast Guard should require a mutual aid agreement between the transferring facility and nontank vessel.

The Coast Guard disagrees. The definition of AMPD, as taken from § 155.1020, refers to cargo oil transfer operations to or from vessels. Nontank vessels that only carry groups I through IV oil as fuel have to identify, but would not have to ensure the availability of AMPD resources by contract or other approved means. This is because the Coast Guard already requires the tank vessel or facility providing the bunker to the nontank vessel to plan for the AMPD resources covering the transfer. Listing of a marine transportation-related facility's or a bunker supplier's AMPD resources is unnecessary, as these AMPD resources are already required by either 33 CFR 154.545, 154.1045(c), or 155.1050(d)(2).

Commenters expressed concern over the requirement that certain categories of nontank vessels need not ensure access to response assets through contracts. Commenters stated this requirement would allow the VRP to merely identify response resources with written consent from the contractor and/or provider, or it might not even require written consent.

The Coast Guard understands the commenters' concern. Because the Coast Guard recognizes that not all nontank vessels are the same, we proposed and are now promulgating tiered response resource requirements based on fuel and cargo oil capacity as shown in new 33 CFR Table 155.5050(p). See additional discussion below in this section (i.e., section VI.A.20).

One commenter stated that the Coast Guard should require vessels carrying 250 barrels or more to have a contract for marine firefighting or salvage response resources.

The Coast Guard disagrees. 33 CFR 155.5050(p) requires nontank vessels with a fuel and cargo capacity less than 2,500 barrels to only identify and plan for response resources and that availability by contract is not required. While the Coast Guard does not require contracts for these vessels, we believe that requiring these vessels to plan for and comply with all of the other requirements of subpart I is sufficient. These requirements include identifying resource providers, who must be given a copy of the pre-fire plan required by 33 CFR 155.4035(b). The resource providers must agree that the plan is acceptable and agree to implement it to mitigate a potential or actual fire.

One commenter stated that the Coast Guard requirement of contracting with a resource provider will mean a cost associated with that contract coming from a business's bottom line.

The Coast Guard agrees in part. We recognize that the development of an NTVRP will not occur without cost. However, that cost is dependent on many factors, including the type of vessel, area of operation, and amount of oil capacity. The Regulatory Assessment provides a breakdown of our estimate for plan development cost. A copy of the Regulatory Assessment is available in the docket where indicated under **ADDRESSES**.

21. Response Times—§ 155.5050(g)

The Coast Guard received one comment on § 155.5050(g), regarding response times. The commenter stated the 24-hour response time requirement is unrealistic for areas a great distance from shore and in many remote areas of the country.

The Coast Guard agrees. In cases where the national planning criteria are not appropriate for the vessel in the areas that the owner or operator intends to operate, the owner or operator may request alternative planning criteria in accordance with new 33 CFR 155.5067.

22. Salvage and Marine Firefighting Resources—§ 155.5050(i)

The Coast Guard received 13 comments on § 155.5050(i), regarding salvage and marine firefighting. Commenters stated that NTVRP requirements for foam and water are unwarranted; the Coast Guard should not require nontank vessels and offshore vessels to meet the same requirements as tank vessels.

The Coast Guard disagrees. The tank vessel rules determine the required quantity of foam based on a calculation that considers the overall deck area of the ship, which assumes that the area of fire involvement is limited. The nontank vessel regulations use the same criteria for calculating the amount of foam, with the principal hazard expected to be fuel leaking from a tank in the machinery space. The requirements for foam and water should be an appropriate rate, as stated in § 155.4030(g). If the specified rate is not suitable, then nontank owners or operators may use an appropriate rate and adequate source of foam, as stated in § 155.4030(g).

Commenters stated that salvage and marine firefighting resources have little effect if the vessel operates many miles offshore. The commenters stated that neither firefighting nor salvage within the 24-hour response time would be very effective.

The Coast Guard disagrees. The salvage and marine firefighting timeframes apply only to defined operating environments as stated in 33 CFR 155.4040. Commenters referred to a response to a worst case release in the ''Open Ocean'' operating environment in 33 CFR 155.1020. None of the timeframes listed in Table 155.4030(b) apply to this operating area. An owner or operator must still contract for salvage and marine firefighting services, provide a description of how they intend to respond, and provide an estimated response time when required, according to 33 CFR 155.4030(b). In cases where the national planning criteria are inappropriate to the vessel for the areas in which it intends to operate, the owner or operator may submit an alternative planning criteria in accordance with 33 CFR 155.5067 to the Coast Guard for approval.

One commenter stated that the Coast Guard cannot expect salvage equipment to arrive on scene within 24 hours; it will take days for the equipment to arrive.

The Coast Guard intends to rely on the vessel owners or operators to prudently identify contractor resources to meet their needs. This rule intends to increase resource providers' capabilities to the level necessary to handle emergency incidents prior to deterioration into WCD scenarios. The rule will also increase the response capabilities necessary to keep port and waterways open in a WCD scenario, which might include a national security incident. The temporary waiver provision allows for a 1-year suspension of on-site salvage and firefighting assessment services, 2 years for hull and bottom survey services, 3 years for salvage stabilization services, 4 years for fire suppression services, and 5 years for specialized salvage operations services as outlined in 33 CFR 155.4030(b) and 155.4055(g). After temporary waivers expire, the Coast Guard will not authorize vessels to trade in U.S. waters without meeting the requirements of this rule. The rule does not contain a provision for consideration of additional waivers, although vessels can propose alternative planning criteria measures in accordance with 33 CFR 155.5067.

One commenter suggested that the Coast Guard form an ad-hoc advisory committee with members from the Coast Guard and industry in order to develop a salvage and marine firefighting standard for nontank vessels.

The Coast Guard agrees and disagrees. The Coast Guard believes the current salvage and marine firefighting regulations provide a sufficient level of response capability for nontank vessels. However, the Coast Guard is open to the idea of discussing revisions to the current salvage and marine firefighting regulations. In addition, the Coast Guard has a variety of advisory committees and quality partnerships with different segments of the maritime industry that regularly provide input on marine safety regulations, including VRPs.

One commenter stated that VRPs will only have one salvor, and will therefore require immediate activation of the salvor. The commenter believes this will lead to only one solution and there will not be any competition to come up with other solutions.

The Coast Guard disagrees. VRPs may list more than one salvor. A VRP GSA must list primary resource providers who are responsible for all, or a subset of, the services that are listed in Table 155.4030(b). VRPs may list additional resource providers for each service, but VRPs must indicate the primary resource provider for the COTP zone. The VRP establishes response times for those operating areas identified in Table 155.4030(b). For areas outside of the operating areas identified in Table 155.4030(b), but within U.S. waters, vessel owners or operators must still contract for salvage and marine firefighting services, provide a description of how they intend to respond, and provide an estimated response time when these services are required (33 CFR 155.4040(d)(6)). 33 CFR 155.5012 describes the means to respond using alternate strategies based on FOSC approval of a salvage plan that the attending salvage master develops, which may provide for a more expeditious or effective response.

One commenter suggested adjusting the definition of emergency towing to address the reality of towing resources and brown water (inland) versus blue water (ocean going) vessels. The commenter also suggested the Coast Guard remove the requirement for named vessels of specified capability, since the capability mandated does not exist in each inland COTP zone and certainly not on a named (dedicated) basis.

The Coast Guard disagrees. The Coast Guard recognizes that inland barges operate in a different environment than offshore vessels; however a VRP must still identify effective emergency towing vessels. Inland operators may comply by contracting emergency towing vessels according to the established requirements or submit alternative planning criteria for approval in accordance with 33 CFR 155.5067.

The Coast Guard revised the following sections to clarify salvage and marine firefighting applicability for nontank vessels as discussed above: §§ 155.4010, 155.4015, 155.4020, 155.4025, 155.4030, 155.4035, and 155.4052.

23. Training and Exercises—§§ 155.5055, 155.5060

The Coast Guard received five comments on §§ 155.5055 and 155.5060, training and exercises. One commenter stated that it is unreasonable and unnecessary to expect a vessel operator to participate in unannounced exercises for each COTP zone. The commenter adds that the Coast Guard should have operators, within a geographic region, specifically the Great Lakes, participate in one exercise annually. Commenters recommended the Coast Guard reduce NTVRP training, exercises, and drills. One commenter stated the regulations should specifically state that vessel owners can develop and administer training appropriate to the vessel and area of operation by using an alternate approved plan. The commenter also stated that the Coast Guard should require the vessels owner exercise the entire spill response plan every 3 years, while allowing vessel owners to exercise different elements of the spill response plan at different times.

The Coast Guard agrees and in the final rule offers a voluntary option for vessels with an oil capacity of less than 250 barrels under 33 CFR 155.5061. As this is a new program, the Coast Guard established the 250 barrels participation limit to provide flexibility to those nontank vessels that present the lowest level of oil spill risk (i.e., oil capacity) of the 3 oil capacity levels in the NTVRP regulations. The 250 barrels limit is a common threshold used in existing Coast Guard regulations on oil transfer requirements (33 CFR Part 155 Subpart C). This option allows those vessels to submit an Alternative Training and Exercise Program to the Coast Guard. This Alternative Training and Exercise Program is a third-party or industry organization-developed standard that the Commandant (CG–CVC) has determined provides an equivalent level of training and exercise preparedness to that established by subpart J.

24. Alternative Planning Criteria—§ 155.5067

The Coast Guard received 12 comments on § 155.5067, regarding alternative planning criteria. Commenters stated that requiring vessels to submit alternative planning criteria 45 days in advance is neither commercially viable nor reasonable.

The Coast Guard disagrees. For a nontank vessel in the spot market, the Coast Guard recommends the vessel obtain advanced approvals from COTP zones where the vessel has the potential to transit or operate. If the vessel finds itself in a situation where advanced approval has not been obtained, then it should request a one-time waiver from the COTP. In all other cases, the Coast Guard expects alternative planning criteria submissions to be submitted within the time frame listed in this final rule, which was changed to 90 days, aligning it with the timeframe provided in subpart D. The Coast Guard is developing national policy guidance to assist vessel owners or operators in the development and subsequent approval of alternative planning criteria. This new policy will facilitate quick approval of alternative planning criteria requests.

Commenters suggested that the Coast Guard should allow vessels to submit alternative planning criteria directly to the Commandant (CG–CVC), versus the local COTP. Commenters stated that an

association or consortium, on behalf of a class of vessels that share common operating characteristics, would accomplish this.

The Coast Guard disagrees. The local COTP, in close coordination with the local area committee, can best determine whether the response resources in their zone meet the national planning criteria.

One commenter stated that, due to MARPOL and the proposed NTRVP's diverse requirements, the Coast Guard should not require the combination of both plans as prescribed in § 155.5067. The commenter also stated that jurisdictions, where the additional U.S. requirements are not applicable, will also require the plan.

The Coast Guard believes the commenter mistakes the purpose of 33 CFR 155.5067. The vessel owner or operator submits alternative planning criteria as a request to the Coast Guard when they believe the national planning criteria are not appropriate to their vessel for the area where it intends to operate.

One commenter suggested that the Coast Guard amend the rule to require sectors in remote areas to establish minimally acceptable resource requirements, based on actual resident capability. The commenter added that the Coast Guard should not require a vessel owner or operator to obtain local OSRO coverage for transiting offshore (up to 200 nm) when OSROs have no capability to respond nearshore or offshore.

The Coast Guard disagrees. The Coast Guard intends the purpose of alternative planning criteria to gradually build-up response capability in remote areas. We encourage Area Committees, established under the National Contingency Plan (NCP) (40 CFR part 300), to address this issue and facilitate solutions to include recommending acceptable alternative planning criteria for NTVRP approval and building up required response resources in applicable areas.

One commenter stated that the Coast Guard should consider making the alternative planning criteria framework an interim approach to be replaced by a more permanent set of requirements at some future date. The commenter stated that Area Committees cannot build response resources. The commenter believes Area Committees should not provide the response resources and preparedness for regulated entities or make decisions granting relief to regulated entities.

The Coast Guard agrees that the Area Committees cannot build response resources for vessels. However, Area Committees should have a thorough list of available resources within their Area of Responsibility. This list of resources should address remote areas where alternative planning criteria is necessary. The Coast Guard is currently developing a national Area Committee standard that each COTP zone can use to develop local resource lists. This national planning standard will be used by the COTP to address resource gaps until private industry response resources are sufficiently built up in remote areas to meet the planning standard described in 33 CFR part 155.

One commenter stated that this rule will result in a large increase in areas requiring waivers/alternate planning. The commenter also stated that the towing resources do not and will not exist in all sectors and the same will likely hold true for firefighting capability in many low volume ports.

The Coast Guard agrees in part. While the current state of resources in remote areas may not meet the criteria required by the Coast Guard's regulations, and waivers and alternative planning criteria will be used to ensure compliance requirements, the Coast Guard believes that over time the resources will build up to a point where waiver and alternative planning criteria will not be needed.

25. Notice of Arrival (NOA) Requirement—§ 160.206

The Coast Guard received one comment on § 160.206, regarding NOA requirements. The commenter stated that the Coast Guard shouldn't require owners or operators to submit their VRP control number as part of the NOA information because the Coast Guard is the issuing authority for the VRP control numbers.

The Coast Guard disagrees. Some vessels are associated with more than one VRP. For purposes of protecting navigation and the marine environment, the Coast Guard proposed this VRP-related addition to NOA reporting requirements under authority of section 4 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223. The Coast Guard will use this additional information to better determine which VRP the reporting vessel is operating under and if the vessel has an approved VRP GSA for the COTP zone in which the vessel intends to call.

B. General Comments

The Coast Guard received comments on the NPRM not related to a specific regulatory text citation. Below we discuss the comments and our responses.

1. Alternative Approach

The Coast Guard received four comments on alternative approaches. Commenters suggested the Coast Guard incorporate an alternative program approach consistent with the intent of the regulations, but tailored to the specific risk factors and operational profiles of a particular class of vessels. The commenters noted the Coast Guard has a program similar to this for the Alternative Security Program concept in 33 CFR 101.120(b).

The Coast Guard agrees in part. First, the Coast Guard has tailored the required response resources to risk (i.e., oil capacity) as seen in new 33 CFR Table 155.5050(p). Second, the Coast Guard has taken measures to incorporate an Alternative Training and Exercise Program into the final rule under § 155.5061 for vessels carrying less than 250 barrels of oil. Owners or operators may use the Alternative Training and Exercise Program for a particular class of vessels operating in similar operating environments.

2. Cost

The Coast Guard received one comment on cost. The commenter stated that while the costs would be shared among more vessels, the cost to the industry may well be larger than the cost for providing spill response equipment to tank vessels. The commenter added there will be a large investment in vessels, equipment, and crew for the OSRO, and the costs will be passed along to the vessel operator.

The Coast Guard disagrees; the Coast Guard does not believe nontank owners or operators will need to invest in OSRO vessels, equipment, and crew. Since the implementation of the tank VRP regulations in 1993, OSRO infrastructure, including vessels and equipment, has been in place in the continental United States for oil spill response coverage up to a WCD scenario. Nontank vessel owners or operators can contract with these OSROs or resource providers.

3. Direct Contracts

The Coast Guard received four comments on direct contracts. The commenter stated that requiring a direct contract (in lieu of a third-party option) will reduce preparedness, eliminate competition, and may reduce salvage effectiveness.

The Coast Guard disagrees. The Coast Guard requires a direct contractual relationship between the vessel owner or operator and the OSRO to ensure that specific resources are available to respond to any potential incidents.

While the Coast Guard does not allow third-party contracts, such as through a P&I Club, with OSROs or salvage providers, the Coast Guard will accept contracts signed on behalf of a vessel owner or operator by an authorized agent or power of attorney. The contract must still be between the vessel owner or operator and the resource provider rather than with a third party so that authority to authorize execution of the response plan is clear in the case of an incident. This is in accordance with 33 U.S.C. 1321(j)(5)(D)(iii), which states that a response plan shall ''identify, and ensure by contract or other means'' the availability of personnel and equipment to respond to a WCD and to mitigate or prevent a substantial threat of such a discharge.

4. Equipment

The Coast Guard received two comments on equipment. One commenter stated it would be more realistic to define response times based on the distance to the nearest commercial port, since many remote areas do not have the response equipment readily available.

The Coast Guard agrees that in some remote areas of the country, meeting national planning criteria is not possible. Because of this, 33 CFR 155.5067 allows vessels to submit alternative planning criteria for those areas where the national planning criteria cannot be met.

One commenter states that the response times listed in NVIC 01–05 are unrealistic. The commenter stated the 1 hour response time for oil containment boom and having oil recovery devices available within 2 hours of any location where oil transfers take place would be impossible to meet. The commenter added that the vessels will not be able to maintain that amount of equipment onboard due to lack of available space.

The Coast Guard agrees. The final rule, like the NPRM, does not have the same requirements as NVIC 01–05 for this reason. Equipment identified to respond to a WCD should be capable of arriving on scene within the timeframes identified in Table 155.5050(g). The specific quantity of boom required for collection and containment will depend on the specific recovery equipment strategies employed.

5. Fuel Type

The Coast Guard received one comment on fuel type. The commenter expressed concern that the proposed rule does not adequately address the substantial variation in fuel oils typically carried onboard nontank vessels. The commenter noted the fuels vary in terms of their physical and chemical properties. The commenter also noted that current U.S. response infrastructure and technologies may not be appropriate for viscous fuel oils.

The Coast Guard disagrees. We believe that our proposed rule, like the current tank regulations in 33 CFR part 155 subpart D, adequately reflect the intent of the FWPCA. The FWPCA requires that vessels submit VRPs for responding, to the maximum extent practicable, to a WCD, and to a substantial threat of such a discharge of oil or hazardous substance. The Coast Guard understands that there are different physical and chemical properties associated with the oils carried onboard regulated vessels. But since this final rule remains relatively consistent with the tank VRP regulations, the Coast Guard has written the regulations so that all oil and oil residue spills will be responded to as the FWPCA intended.

6. International Issues

The Coast Guard received four comments on international issues. The commenters urged the Coast Guard to work with Transport Canada to coordinate contingency plan requirements for vessels transiting through transboundary areas.

The Coast Guard agrees. The Coast Guard already works with Transport Canada under the Canada-United States Joint Marine Pollution Contingency Plan. The Joint Contingency Plan provides a coordinated system for planning, preparedness, and responding to harmful substance incidents in the contiguous waters of Canada and the United States.

One commenter recommended the Coast Guard explicitly clarify the boundaries of the United States and Russia for the purposes of requiring VRPs for the Bering Strait.

The Coast Guard clarifies the applicability of VRP requirements in relation to the boundaries of the United States and Russia as follows. If a vessel is destined to or from a U.S. port or place, the Coast Guard will require it to submit a VRP for the port or place in which they are entering and include a GSA for all of the COTP zones that it transits through; if a vessel is not bound to or from a U.S. port or place, and it passes through the Bering Strait or any other international strait, the Coast Guard does not require that the vessel submit a VRP.

One commenter urged the Coast Guard to consult with the State of Alaska on the matter of nontank vessel compliance in the Bering Strait before finalizing the rule.

The Coast Guard gave Alaska, along with any other state, the opportunity to comment on this NPRM during the comment period. The Coast Guard will continue to consult with stakeholders among the states and other groups once the rule is implemented to ensure that the rule's provisions are well understood and operating as effectively as possible to prepare for, prevent and mitigate the effects of oil spills from nontank vessels.

7. NVIC

The Coast Guard received seven comments on NVIC 01–05. Commenters asked the Coast Guard to maintain consistency between the requirements of the NVIC and rule. Commenters requested that the Coast Guard not include requirements that exceed requirements for tank vessels.

The Coast Guard agrees in part. The NVIC provided interim guidance for nontank vessel owners or operators for preparing and submitting NTVRPs to respond to a discharge or threat of discharge of oil. The Coast Guard published the NVIC to assist nontank vessel owners with compliance with a Congressional statutory mandate under the FWPCA, as amended by OPA 90.

The NVIC and the NTVRP rule closely mirror the current tank vessel regulations. There is very little difference between the NVIC and the nontank final rule. However, the NVIC had provisions which the final rule improved after public notice and comment. For example, we added one-time waivers and 5-year approvals for approved NTVRPs. Also, NVIC 01–05 specifically warned in the ''Disclaimer'' section on p. 5, ''A response plan that complies with this guidance may ultimately not comply with the regulations, once issued. In which case, the plan may require revision by the vessel owner or operator to comply with the regulations.'' The Coast Guard agrees that the tank vessel regulations need to align with the updated SOPEP regulations and NTVRP regulations; the Coast Guard will address that in a future rulemaking.

8. Port or Place of the United States

The Coast Guard received two comments on the term port or place of the United States. Commenters requested the Coast Guard clarify the term in consideration of the provisions of 43 U.S.C. 1333, with regard to this rulemaking.

The Coast Guard clarifies the term in the following discussion. Port or place of the United States is a general term to describe any location subject to the jurisdiction of the United States. The

actual jurisdiction for the United States is different for each statute because each statute separately establishes jurisdiction. The term ''port or place of the United States'' in this regulation is intended as a clarifying description that modifies the preceding clause relating to innocent passage and transit passage. This particular term must be read in conjunction with the rest of the applicability requirements, particularly the requirement that the nontank vessel operate upon the navigable waters of the United States as defined in 46 U.S.C. 2101(17a) and 33 CFR 2.36(b)(1). Thus, for example, a nontank vessel that did not operate on the navigable waters of the United States could operate upon the outer continental shelf (OCS) of the United States or within the EEZ and not require a NTVRP. On the other hand, a nontank vessel that operated upon U.S. navigable waters en route a destination on the OCS outside U.S. navigable waters would be required to hold a NTVRP.

9. Risk Analysis

The Coast Guard received 20 comments on risk analysis. Commenters stated the regulatory analysis did not support the regulation that the Coast Guard created, including covering those vessels carrying lesser quantities of oil than tank vessels.

The Coast Guard disagrees. While the 2004 Act and 2006 Act mandate that certain owners and operators prepare and submit NTVRPs, the Coast Guard has taken steps to tier the NTVRP requirements based on a vessel's perceived risk. Table 155.5050(p) indicates how the Coast Guard tiers the required response resources to the total amount of a vessel's oil capacity.

Additionally, after further review of associated guidance and regulations, the Coast Guard has reduced the burden of compliance with the training and exercise requirements for certain nontank vessels. The Coast Guard has incorporated an Alternative Training and Exercise Program into the final rule under § 155.5061 for vessels carrying less than 250 barrels of oil. This Alternative Training and Exercise Program can be a third-party or industry organization developed standard that the Commandant (CG–CVC) has determined to provide an equivalent level of training and exercise preparedness to that in 33 CFR 155.5055(a) and 155.5060(a). Based on this new option, we believe some small entities will realize a reduced economic burden as a result of this section because they would have the flexibility to tailor their training and exercise program to meet this new requirement, based on Commandant approval, without having to perform the same level of training and exercises as owners and operators of larger nontank vessels.

Commenters stated the design, operational characteristics, and casualty history of towing vessels strongly suggest that towing vessels 400 gross tons or greater do not pose a significant risk of the kind of catastrophic spill that led to the imposition of this statutory mandate.

The Coast Guard disagrees and believes that the potential risk of towing vessels spilling oil into the environment exists. The 2004 Act and the 2006 Act specifically require nontank vessels 400 gross tons or greater to have a VRP. The rule intends to improve our nation's response planning and preparedness posture. While towing vessels will generally spill less fuel oil than a large nontank ship, the potential to disrupt maritime commerce and normal operations in the affected port and waterway is just as great. Therefore, all nontank vessels 400 gross tons or greater are required to prepare an NTVRP.

One commenter stated the Coast Guard should consider areas of operation, including those 100 miles offshore, along with the amount and type of fuels carried, in weighing the risk posed by a potential discharge of oil. The commenter stated that if a vessel operating 100 miles offshore discharged oil, the oil would likely evaporate before it reached territorial waters.

The Coast Guard agrees that a vessel operating 100 miles offshore poses less of an environmental risk to territorial waters than that same vessel operating closer to shore. However, the vessel still could spill oil while transiting to and from an offshore location. Therefore, offshore vessels 400 gross tons or greater operating on the navigable waters of the United States are required to prepare an NTVRP.

One commenter stated that the Coast Guard should tailor the final rule to the risk posed by the different vessel types.

The Coast Guard agrees in part. While the 2004 Act, as modified by the 2006 Act, requires all nontank vessels 400 gross tons or greater regardless of their type to have a VRP, we proposed in the NPRM, and maintain in this final rule, that the level of response planning and preparedness be tailored to the level of oil spill risk. To account for the variation in risk, we did not tailor the final rule by vessel type, but rather by oil capacity. Table 155.5050(p) summarizes this tiered approach to required response resources by grouping requirements into three segments, for nontank vessels with an oil capacity of—

- 2,500 barrels or greater;
- Less than 2,500 barrels, but greater than or equal to 250 barrels; and
- Less than 250 barrels.

Any spill has the potential to disrupt maritime commerce and damage the environment, thus, the requirement to prepare a VRP is important for all types of covered nontank vessels. But as Table 155.5050(p) summarizes, we have tailored the level of response planning and preparedness to the level of oil spill risk, considering that the law requires planning for a ''worst case discharge'' and the amount of a WCD would be considerably less for vessels carrying smaller amounts of oil.

10. Small Business

The Coast Guard received two comments on small businesses. Commenters stated that the rulemaking was not scaled properly for small business.

The Coast Guard disagrees. First, the Coast Guard proposed and is now promulgating requirements for response resources that are tailored to risk (i.e., oil capacity) as seen in Table 155.5050(p). Second, the Coast Guard has incorporated an Alternative Training and Exercise Program into the final rule under § 155.5061 for vessels carrying less than 250 barrels of oil. This Alternative Training and Exercise Program can be a third-party or industry organization developed standard that the Commandant (CG–CVC) has determined to provide an equivalent level of training and exercise preparedness to that in 33 CFR 155.5055(a) and 155.5060(a). With this new option, we believe some small entities will realize a reduced economic burden as a result of this section because they would have the flexibility to tailor their training and exercise program to meet this new requirement, based on Commandant approval, without having to perform the same level of training and exercises as owners and operators of larger nontank vessels.

11. State Plans

The Coast Guard received one comment on State plans. The commenter suggested that the Coast Guard should allow vessels that operate in waters with state requirements for spill response plans (e.g. Alaska and the west coast) to operate under their respective State plans, rather than both Federal and State plans.

Executive Order 13132, Federalism, sets forth specific requirements that the Federal government must follow as it develops and carries out policy actions

that affect State and local governments. In the 2004 Act and the 2006 Act, Congress delegated the responsibility to the Coast Guard to ensure all applicable vessels prepare and submit plans for responding to a discharge of oil from their vessels. We drafted the proposed rule to ensure that, to the extent practicable, it is consistent with any applicable State-mandated response plans in effect on August 9, 2004. To that end, we conducted a search of State laws addressing NTVRPs and concluded that we will not preempt any State law when this rule is final. The vessel owner or operator may comply with both State law and Federal law on this topic so long as, among other things, the vessel owner or operator has a direct contractual relationship with the oil spill removal organization. States that may have interest in this rulemaking had an opportunity to comment upon potential federalism issues.

Further discussion and information on this topic can be found in the Regulatory Analyses at section VIII.E., *Federalism.*

12. Tier 1 Response Resources

The Coast Guard received four comments on Tier 1 response resources. Commenters stated nontank vessels must share the investment in Tier 2 and Tier 3 capability, rather than just planning for Tier 1 response resources.

The Coast Guard determined that the vast majority of nontank vessels do not carry fuel oil in such large volumes to require them to have Tier 2 or 3 response resources available by contract or other approved means. However, when the Coast Guard considered the volumes of cargo oil carried in Very Large Crude Carriers or Ultra Large Crude Carriers, we realized the need for Tier 2 or 3 response resources for VRPs. The response to significant fuel oil spills from nontank vessels, such as the M/V COSCO BUSAN, indicates that response resources' availability is not an issue. OSROs responding to these spills have been able to successfully cascade in the needed response resources to contain and mitigate the impact of smaller spills. When the availability of response resources is limited or in question, vessels should employ the provisions of Coast Guard NVIC 07–01 to ensure a successful spill cleanup while maintaining adequate coverage for a region at the same time.

13. Additional Changes

The Coast Guard has made additional changes to the regulatory text, see V. Summary of Changes from the NPRM in this preamble for a discussion of these changes.

C. Miscellaneous Comments

The Coast Guard received nine miscellaneous comments. One commenter recommended the Coast Guard extend the presented proposal to include a requirement for a computerized calculation service, offering stability and strength calculations based on a refined, vessel-specific data model. The commenter also added that OPA 90 (Pub. L. 101–380; 104 Stat. 484) and MARPOL regulations require this service for tank vessels in U.S. waters as well as worldwide for nontank vessels.

The Coast Guard agrees. Nontank vessel owners or operators must plan for and identify salvage response resources, including the assessment of structural stability required by 33 CFR 155.4030(b). This requires the use of a salvage software program to assess the vessel's stability and structural integrity.

One commenter suggested 33 CFR part 155, subpart J become a stand-alone guide because subpart J often refers to 33 CFR part 155, subpart D.

The Coast Guard disagrees. The Coast Guard believes that interlinking subpart J with subpart D maximizes consistency. The regulations are easily accessible, since they are all contained under 33 CFR part 155. In addition, they are available in a searchable format at *http://www.gpoaccess.gov/cfr/index.html.*

One commenter expressed concern that the Coast Guard's VRP review and approval process for both tank VRPs and NTVRPs does not allow for public review and comment. The commenter recommended that the Coast Guard provide an opportunity for public review and comment on all VRPs, approved contractors, and information on the completion of drills and exercises required by the regulations.

The Coast Guard disagrees. The opportunity for public comment on the items listed above fall outside the scope of this rulemaking. OPA 90 requires the Coast Guard to review and approve VRPs. Due to the extensive regulatory requirements, the need to facilitate maritime commerce combined with the large volume of VRP submissions, an opportunity for public review and comment is not appropriate. The public can learn about response planning efforts and response resources in each COTP zone, through involvement with the local area committee.

One commenter requested the Coast Guard clarify how to select out domestic passenger vessels in the Coast Guard's VRP online database.

On September 30, 2010, the Coast Guard launched a new, online VRP database called VRP Express (*http://homeport.uscg.mil/vrpexpress*). This new web-based tool allows users to upload their VRP information electronically. This database also features a search function by vessel, so users may look up specific VRP information. This database is also capable of conducting advanced searches through expanded criteria.

To determine the number of authorized U.S. flagged passenger vessels, the user should first, select ''VRP Express'' in the ''Data Type'' and then select ''authorized'' in the ''Vessel Status''. Selecting the ''Advanced Search'' listed on the main page will expand search options. Next, in the Advanced Search, under ''Carrier Type,'' select ''a vessel type that matches your criteria.'' Finally, under ''Vessel Flag'' select ''United States'' and select ''Search''. Users will need to do the above process for each of the vessel carrier types they wish to query in the database.

Three commenters asked the Coast Guard to review comments that were previously submitted to a docket concerning the NVIC.

The Coast Guard has included those comments and responded to them in this Discussion of Comments and Changes section.

One commenter stated that a salvor is not an OSRO, i.e., clean-up contractor, and that referring to a salvor as such is confusing and misleading to industry.

The Coast Guard could not find where the proposed regulation refers to a salvor as an OSRO. Therefore, we are unable to respond to this comment.

D. Beyond Scope

One commenter suggested the Coast Guard reassess the licensing restriction. The commenter stated operators have been told they could not use international gross tonnage for operator license upgrades but rather domestic gross tonnage.

The Coast Guard found this comment to be beyond the scope of the proposed rulemaking.

VII. Incorporation by Reference

The Director of the Federal Register has approved the material in § 155.5035 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in § 155.140.

VIII. Regulatory Analyses

This NTVRP final rule implements a statutory mandate from the 2004 Act as amended by the 2006 Act. These statutes expanded response plan requirements from only tank vessels, for

which regulations were initially issued in 1993, to also apply to nontank vessels. This expansion recognizes the significant increase in the quantity of petroleum and petroleum products carried as bunker for fuel and the potentially catastrophic consequences should a mishap result in tank breach. In fact, a significant number of today's large nontank vessels carry more oil as fuel than many of the tank vessels did as cargo when the original tank vessel response plan requirements were promulgated. These statutorily-mandated requirements fill this regulatory gap and enhance the national oil response infrastructure.

When fully implemented, the NTVRP final rule will serve as a useful tool for national preparedness. While the Coast Guard and the entire marine industry have worked successfully to reduce the risk of oil spills, marine casualties, accidental or not, will always be possible. Furthermore, spill volumes could be potentially catastrophic, as was seen in the case of the M/V SELENDANG AYU. In 2004, M/V SELENDANG AYU spilled about 336,000 gallons of its fuel when it ran aground off the coast of the environmentally sensitive Alaskan Aleutian islands. Similarly, in 1999 the M/V NEW CARISSA spilled about 70,000 gallons of fuel oil during a grounding on the Oregon coast that resulted in considerable environmental damage. Neither vessel was required to have a NTVRP at the time of the incident. The NTVRP final rule enhances our national preparedness posture by requiring the development and submission of oil spill response plans that cover thousands of U.S. and foreign vessels when operation on our Nation's waters. This pre-planning will create vital linkages between the shipping industry and oil spill response service providers, such as OSROs, salvage companies, and marine firefighting companies. Pre-planning may also drive an increase in capacity of this vital response service infrastructure. This infrastructure would be available not only for a maritime accident, but also to respond to a natural disaster.

The NTVRP final rule cost is borne by the estimated 12,000+ nontank vessel users of our Nation's waterways with foreign-flag vessels comprising approximately 75 percent of this population. The response services a nontank vessel owner or operator must plan for are scaled to the consequence of an oil spill as represented by the oil capacity of the vessel. The costs are also spread between U.S. and foreign nontank vessels. Approximately 60 percent of this final rule's $263 million 10-year cost is borne by foreign vessel owners/operators.

In summary, the NTVRP final rule is a statutorily-mandated national preparedness document that enhances our oil spill response posture. The NTVRP final rule costs are shared between U.S. and foreign nontank vessels, and are scaled to vessel oil capacity. Public comment did not focus on cost, but rather on ways to improve the requirements.

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule is a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order.

We summarized public comments on the NPRM in section VI of the preamble. As previously discussed, we received public comments on the burden associated with the proposed training and exercise provisions. As a result, we have amended the final rule to allow for vessel owners or operators to submit an Alternative Training and Exercise Program under 33 CFR 155.5061. This alternative approach applies to those vessels subject to this rule and that have an oil capacity less than 250 barrels. This alternative program may reduce the economic impact of the rule on some owners or operators of smaller vessels that find it beneficial to voluntarily develop and submit an alternative program that may provide flexibility for small vessel operations.

We did not receive or find data to quantify the total number of owners or operators of vessels with an oil capacity less than 250 barrels who will take advantage of this alternative program. Our cost analysis for the NPRM assumes all affected nontank vessel owners or operators will perform the full level of training and exercises under 33 CFR 155.5055 and 5060. We did not revise these estimates of training and drilling costs in the NPRM, since we have no data available to quantify the potential reduction in costs and regulatory burden of the alternative program. In addition, we expect this change would be a reduction in the regulatory burden and owners or operators would only take advantage of this voluntary alternative if they receive a reduced regulatory burden below the costs to comply with the full level of training and exercise requirements under 33 CFR 155.5055 and 5060.

We received no other public comments that would alter our assessment of the impacts discussed in the NPRM. We received no additional information or data that would alter our assessment of the impacts of the rule on industry. Therefore, since the alternative program provides flexibility and we received no additional data to change our original estimates of costs and benefits for the NPRM, we adopt the Preliminary Regulatory Analysis for the NPRM as final. A summary of the analysis follows.

The following table summarizes the costs and benefits of this rule.

TABLE 1—SUMMARY OF COSTS AND BENEFITS OF RULE—COSTS *

[$ millions; 7% discount rate]

Total Annualized Cost	$37.4
Total 10-year Present Value Cost	$263.0
Benefits	
Qualitative: Improved preparedness and reaction to an incident, including a worst case discharge, and improved effectiveness of shore-side and onboard response activities.	
Quantitative: Prevent between 2,014 and 2,446 barrels of oil from being spilled over 10-year period of analysis.	

* Estimates are for both U.S. and foreign-flag vessels. U.S. and foreign-flag vessel cost are also reported separately in this section.

The rule will implement the statutory requirements in 33 U.S.C. 1321(j)(5) for U.S. and foreign-flag vessel owners or operators to prepare and submit oil spill response plans to the Coast Guard. The type of vessels affected will be self-propelled, nontank vessels of 400 gross tons or greater as measured under the convention measurement system or regulatory measurement system, which operate on the navigable waters of the

United States, and carry oil of any kind as fuel for main propulsion.

The rule will specify the content of a response plan, including the requirement to plan for a response to a WCD and a substantial threat of such a discharge. The rule will also specify the procedures for submitting a plan to the Coast Guard.

There are four cost elements associated with this rule: The cost for nontank vessel plan development, maintenance, and submission; the cost for a nontank vessel owner or planholder to obtain the service of an OSRO; the cost for a nontank vessel owner or planholder to contract with a QI along with a SMT; and, the cost for training and exercises.

Based on Coast Guard data, we estimate this rule will affect about 2,951 U.S.-flag vessels and 1,228 associated planholders. We estimate the rule will also affect about 9,264 foreign-flag vessels and about 1,544 associated planholders.

The following estimates use a 7 percent discount rate over a 10-year period of analysis. We estimate for owners or operators of U.S.-flag nontank vessels the present value 10-year costs of this rule to be $111.4 million with annualized costs of about $15.8 million. We estimate for owners or operators of foreign-flag nontank vessels the present value 10-year costs of this rule to be $151.6 million with annualized costs of about $21.6 million. We estimate for all owners or operators of U.S. and foreign-flag nontank vessels the total present value 10-year costs to be about $263 million with annualized costs of about $37.4 million.

We found the training and exercise requirements to be the most costly requirements representing 90 percent of the cost of the rule for vessel owners or operators. Owners or operators of nontank vessels (with an oil capacity less than 250 barrels) that take advantage of the Alternative Training and Exercise Program may reduce their training and exercise costs.

As detailed in the NPRM, we expect this rule to provide quantifiable benefits in the form of barrels of oil not spilled in addition to qualitative benefits, which include improved preparedness and reaction to an incident, including a WCD, and improved effectiveness of onboard and shore-side response activities.

We based quantifiable benefits on a review of marine casualty cases from our Marine Information for Safety and Law Enforcement database for the period 2002–2006 in order to obtain casualty reports involving self-propelled, nontank vessels of 400 gross tons or greater that operated on the navigable waters of the United States and that carried oil of any kind as fuel for main propulsion. We estimated the rule will prevent 2,014 to 2,446 barrels of oil from being spilled during a 10-year period of analysis.

These estimates do not include an evaluation of additional data since 2006 and do not include open cases (investigations) that may have recently closed. These estimates also do not reflect the full socioeconomic benefits of oil spill mitigation and risk reduction associated with nontank vessels, which include avoided damages to the ecosystem and regional and national economic impacts. The Preliminary Regulatory Analysis for the NPRM contains additional discussion of benefits, including qualitative benefits, case studies of notable spills, and other areas of benefits.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Final Regulatory Flexibility Analysis

When an agency promulgates a final rule under section 553 of the Regulatory Flexibility Act (RFA), after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency must prepare a final regulatory flexibility analysis (FRFA) or have the head of the agency certify pursuant to RFA section 605(b) that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA prescribes the content of the FRFA in section 604(a), which we discuss below.

(1) A description of the reasons why action by the agency is being considered.

Coast Guard response: This rule will affect an owner or operator of a commercial, self-propelled nontank vessel of 400 gross tons or greater operating on the navigable water of the U.S. that uses oil of any kind as fuel for main propulsion, and is not a tank vessel. These vessel owners would be required to prepare and submit oil spill response plans (NTVRPs) to the Coast Guard much like the requirements in the response plans for tank vessels under 33 CFR part 155, subpart D. The rule will specify the content of a response plan, including the requirement to plan for responding to a worst-case discharge and a substantial threat of such a discharge. The rule will also specify the procedures for submitting a plan to the Coast Guard. Additionally, the rule will update the international Shipboard Oil Pollution Emergency Plan (SOPEP) requirements that apply to certain nontank vessels and tank vessels. The rule will amend or change 33 CFR parts 151 and 155.

(2) The RFA requires a succinct statement of the need for, and objectives of, the rule.

Coast Guard response: Section 311(j)(5) of the FWPCA (33 U.S.C. 1321(j)(5)), as amended by section 4202 of OPA 90; the 2004 Act; and the 2006 Act, sets out the statutory mandate requiring tank and nontank vessel owners or operators to prepare and submit oil or hazardous substance discharge response plans for certain vessels operating on the navigable waters of the United States. This rule implements the statutory requirement for an owner or operator of a self-propelled, nontank vessel of 400 gross tons or greater, which operates on the navigable waters of the United States, to prepare and submit an oil spill response plan to the Coast Guard.

This rule specifies the content of a VRP, including the requirement for owners or operators to plan to respond to a WCD and a substantial threat of such a discharge as mandated in statute. The rulemaking also specifies the procedures for submitting a VRP to the Coast Guard. This rule will improve our nation's pollution response planning and preparedness posture, and help limit the environmental damage resulting from nontank vessel marine casualties.

(3) The RFA requires a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Coast Guard response: We summarize the public comments we received on the NPRM in section VI of the preamble. We received public comments on the burden associated with the proposed training and exercise provisions. As a result, we have amended the final rule to allow for vessel owners or operators to submit an Alternative Training and Exercise Program under 33 CFR

155.5061. This alternative approach applies to those vessels subject to this rule and that have an oil capacity less than 250 barrels. This alternative program may reduce the economic impact of the rule on some owners or operators of smaller vessels that find it beneficial to voluntarily develop and submit an alternative program that may provide flexibility for small vessel operations. See section VIII. A., ''Executive Order 12866,'' for additional information.

(4) The RFA requires a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

Coast Guard response: This rule will affect owners or operators of commercial, self-propelled nontank vessels of 400 gross tons or greater that operate on the navigable waters of the United States. We expect that a majority of the 2,951 U.S.-flag vessels affected by rule may be owned by small entities based on our analysis.

As detailed in the IRFA for the NPRM, we estimate this rule will affect about 1,228 U.S. companies (entities) that own approximately 2,951 nontank vessels. We researched all 1,228 entities and found entity-specific information on 640 of them (about 52 percent). From our analysis, we determined that 376 of the 640 (about 59 percent) entities are small based on the Small Business Administration (SBA) size criteria of annual revenues and employment data. These 376 small entities own 769 vessels or about two vessels per owner.

Additionally, we did not find revenue and employee size data for the remaining 588 of the 1,228 entities, which precluded us from using those entities in our analysis. Given the lack of data for these entities, we assume that these 588 entities are likely small.

We classified small entities by the North American Industry Classification System (NAICS) code for those entities that had revenue and size data. The 376 small entities with data are represented by 82 different NAICS codes or categories. We determined if a business was small by using the SBA size standards for each NAICS code. We found that 19 NAICS categories represent 287, about 76 percent of the 376 of the small entities that we analyzed. The remaining 24 percent of small entities (89 small entities) are represented by over 60 different NAICS categories with less than 1 percent of the population of small entities in each category.

Based on the 19 NAICS categories that represent 76 percent of the small entities with data, 28 percent or 104 of the 287 small entities are classified by 3 NAICS categories: ''Ship Building and Repairing,'' ''Coastal and Great Lakes Passenger Transportation,'' and ''Inland Water Freight Transportation''. Based on available data, we did not find evidence that small not-for-profit organizations or small government jurisdictions will be impacted by this rule.

(5) The RFA requires a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

Coast Guard response: The rule will require reporting, recordkeeping and other compliance requirements under two existing OMB-approved collections: ''Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Requirements for Prince William Sound'' (OMB Control Number 1625–0066) and ''Advance Notice of Vessel Arrival'' (OMB Control Number 1625–0100).

Owners or operators of commercial, self-propelled nontank vessels of 400 gross tons or greater operating on the navigable waters of the United States will be required to submit NTVRPs to the Coast Guard. The Coast Guard has been receiving some NTVRPs from planholders as of August 2005.

The projected reporting and recordkeeping, other compliance requirements of the rule, and types of activities and skills necessary for the preparation of NTVRPs are described in section VIII. D., ''Collection of Information.''

(6) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

Coast Guard response: The Coast Guard did not receive comments on the NPRM from the Chief Counsel for Advocacy of the Small Business Administration.

(7) The RFA requires a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Coast Guard response: As previously discussed, based on public comments the Coast Guard will permit owners or operators of nontank vessels with a oil capacity of less than 250 barrels to meet an alternative training and exercise program under 33 CFR 155.5055 and 155.5060, respectively. We expect this change to reduce the economic burden on small business owners or operators.

The Coast Guard presented four alternatives and considered each one carefully before choosing the first alternative, to have owners or operators of nontank vessels submit VRPs to the Coast Guard, based on a tiered approach. Section 311(j)(5) of the FWPCA, 33 U.S.C. 1321(j)(5), as established by section 4202 of OPA 90; and as amended by the 2004 Act, Public Law 108–293, 118 Stat. 102, and the 2006 Act, Public Law 109–241, 120 Stat. 516, sets out a statutory mandate requiring tank and nontank vessel owners or operators to prepare and submit oil or hazardous substance discharge response plans for certain vessels operating on the navigable waters of the United States. For more information, see Section III ''Background'' of the NPRM.

In 33 U.S.C. 1321 (j)(5)(A)(ii), Congress specifically directs the issuance of regulations that require the owner or operator of a nontank vessel to prepare and submit ''a plan for responding, to the maximum extent practicable, to a WCD, and to a substantial threat of such a discharge, of oil.'' The Coast Guard considered four alternatives: Three regulatory alternatives and one non-regulatory alternative. We noted the Congressional mandate for regulations in our explanation of why we did not select the non-regulatory alternative. We present these three alternatives below.

1. Establish Regulations for the Submission of NTVRPs to the Coast Guard

The Coast Guard accepted this alternative that establishes new regulations for nontank vessels in 33 CFR part 155, subpart J. These new regulations are based upon, and refer to, applicable sections of 33 CFR part 155, subpart D, and 33 CFR part 151 (SOPEP). Consistent with applicable FWPCA, title 33 U.S.C. 1321(j)(5), provisions, planholders are required to have a plan that is consistent with the requirements of the NCPs and ACPs; identifies QIs; ensures the availability of response resources by contract or other approved means to remove a WCD and to mitigate or prevent a substantial

threat of such a discharge (this includes ensuring the availability of response resources, such as OSROs, salvage, firefighting, emergency lightering, dispersant, and aerial observation oil tracking resources); describes training, drills, and exercise requirements; and is updated periodically and is resubmitted for approval for each significant change.

We used the discretion Congress provided to set up a tiered approach to classify three separate categories of NTVRP response resource requirements based upon a vessel's oil capacity (greater than or equal to 2,500 barrels, less than 2,500 barrels but greater than or equal to 250 barrels, and less than 250 barrels). This approach avoids across-the-board requirements at a level necessary to respond to WCD oil spills from vessels with oil capacity greater than 2,500 barrels, and thus imposes a lower burden on vessels with a lower oil capacity. Additionally, these new regulations are based upon, and refer to, the SOPEP requirements of 33 CFR 151.26.

Finally, under this alternative, an owner or operator of a nontank vessel would have the opportunity to seek a one-time authorization or waiver to enter a geographic-specific area not covered by a cognizant COTP.

2. Acceptance of Flag-Approved SOPEPs

In evaluating this alternative, we considered accepting flag state-approved SOPEPs. We rejected this alternative, because these SOPEP plans are not consistent with the NCP and the Area Contingency Plans (ACP), as required by the FWPCA. While a SOPEP contains information similar to a NTVRP that can also be useful during a response, it does not include the detailed shorebased response planning mandated by FWPCA nor does it include the requirement to contract for those resources. The preferred alternative incorporates some flexibility in training and contracting requirements for small vessels (predominantly operated by small entities) without undermining the requirements of intent of FWPCA or the NCP and ACPs. The SOPEPs mandated under the international MARPOL protocol and the NTVRPs proposed in this rule should be considered complimentary when planning or executing the response to a discharge, or substantial threat of a discharge, of oil.

3. Remove Consideration of Alternative Drills and Exercises Programs for Small Vessels

A more stringent alternative to the one chosen would be to require all nontank vessels, regardless of fuel capacity, to comply with the detailed drills and training exercises programs defined in § 155.5055 and § 155.5060 (since the Coast Guard does not have information on how many planholders will take advantage of the alternative exercises, the costs presented in this regulatory analysis assume all planholders will perform the full level of exercises outlined in the drills and exercises section of this analysis). The Coast Guard recognizes that small vessels (less than 250 barrels of fuel) pose less of a risk because of several factors. These small vessels have a lesser fuel capacity and normally operate using oils that are less hazardous to the environment. As a result these vessels are normally of simpler design and construction, and carry smaller crews. Unlike larger vessels, these small vessels do not rotate their crews as frequently, and so conducting drills and exercises of reduced frequency can be considered as an alternative to the drills and exercises prescribed in § 155.5055 and 5060. In response to public comments from this segment of the industry, the Coast Guard developed § 155.5061 to provide flexibility to the operators of small vessels. Because of the wide variety of vessels potentially able to take advantage of this provision, the requirements of § 155.5061 are not prescriptive. Based on similar provisions in MTSA, the Coast Guard estimates about 1,288 vessels covered or owned by about 237 planholders may be able to reduce their training burden by as much as 75% annually (if owners choose to perform the QI notification drill once per year instead of quarterly) for QI notification drills and perform SMT exercises biennially instead of annually. Assuming all 237 planholders choose the frequencies described previously, we estimate the cost savings to industry for all 1,228 planholders estimated for this analysis to be about $180,000 annually for QI notification drills and about $1.1 million annually for SMT exercises every other year, or a grand total of about $1.3 million biennially. We estimate the cost savings to industry over the 10-year period of analysis to be between $5.0 and $6.2 million at seven and three percent discount rates, respectively.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander John Peterson at 202–372–1226 or *vrp@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rulemaking relates to two existing OMB-approved collections of information, 1625–0066, revisions for which are pending OMB approval, and 1625–0100, revisions for which are approved by OMB. Details are provided below.

OMB Control Number: 1625–0066.

Title: Vessel and Facility Response Plans (Domestic and Int'l), and Additional Response Requirements for Prince William Sound, Alaska.

Summary of the Collection of Information: In general, this collection relates to both domestic and international response plan requirements for vessels and facilities. In particular, a nontank vessel owner or operator needs to prepare and submit to the Coast Guard a nontank vessel response plan in accordance with 33 CFR part 155, subpart J. The content of the response plan includes the requirement to plan for responding to a WCD and a substantial threat of such a

discharge. Additionally, submissions of international SOPEPs for certain U.S.-flag nontank and tank vessels requires alignment with updated SOPEP rules.

Need for Information: The information is necessary to show evidence that planholders have properly planned to prevent or mitigate oil outflow and to provide information to the Coast Guard for its use in emergency response.

Proposed Use of Information: The Coast Guard will use the information to determine whether a nontank vessel response plan meets the requirements set forth in new 33 CFR part 155, subpart J.

Description of the Respondents: The respondents are nontank vessel response planholders and SOPEP planholders.

Number of Respondents: This rule accounts for 2,772 respondents.

Frequency of Response: The frequency of response is about 1 response per respondent per year. For those respondents that seek an alternative or waiver, there would be an additional response per request.

Burden of Response: The burden of response is a range of 1 to 100 hours per NTVRP activity (i.e., initial plan development, plan revision, annual recordkeeping, 5-year resubmission, alternative/waiver request).

Estimate of Total Annual Burden: The estimated NTVRP total annual burden is 33,688 hours. Of that burden, the alternatives/waivers element of this rule accounts for 202 hours.

As required by 44 U.S.C. 3507(d), we submitted a copy of the rule to OMB for its review of the collection of information. OMB has not yet completed its review of this collection. Therefore, we are not making §§ 155.5023, 155.5025, and 155.5055 through 155.5075 effective until OMB completes action on our information collection request, at which time we will publish a **Federal Register** notice describing OMB's action and, if OMB grants approval, notifying you when these provisions take effect.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

OMB Control Number: 1625–0100.

Title: Advance Notice of Vessel Arrival.

Summary of the Collection of Information: The Coast Guard requires pre-arrival notices from certain vessels entering a port or place of the United States. This rule would add one new data element (the VRP control number) to the 40 data elements that are currently required by 33 CFR part 160.

Need for Information: In general, the Coast Guard uses notice of arrival information to ensure port safety and security, and to ensure the uninterrupted flow of commerce. In particular, the addition of the VRP control number enables the Coast Guard to determine if the vessel has an authorized GSA for each COTP zone through which the vessel intends to transit.

Proposed Use of Information: In general, response plan information is required to control vessel traffic, develop contingency plans, and enforce regulations. In particular, for those vessels that are covered by more than one response plan, submission of the VRP control number as part of advance notice of vessel arrival information will notify the Coast Guard as to which plan they are operating under.

Description of the Respondents: Respondents are the owner, agent, master, operator, or person in charge of a vessel that arrives at a port or place of the United States.

Number of Respondents: The existing OMB-approved number of respondents is 31,594. This rule does not change that number. The total number of respondents would remain 31,594.

Frequency of Response: The existing OMB-approved number of responses is 171,016. This rule does not change that number. The total number of responses would remain 171,016.

Burden of Response: The existing OMB-approved burden of response is approximately 1 hour (60 minutes) per response. The additional burden imposed by this rule is estimated to be so minimal that it does not merit changing the approved collection. For this collection, we propose to add one data element, the VRP control number, to the currently required 40 data elements for the notice of arrival. The VRP control number is a ''static'' data element issued once every 5 years or longer, while some of the 40 other data elements change with each voyage (such as last port of call, cargo, or crew list). Therefore, we believe the 60-minute burden currently approved for this collection more than adequately covers the post rulemaking 41 data elements, and the burden of response should remain unchanged.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 164,144 hours. Because the additional burden imposed by this rule is estimated to be so minimal, it does not merit changing the approved annual burden. The estimated total annual burden would remain 164,144 hours.

As required by 44 U.S.C. 3507(d), we submitted a copy of the proposed rule to OMB for its review of the collection of information. OMB has approved this collection (ICR Ref. No. 201012–1625–002). The section number associated with the collection of information is § 160.206, and the corresponding approval number from OMB is OMB Control Number 1625–0100, which expires on December 31, 2013.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, or 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).

This rule describes the standards to which nontank vessel owners or operators will adhere when preparing and submitting plans for responding to a discharge of oil from their vessels. This rule will not preempt the various State laws on this topic. We drafted this rule to ensure that, to the extent practicable, it is consistent with any applicable State-mandated response plan in effect on August 9, 2004. We contacted the National Conference of State Legislatures to circulate the NPRM to the States for their awareness of the proposal. We conducted a search of State laws addressing NTVRPs and conclude that no State law is preempted by this final rule.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or a risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order. Though it is a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses the following voluntary consensus standards:

- IMO Resolution A.741(18), International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), November 4, 1993.
- IMO Resolution A.851(20), General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants, November 27, 1997.
- IMO Resolution MSC.104(73), Adoption of Amendments to the International Safety Management (ISM) Code, December 5, 2000.
- Oil Companies International Marine Forum's Ship to Ship Transfer Guide (Petroleum), Fourth Edition 2005.

The sections that reference these standards and the locations where these standards are available are listed in § 155.140.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 6(b) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48244, July 23, 2002).'' This rule involves Congressionally mandated regulations designed to protect the environment, specifically regulations implementing the requirements of the Coast Guard and Marine Transportation Act of 2004/2006. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR part 155

Administrative practice and procedure, Alaska, Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

33 CFR part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 151, 155, and 160 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); Pub. L. 108–293 (118 Stat. 1063) sec. 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; DHS Delegation No. 0170.1, sec. 2 (77).

■ 2. In § 151.09, add a note to paragraph (b), remove the note from under paragraph (c)(3), and revise paragraph (d) to read as follows:

§ 151.09 Applicability.

* * * * *

(b) * * *

Note to § 151.09(b): The term ''internal waters'' is defined in § 2.24 of this chapter.

* * * * *

(d) The requirements of §§ 151.26 through 151.28—

(1) Do not apply to—

(i) The ships specified in paragraph (b) of this section; and

(ii) Any barge or other ship, which is constructed or operated in such a manner that no oil in any form can be carried aboard.

(2) Are considered to be met if a U.S.-flag vessel holds a USCG-approved vessel response plan and provides evidence of compliance with 33 CFR part 155, subpart D or J requirements.

* * * * *

■ 3. In § 151.26—

■ a. In paragraph (b)(1)(i), in the first paragraph of the sample language,

remove the words ''Regulation 26'' and add, in their place, the words ''Regulation 37''; and insert the words ''as amended by Resolution MEPC.86(44)'' immediately after ''MEPC.54(32)'';

■ b. Revise paragraph (b)(2);

■ c. Revise paragraphs (b)(3)(i)(A) and (b)(3)(ii);

■ d. Add two sentences to paragraph (b)(3)(iii)(A)

■ e. Add paragraph (b)(3)(iii)(D);

■ f. Revise paragraphs (b)(4)(i),(b)(4)(ii), and (b)(4)(iii)(B);

■ g. In paragraph (b)(4)(iii)(C) after the words ''as appropriate'', remove the character ''.'' and add, in its place, the character '';'';

■ h. Add paragraphs (b)(4)(iii)(D) and (E);

■ i. Revise paragraph (b)(5)(i);

■ j. Remove paragraph (b)(7)(i); and

■ k. Redesignate paragraphs (b)(7)(ii) through (vi) as (b)(7)(i) through (v).

The revisions and additions read as follows:

§ 151.26 Shipboard oil pollution emergency plans.

* * * * *

(b) * * *

(2) *Preamble.* The plan must be realistic, practical, and easy to use, and the Preamble section of the plan must reflect these three features of the plan. The use of flowcharts, checklists, and appendices within the plan will aid in addressing this requirement. This section must contain an explanation of the purpose and use of the plan and indicate how the shipboard plan relates to other shore-based plans. Additionally, the Preamble section of the plan must clearly recognize coastal States' rights to approve oil pollution response in their waters by stating the following:

Without interfering with shipowner's liability, some coastal States consider that it is their responsibility to define techniques and means to be taken against an oil pollution incident and approve such operations that might cause further pollution, i.e., lightening. States are entitled to do so under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (Intervention Convention).

* * * * *

(3) * * *

(i) * * *

(A) A discharge of oil above the permitted level for any reason, including those for the purpose of securing the safety of the ship or saving life at sea;

* * * * *

(ii) *Information required.* This section of the plan must include a notification form, such as the one depicted in Table 151.26(b)(3)(ii), that includes all the data elements required in Resolution A.851(20) and contains information to be provided in the initial and follow-up notifications. The official number of the vessel and current conditions of the vessel are to be included. In addition, the initial notification should include as much of the information on the form as possible, and supplemental information, as appropriate. However, the initial notification must not be delayed pending collection of all information. Copies of the form must be placed at the location(s) on the ship from which notification may be made.

* * * * *

(iii) * * *

(A) * * * In order to expedite response and minimize damage from a pollution incident, it is essential that appropriate coastal States should be notified without delay. This process begins with the initial report required by article 8 and Protocol I of MARPOL 73/78.

* * * * *

(D) The plan must clearly specify who will be responsible for informing the necessary parties from the coastal State contacts, the port contacts, and the ship interest contacts.

(4) * * *

(i) Operational spills: The plan must outline procedures for safe removal of oil spilled and contained on deck. The plan must also provide guidance to ensure proper disposal of recovered oil and cleanup materials;

* * * * *

(ii) Spills resulting from casualties: Casualties should be treated in the plan as a separate section. The plan should include various checklists or other means that will ensure the master considers all appropriate factors when addressing the specific casualty (Reference is made here to the International Safety Management (ISM) Code, Section 8). These checklists must be tailored to the specific ship and to the specific product or product types. In addition to the checklists, specific personnel assignments for anticipated tasks must be identified. Reference to existing fire control plans and muster lists is sufficient to identify personnel responsibilities. The following are examples of casualties that must be considered—

(A) Grounding;

(B) Fire or explosion;

(C) Collision/Allision;

(D) Hull failure;

(E) Excessive list;

(F) Containment system failure;

(G) Submerged/Foundered;

(H) Wrecked/Stranded; and

(I) Hazardous vapor release.

(iii) * * *

(B) Stability and strength considerations: The plan should provide the master with detailed guidance to ensure that great care in casualty response must be taken to consider stability and strength when taking actions to mitigate the spillage of oil or to free the vessel if aground. Information for making damage stability and longitudinal strength assessments, or contacting classification societies to acquire such information, should be included. Where appropriate, the plan should provide a list of information for making damage stability and damage longitudinal strength assessments. The damage stability information for oil tankers and offshore oil barges in 33 CFR 155.240 is required to be provided in the SOPEP;

* * * * *

(D) Mitigating activities: The spill mitigation requirements of 33 CFR 155.1035(c) must be met for tankships, the requirements of 33 CFR 155.1040(c) must be met for unmanned vessels, and the requirements of 33 CFR 155.5035(c) must be met for nontank vessels. Additionally, the following personnel safety mitigation strategies must be addressed for all personnel involved—

(1) Assessment and monitoring activities;

(2) Personnel protection issues;

(3) Protective equipment;

(4) Threats to health and safety;

(5) Containment and other response techniques;

(6) Isolation procedures;

(7) Decontamination of personnel; and

(8) Disposal of removed oil and clean-up materials; and

(E) Drawings and ship-specific details: Supporting plans, drawings, and ship-specific details such as a layout of a general arrangement plan, midship section, lines or tables of offsets, and tank tables must be included with the plan. The plan must show where current cargo, bunker or ballast information, including quantities and specifications, is available.

(5) * * *

(i) This section of the plan must contain information to assist the master in initiating action by the coastal State, local government, or other involved parties. This information must include guidance to assist the master with organizing a response to the incident, should a response not be organized by the shore authorities. Detailed information for specific areas may be included as appendices to the plan. See 33 CFR 151.26(b)(2) (Preamble)

regarding a ship owner's responsibility to comply with individual state requirements for oil spill response.

* * * * *

■ 4. In § 151.27, revise paragraphs (e) and (f) and add paragraphs (g) and (h) to read as follows:

§ 151.27 Plan submission and approval.

* * * * *

(e) If the Coast Guard determines that the plan meets the requirements of this section, the Coast Guard will issue an approval letter. The approval period for a plan expires 5 years after the approval date.

(f) If the Coast Guard determines that the plan does not meet the requirements, the Coast Guard will notify the owner or operator of the plan's deficiency. The owner or operator must then resubmit a copy of the revised plan or the corrected portions of the plan, within the time period specified in the written notice provided by the Coast Guard.

(g) Plans, including revisions, should be submitted electronically by using the Vessel Response Plan Electronic Submission Tool available at *https://homeport.uscg.mil/vrpexpress.*

(h) If plans are submitted in paper format, owners or operators should use CG Form ''Application for Approval/Revision of Vessel Pollution Response Plans'' (CG–6083) located at: *http://www.uscg.mil/forms/CG/CG_6083.pdf* in lieu of a cover letter to make initial application for plan submission and revision.

■ 5. In § 151.28, add paragraphs (g) and (h) to read as follows:

§ 151.28 Plan review and revision.

* * * * *

(g) Plans, including revisions, should be submitted electronically by using the Vessel Response Plan Electronic Submission Tool available at *https://homeport.uscg.mil/vrpexpress.*

(h) If plans are submitted in paper format, owners or operators should use CG Form ''Application for Approval/Revision of Vessel Pollution Response Plans'' (CG–6083) located at: *http://www.uscg.mil/forms/CG/CG_6083.pdf* in lieu of a cover letter to request the required resubmission, plan amendment, or revision.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 6. The authority citation for part 155 is revised to read as follows:

Authority: 3 U.S.C. 301 through 303; 33 U.S.C. 1225, 1231, 1321(j), 1903(b), 2735; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 155.480 also issued under section 4110(b) of Pub. L. 101.380.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 40, 150, 151, and 153.

■ 7. In § 155.140—

■ a. Redesignate paragraph (d)(2) as (d)(4);

■ b. Add paragraphs (d)(2), (d)(3), and (d)(5); and

■ c. Add paragraph (f)(2).

The additions read as follows:

§ 155.140 Incorporation by reference.

* * * * *

(d) * * *

(2) Resolution A.741(18), International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), adopted 4 November, 1993, incorporation by reference approved for § 155.5035.

(3) Resolution A.851(20), General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants, adopted 27 November, 1997, incorporation by reference approved for § 155.5035.

* * * * *

(5) Resolution MSC.104(73), Adoption of Amendments to the International Safety Management (ISM) Code, adopted 5 December, 2000, incorporation by reference approved for § 155.5035.

* * * * *

(f) * * *

(2) Ship to Ship Transfer Guide (Petroleum), Fourth Edition, 2005, incorporation by reference approved for § 155.5035.

■ 8. In § 155.1015, revise paragraph (c)(7), add paragraph (c)(8), and add a note to the end of the section to read as follows:

§ 155.1015 Applicability.

* * * * *

(c) * * *

(7) Foreign-flag vessels engaged in innocent passage through the territorial sea or transit passage through a strait used for international navigation, unless bound for or departing from a port or place of the United States.

(8) Vessels carrying oil as a secondary cargo and measuring 400 gross tons or greater.

* * * * *

Note to § 155.1015: Response plan requirements for nontank vessels are found in subpart J of this part.

■ 9. In § 155.1020, add a definition for ''nontank vessel'', in alphabetical order, to read as follows:

§ 155.1020 Definitions.

* * * * *

Nontank vessel means a vessel meeting the description provided in 33 CFR 155.5015(a).

* * * * *

■ 10. In § 155.1030, revise paragraphs (i)(1) through (3) to read as follows:

§ 155.1030 General response plan requirements.

* * * * *

(i) * * *

(1) The vessel owner or operator must ensure that they maintain one English language copy of the VRP, at a minimum the contents listed in paragraph (c)(1), (2), (3), (5), (6), (7), (9), and (10) of this section and a copy of the Coast Guard approval letter, onboard the vessel. In lieu of paper format, the vessel owner or operator may keep an electronic copy of the VRP and approval letter onboard the vessel. If applicable, additional copies of the required VRP sections must be in the language understood by crew members with responsibilities under the VRP and maintained onboard the vessel.

(2) The owner or operator of all unmanned tank barges shall ensure that one English language copy of the plan section listed in paragraph (c)(9) of this section and the Coast Guard approval letter is maintained aboard the barge. An electronic copy of the VRP is authorized.

(3) The vessel owner or operator must maintain a current copy of the entire plan, and ensure that each person identified as a qualified individual and alternate qualified individual in the plan has a current copy of the entire plan. An electronic copy of the VRP is authorized.

* * * * *

§ 155.1035 [Amended]

■ 11. In § 155.1035—

■ a. In paragraph (e)(3), remove the word ''representatives'' and add in its place the words ''provider, representative,''; and remove the word ''surveyors'' and add in its place the word ''surveyor''; and

■ b. In paragraph (e)(4), after the words ''area of operation'' add the words ''or a reference to the 24-hour point of contact as listed on the vessel's notice of arrival''.

§ 155.1055 [Amended]

■ 12. In § 155.1055(a), remove the text ''§ 155.1035'' and add in its place the text ''§§ 155.1035 or 155.5035''.

§ 155.1060 [Amended]

■ 13. In § 155.1060(a), remove the words ''§§ 155.1035 and 155.1040'' and add in their place the words ''§§ 155.1035, 155.1040, or 155.5035''.

■ 14. In § 155.1065—

■ a. In paragraph (a), after the words ''plan to Commandant'' add the words ''electronically by using the Vessel Response Plan Electronic Submission Tool available at *http://evrp.uscg.mil* or by mail to Commandant'';

■ b. In paragraph (b), remove the words ''subparts D, E, F, and G of this part'' and add in their place the words ''subparts D, E, F, G, and J of this part''; and after the words ''secondary cargo.''; and

■ c. In paragraph (b), add a sentence.

The addition reads as follows:

§ 155.1065 Procedures for plan submission, approval, requests for acceptance of alternative planning criteria, and appeal.

* * * * *

(b) * * * For plans submitted in paper format, CG Form ''Application for Approval/Revision of Vessel Pollution Response Plans'' (CG–6083) located at: *http://www.uscg.mil/forms/CG/CG_6083.pdf* meets the requirement for a vessel response plan certification statement as required by this paragraph.

* * * * *

■ 15. In § 155.1070—

■ a. In paragraph (a)(2), add a sentence;

■ b. Revise paragraph (b);

■ c. Revise paragraphs (c)(1), (2), (4), (5), and (8);

■ d. Revise paragraph (d);

■ e. In paragraph (f), remove the words ''Prevention Policy Directorate for Marine Safety, Security, and Stewardship'' and add in their place the words ''Office of Commercial Vessel Compliance''; and remove the text ''CG–54'' and add in its place the text ''CG–CVC'';

■ f. Remove paragraph (i); and

■ g. Redesignate paragraphs (g) as (h) and paragraphs (h) as (i) and add new paragraph (g).

The revisions and additions read as follows:

§ 155.1070 Procedures for plan review, revision, amendment, and appeal.

(a) * * *

(2) * * * Although plans should be submitted electronically, for plans submitted in paper format, CG Form ''Application for Approval/Revision of Vessel Pollution Response Plans'' (CG–6083) located at: *http://www.uscg.mil/forms/CG/CG_6083.pdf* should be used in lieu of a cover letter to request the required resubmission, plan amendment, or revision and to document the annual review required by this paragraph (a).

(b) The vessel owner or operator subject to subparts D, E, F, G, or J of this part must resubmit the entire plan to the Coast Guard for approval—

(1) Six months before the end of the Coast Guard approval period identified in § 155.1065(c) or § 155.5065(c); and

(2) Whenever there is a change in the vessel owner or operator, if the previous vessel owner or operator provided the certifying statement required by § 155.1065(b) or § 155.5065(b), then the new vessel owner or operator must submit a new statement certifying that the plan continues to meet the applicable requirements of subparts D, E, F, G, or J of this part.

(c) * * *

(1) A change in the vessel owner or operator, if that vessel owner or operator is not the one who provided the certifying statement required by § 155.1065(b) or § 155.5065(b);

(2) A change in the vessel's operating area that includes ports or geographic area(s) not covered by the previously approved plan. A vessel may operate in an area not covered in a previously approved plan upon receipt of written acknowledgment by the Coast Guard that a new geographic-specific appendix has been submitted for approval by the vessel's owner or operator and the certification required in § 155.1025(c)(2) or § 155.5023(b) has been provided;

* * * * *

(4) A change in the type of oil carried onboard (oil group) that affects the required response resources, except as authorized by the COTP for purposes of assisting in an oil spill response activity;

(5) A change in the identification of the oil spill removal organization(s) or other response-related resource required by § 155.1050, § 155.1052, § 155.1230, § 155.2230, § 155.5050, or § 155.5052 as appropriate, except an oil spill removal organization required by § 155.1050(d) or § 155.5050(d) that may be changed on a case-by-case basis for an oil spill removal organization previously classified by the Coast Guard, which has been ensured to be available by contract or other approved means;

* * * * *

(8) The addition of a vessel to the plan. This change must include the vessel-specific appendix required by this subpart and the vessel owner or operator's certification required in § 155.1025(c) or § 155.5023(b); or

* * * * *

(d) Thirty days in advance of operation, the vessel owner or operator must submit any revision or amendments identified in paragraph (c) of this section. The certification required in § 155.1065(b) or § 155.5065(b) must be submitted along with the revisions or amendments.

* * * * *

(g) Within 21 days of notification that a plan is not approved, the vessel owner or operator may appeal that determination to the Director of Inspections and Compliance (CG–5PC). This appeal must be submitted in writing to Commandant (CG–5PC), Director of Inspections and Compliance, U.S. Coast Guard, 2100 2nd St. SW Stop 7581, Washington, DC 20593–7581.

* * * * *

■ 16. In § 155.4010—

■ a. In paragraph (a), remove the reference ''§ 155.1015'' and add in its place the references ''§§ 155.1015 and 155.5015''; and remove the second sentence;

■ b. Redesignate paragraph (b) as paragraph (c); and

■ c. Add new paragraph (b) to read as follows:

§ 155.4010 Purpose of this subpart.

* * * * *

(b) *Salvage* and *marine firefighting* actions can save lives and property, and prevent the escalation of potential oil spills to worst case discharge scenarios.

* * * * *

§ 155.4015 [Amended]

■ 17. In § 155.4015, in the introductory text, remove the reference ''§ 155.1015'' and add in its place ''§ 155.1015 or § 155.5015''.

■ 18. In § 155.4020 —

■ a. Redesignate paragraph (a) as paragraph (a)(1), paragraph (b) as paragraph (a)(2), paragraph (c) as paragraph (a)(3), paragraph (c)(1) as paragraph (a)(3)(i), paragraph (c)(2) as paragraph (a)(3)(ii), paragraph (c)(3) as paragraph (a)(3)(iii), paragraph (c)(4) as paragraph (a)(3)(iv), and paragraph (c)(5) as paragraph (a)(3)(v);

■ b. In newly redesignated paragraph (a)(1), after the words ''approved vessel response plan'' add the words ''required by § 155.1015''; and

■ c. Add paragraph (b) to read as follows:

§ 155.4020 Complying with this subpart.

* * * * *

(b) If § 155.5015 requires that you have a vessel response plan, you must

have your vessel response plan submitted to the Coast Guard by January 30, 2014.

§ 155.4025 [Amended]

■ 19. In § 155.4025, in the definition for ''Contract or other approved means'', in paragraph (1)(iii), after the words ''33 CFR 155.1065(f)'' add the words ''and 155.5067(a)''.

§ 155.4030 [Amended]

■ 20. In § 155.4030—
■ a. In paragraph (a), remove the words ''§§ 155.1035(e)(6)(ii) and 155.1040(e)(5)(ii),'' and add, in their place, the words ''§§ 155.1035(e)(6)(ii), 155.1040(e)(5)(ii), and 155.5035(e)(6)(ii),'';
■ b. In paragraph (c), remove the words ''§§ 155.1035(d), 155.1040(d) and 155.1045(d)'' and add, in their place, the words ''§§ 155.1035(d), 155.1040(d), 155.1045(d), and 155.5035(d)'';
■ c. In paragraph (d), remove the words ''§ 155.1030(h)'' and add, in their place, the words ''§§ 155.1030(h) and 155.5030(f)'';
■ d. In paragraph (f), after the words ''vessel's largest cargo'' add the words ''or fuel''; and after the word ''tank'' add the words '', whichever is greater,'';
■ e. In paragraph (g), after the words ''needed to combat'' remove the word ''a'' and add, in its place, the words ''an oil''; and after the words ''your vessel's cargo,'' add the word ''fuel,''; and
■ f. In paragraph (h), after the words ''capability of removing'', add the words ''bulk liquid''.

§ 155.4035 [Amended]

■ 21. In § 155.4035(a), remove the words ''§§ 155.1035(c) and 155.1040(c)'' and add, in their place, the words ''§§ 155.1035(c), 155.1040(c), and 155.5035(c)''.

§ 155.4052 [Amended]

■ 22. In § 155.4052—
■ a. In paragraph (a), remove the words ''§§ 155.1035 and 155.1040'' and add, in their place, the words ''§§ 155.1035, 155.1040, and 155.5035''; and
■ b. In paragraph (b)(7), after the words ''33 CFR 155.1060(a)'' add the words ''and 155.5061''; and after the words ''33 CFR 155.1065'' add the words ''and 155.5065''.

■ 23. Add subpart J, consisting of §§ 155.5010 through 155.5075, to read as follows:

Subpart J—Nontank Vessel Response Plans

Sec.

Subpart J—Nontank Vessel Response Plans

§ 155.5010 Purpose.

The purpose of this subpart is to establish requirements for oil spill response plans for nontank vessels. The planning criteria in this subpart are intended for use in nontank vessel oil spill response plan development and the identification of resources necessary to respond to a nontank vessel's worst case discharge or substantial threat of such a discharge. The development of a nontank vessel response plan prepares the vessel's crew and ship management to respond to an oil spill. The specific criteria for response resources and their arrival times are not performance standards. They are planning criteria based upon a set of assumptions that may not exist during an actual oil spill incident. Note to § 155.5010: For nontank vessels that are mobile offshore drilling units (MODUs), additional oil spill planning standards are found in 30 CFR part 254.

§ 155.5012 Deviation from response plan.

The owner or operator of a nontank vessel required to have a vessel response plan (VRP) under this subpart may not deviate from the approved VRP unless the President or Federal On-Scene Coordinator determines that the deviation from the VRP would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.

§ 155.5015 Applicability.

(a) Except as provided in paragraph (d) of this section, this subpart applies to each self-propelled vessel that—

(1) Carries oil of any kind as fuel for main propulsion;

(2) Is not a tank vessel or is not certificated as a tank vessel;

(3) Operates upon the navigable waters of the United States, as defined in 46 U.S.C. 2101(17a); and

(4) Is 400 gross tons or more as measured under the convention measurement system in 46 U.S.C. 14302 or the regulatory measurement system of 46 U.S.C. 14502 for vessels not measured under 46 U.S.C. 14302.

(b) This subpart also applies to vessels carrying oil as secondary cargo and that meet the requirements of paragraph (a) of this section.

(c) For Integrated Tug Barge (ITB) units that are not certificated as tank vessels, the tonnage used to determine applicability of these regulations is the aggregate tonnage of the ITB combination, and the oil capacity used to determine the worst case discharge volume is the aggregate oil capacity of the ITB combination.

(d) This subpart does not apply to the following types of vessels—

(1) Public vessels;

(2) Foreign-flag vessels engaged in innocent passage through the territorial sea or transit passage through a strait used for international navigation, unless bound for or departing from a port or place of the United States;

(3) Vessels that carry oil as a primary cargo and are required to submit a vessel response plan (VRP) in accordance with 33 CFR part 155, subpart D;

(4) Vessels constructed or operated in such a manner that no oil in any form can be carried onboard as fuel for propulsion or cargo;

(5) Permanently moored craft; and

(6) Inactive vessels.

Note to § 155.5015: VRP requirements for tank vessels are found in subpart D of this part.

§ 155.5020 Definitions.

Except as otherwise defined in this section, the definitions in §§ 155.110 and 155.1020 apply to this subpart. For the purposes of this subpart only, the term—

Cargo means oil, not carried as fuel, which is carried in bulk, and that is transported to and off-loaded at a port or place by a vessel. It does not include—

(1) Oil carried in integral tanks, marine portable tanks, or independent tanks for use by machinery, helicopters, and boats carried onboard the vessel, or for use by helicopters that are directly supporting the vessel's primary operations;

(2) Oil transferred from a towing vessel to a vessel in its tow to operate

installed machinery other than the propulsion plant; or

(3) Oil recovered during oil spill response operations.

Contract or other approved means includes—

(1) A written contractual agreement between a vessel owner or operator and a required response resource provider. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the applicable Captain of the Port (COTP) zone or specified geographic areas;

(2) Certification by the vessel owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the vessel owner or operator, and are available within stipulated response times in the applicable COTP zone or specified geographic areas;

(3) Active membership with a local or regional required response resource provider that has identified specific personnel and equipment required under this subpart that are available to respond to a discharge within stipulated response times in the COTP zone or specified geographic areas;

(4) A document that—

(i) Identifies the personnel, equipment, and services capable of being provided by the required response resource provider within stipulated response times in the COTP zone or specified geographic areas;

(ii) Sets out the parties' acknowledgment that the required response resource provider intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and exercises; and

(iv) Is referenced in the vessel response plan; or

(5) With the written consent of the required response resource provider, the identification of a required response resource provider with specified equipment and personnel that are available within stipulated response times in the COTP zone, port area, or specified geographic area. This paragraph is ''other approved means'' for only—

(i) Nontank vessels with a fuel and cargo oil capacity of less than 250 barrels for maximum most probable discharge oil spill removal response resource requirements per 33 CFR 155.5050(e);

(ii) Nontank vessels that carry group I through group IV petroleum oils as fuel or cargo with a capacity of 250 barrels or greater, but less than 2,500 barrels, for salvage, emergency lightering, and marine firefighting response resources per 33 CFR 155.5050(i)(2);

(iii) Nontank vessels that carry group I through group IV petroleum oils as fuel or cargo with a capacity less than 250 barrels for salvage response resources in 33 CFR 155.5050(i)(3);

(iv) Nontank vessels that carry group II through group IV petroleum oils as fuel or cargo with a capacity of 250 barrels or greater, but less than 2,500 barrels, for dispersant response resources per 33 CFR 155.5035(i)(7) and 33 CFR 155.5050(j); and

(v) Nontank vessels that carry groups I through IV petroleum oils as fuel or cargo with a capacity of 250 barrels or greater, but less than 2,500 barrels, for aerial oil spill tracking to support oil spill assessment and cleanup activities per 33 CFR 155.5050(k).

Fuel means all oils of any kind, which may be used to supply power or lubrication for primary or auxiliary purposes onboard the vessel in which it is carried.

Inactive vessel means a vessel that is out of service or laid up and has emptied its tanks of fuel except for the minimum amount of fuel necessary for the maintenance of the vessel's material condition. Such a vessel is considered not to be operating on the navigable waters of the United States for the purposes of 33 U.S.C. 1321(j)(5), unless the cognizant COTP determines that it poses an unacceptable risk to the marine environment due to the amount of oil carried for maintenance. A vessel would not be considered inactive if it carried oil as a cargo or cargo residue.

Integrated Tug Barge or *ITB* means any tug barge combination in which a specially designed propulsion unit (tug) is mated to a cargo unit (barge) of a compatible special design or where a propulsion unit (tug) is mated to a cargo unit (barge) with a specially designed connection system such that the combined unit has operating characteristics and seakeeping capabilities that exceed, under all anticipated weather conditions, those of a tug and barge, where the tug is secured in the barge notch or on fenders by means such as wire rope, chains, lines, or other tackle now commonly used in offshore towing.

Maximum most probable discharge or *MMPD* means a discharge of—

(1) Two thousand five hundred (2,500) barrels of oil, for vessels with a fuel and cargo capacity equal to or greater than 25,000 barrels; or

(2) Ten percent of the vessel's fuel and cargo capacity, for vessels with a fuel and cargo capacity of less than 25,000 barrels.

Navigable waters of the United States means navigable waters of the United States as defined in 33 CFR 2.36(b)(1), including the waters in 46 U.S.C. 2101(17a).

Nontank vessel means a vessel meeting the description provided in 33 CFR 155.5015(a).

Oil spill removal organization or *OSRO* means any person or persons who own(s) or otherwise control(s) oil spill removal resources that are designed for, or are capable of, removing oil from the water or shoreline. Control of such resources through means other than ownership includes leasing or subcontracting of equipment or, in the case of trained personnel, by having contracts, evidence of employment, or consulting agreements. OSROs provide response equipment and services, individually or in combination with subcontractors or associated contractors, under contract or other approved means, directly to a vessel owner or operator of a vessel or a facility required to have a response plan under 33 U.S.C. 1321(j)(5). OSROs are able to mobilize and deploy equipment or trained personnel and remove, store, and transfer recovered oil. Persons such as sales and marketing organizations (e.g., distributorships and manufacturer's representatives) that warehouse or store equipment for sale are not OSROs.

P&I Club means a protection and indemnity insurance group that provides liability insurance cover for the vessel owner or operator that would respond to an oil discharge or substantial threat of such a discharge by the vessel.

Permanently moored craft means a watercraft that is not considered to be a vessel under the rule of construction in 1 U.S.C. 3, because it is not practically (as opposed to theoretically) used or capable of being used as a means of transportation on the water.

Public vessel means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Qualified individual or *QI* and *alternate qualified individual* means a shore-based representative of a vessel owner or operator who meets the requirements of 33 CFR 155.5026.

Substantial threat of such a discharge means any incident involving a vessel that may create a significant risk of discharge of fuel or cargo oil. Such incidents include, but are not limited to, groundings, allisions, strandings, collisions, hull damage, fires,

explosions, loss of propulsion, floodings, on-deck spills, or other similar occurrences.

Tier means the combination of required response resources and the times within which the resources must arrive on scene. Appendix B of this part, especially Tables 5 and 6, provide specific guidance on calculating the response resources required by a respective tier. Section 155.5050(g) sets forth the required times within which the response resources must arrive on scene. Tiers are applied to three categories of areas—

(1) Higher volume port areas;

(2) The Great Lakes; and

(3) All other operating environments, including rivers and canals, inland, nearshore, offshore, and open ocean areas.

Transfer means any movement of oil to or from a vessel by means of pumping, gravitation, or displacement. A transfer is considered to begin when the person in charge of the transferring vessel or facility and the person in charge of the receiving facility or vessel first meet to begin completing the declaration of inspection required by 33 CFR 156.150. A transfer is considered to be complete when all the connections for the transfer have been uncoupled and secured with blanks or other closure devices and both of the persons in charge have completed the declaration of inspection to include the date and time they complete the transfer.

Worst case discharge or *WCD* means a discharge in adverse weather conditions of a vessel's entire fuel or cargo oil, whichever is greater.

§ 155.5021 Operating restrictions.

Nontank vessels subject to this subpart may not—

(a) Operate upon the navigable waters of the United States unless in compliance with a vessel response plan (VRP) approved under § 155.5065.

(b) Continue to operate on the navigable waters of the United States if—

(1) The Coast Guard determines that the response resources identified in the vessel's certification statement do not meet the requirements of this subpart;

(2) The contracts or agreements required in §§ 155.5050 and 155.5052 and the vessel's certification statement are no longer valid;

(3) The vessel is not operating in compliance with the submitted VRP; or

(4) The period of the VRP authorization has expired.

§ 155.5023 Interim operating authorization.

(a) Notwithstanding the requirements of § 155.5021 of this subpart, a vessel may continue to operate for up to 2 years after the date of submission of a vessel response plan (VRP) pending approval of that VRP, if the vessel has received written authorization for continued operations from the Coast Guard.

(b) To receive this authorization, the vessel owner or operator must certify in writing with an original or electronic signature to the Coast Guard that the vessel owner or operator has identified and has ensured, by contract or other approved means, the availability of the necessary private response resources to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel.

(c) Those nontank vessels temporarily authorized to operate under the provisions provided in this section must comply with 33 CFR 155.1070(c), (d), and (e).

§ 155.5025 One-time port waiver.

(a) If the vessel owner or operator seeks a one-time port waiver, they must certify in writing or using electronic signatures acceptable to the Coast Guard, prior to the vessel's entry into the Captain of the Port (COTP) zone, that they have met the requirements of—

(1) 33 CFR 155.1025(e)(1) through (3); and

(2) The vessel owner or operator has identified and ensured the availability of, through contract or other approved means, the private response resources necessary to respond, to the maximum extent practicable under the criteria in § 155.5050 to a worst case discharge or substantial threat of discharge from the vessel in the applicable COTP zone.

(b) Once the vessel owner or operator satisfies the requirements of paragraph (a) of this section, the cognizant U.S. Coast Guard COTP may grant written authorization for that nontank vessel to make one voyage in the respective geographic-specific area not covered by the vessel response plan.

(c) All requirements of this subpart must be met by a nontank vessel that received a one-time port waiver, for any subsequent voyage to the same geographic-specific area.

§ 155.5026 Qualified individual and alternate qualified individual.

The vessel response plan must identify a qualified individual and at least one alternate who meet the requirements of 33 CFR 155.1026. The qualified individual or alternate qualified individual must be available on a 24-hour basis.

§ 155.5030 Nontank vessel response plan requirements: General content.

(a) The entire vessel response plan (VRP) must be written in English and, if applicable, in a language that is understood by the crew members with responsibilities under the VRP.

(b) The VRP must cover all geographic areas of the United States in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas.

(c) The VRP must be divided into the following sections—

(1) General information and introduction;

(2) Notification procedures;

(3) Shipboard spill mitigation procedures;

(4) Shore-based response activities;

(5) List of contacts;

(6) Training procedures;

(7) Exercise procedures;

(8) Plan review and update procedures;

(9) Geographic-specific appendix (GSA) for each Captain of the Port (COTP) zone in which the vessel or vessels operate; and

(10) An appendix for vessel-specific information for the vessel or vessels covered by the VRP.

(d) A vessel owner or operator with multiple vessels may submit one plan for all classes of vessels (i.e., subpart D-Manned vessels carrying oil as primary cargo and unmanned vessels carrying oil as primary cargo; subpart E– Tankers loading cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act; subpart F—Vessels carrying animal fats and vegetable oils as primary cargo; and subpart G—Vessels carrying other non-petroleum oils as a primary cargo) with a separate vessel-specific appendix for each vessel covered by the plan and a separate GSA for each COTP zone in which the vessel(s) will operate.

(e) A VRP must be divided into the sections described in paragraph (c) of this section unless the VRP is supplemented with a cross-reference table to identify the location of the information required by this subpart.

(f) The information contained in a VRP must be consistent with—

(1) The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) in effect on the date 6 months prior to the submission date of the VRP; or

(2) Most recent NCP and ACP(s).

Note to § 155.5030(f)(1): See diagram of ''Relationship of Plans'' at 40 CFR 300.210.

(g) Copies of the submitted and approved VRP must be available as follows—

(1) The vessel owner or operator must ensure that they maintain one English language copy of the VRP, at a minimum the contents listed in paragraph (c)(1), (2), (3), (5), (6), (7), (9) and (10) of this section and a copy of the Coast Guard approval letter, onboard the vessel. In lieu of paper format, the vessel owner or operator may keep an electronic copy of the VRP and approval letter onboard the vessel. If applicable, additional copies of the required VRP sections must be in the language understood by crew members with responsibilities under the VRP and maintained onboard the vessel; and

(2) The vessel owner or operator must also maintain a current copy of the entire VRP and ensure that each person identified as a qualified individual and alternate qualified individual in the VRP has a current copy of the entire VRP. An electronic copy of the VRP is authorized.

(h) Compliance with this subpart will also constitute compliance for a U.S.-flag nontank vessel required to submit a Shipboard Oil Pollution Emergency Plan (SOPEP) pursuant to 33 CFR 151.09(c) and Regulation 37 of MARPOL 73/78 Annex I as long as the additional requirements listed in § 155.5035(k) are met. A U.S.-flag nontank vessel holding a valid Certificate of Inspection endorsed for Coastwise or Oceans operating routes with authorization to engage on an international voyage must maintain a U.S. Coast Guard SOPEP approval letter per 33 CFR 151.27(e). A separate SOPEP is not required.

§ 155.5035 Nontank vessel response plan requirements: Specific content.

(a) *General information and introduction section.* This section of the vessel response plan (VRP) must include—

(1) The vessel's name, country of registry, call sign, official number, and International Maritime Organization (IMO) international number (if applicable). If the VRP covers multiple vessels, this information should be provided for each vessel;

(2) The name, mailing address, email address, telephone number, and facsimile number, and procedures for contacting the vessel's owner or operator on a 24-hour basis;

(3) A list of the Captain of the Port (COTP) zones, ports, and offshore transit areas in which the vessel intends to operate;

(4) A table of contents or index of sufficient detail to permit personnel with responsibilities under the VRP to locate the specific sections of the VRP; and

(5) A record of change(s) page to record information on VRP reviews, updates, or revisions.

(b) *Notification procedures section.* This section of the VRP must include the following information—

(1) A checklist with all notifications, including telephone or other contact numbers, in order of priority to be made by shipboard or shore-based personnel and the information needed for those notifications. Notifications should include those required by—

(i) International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78 (as set forth in 33 CFR 151.26 and 33 CFR part 153); and

(ii) Any applicable State;

(2) Identification of the person(s) to be notified of a discharge or substantial threat of a discharge of oil. If the notifications vary due to vessel location, the persons to be notified also should be identified in a geographic-specific appendix (GSA). This section should separately identify—

(i) The individual(s) or organization(s) to be notified by shipboard personnel; and

(ii) The individual(s) or organization(s) to be notified by shore-based personnel;

(3) The procedures for notifying the qualified individual(s) designated by the vessel's owner or operator;

(4) Descriptions of the primary and, if available, secondary communications methods by which the notifications would be made. These should be consistent with those in paragraph (b)(1) of this section;

(5) The information that is to be provided in the initial and any follow-up notifications under paragraph (b)(1) of this section;

(i) The initial notification may be submitted in accordance with IMO Resolution A.851(20), ''General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants'' (incorporated by reference, see § 155.140). However, the VRP must specify that the notification includes at least the following information—

(A) Vessel name, country of registry, call sign, and official number (if any);

(B) Date and time of the incident;

(C) Location of the incident;

(D) Course, speed, and intended track of vessel;

(E) Radio station(s) and frequencies guarded;

(F) Date and time of next report;

(G) Type and quantity of oil onboard;

(H) Nature and detail of defects, deficiencies, and damage (e.g., overfill of tanks, grounding, collision, hull failure, etc.);

(I) Details of pollution, including estimate of amount of oil discharged or threat of discharge;

(J) Weather and sea conditions on scene;

(K) Ship size and type;

(L) Actions taken or planned by persons on scene;

(M) Current conditions of the vessel;

(N) Number of crew and details of injuries, if any; and

(O) Details of Protection and Indemnity (P&I) Club and Local Correspondent, as applicable.

(ii) The VRP must state that after transmission of the initial notification, as much information as possible that is essential for the protection of the marine environment will be reported to the appropriate on-scene coordinator in follow-up reports. This information must include—

(A) Additional details on the type of oil onboard;

(B) Additional details on the condition of the vessel and the ability to offload cargo and transfer ballast and fuel;

(C) Additional details on the quantity, extent, and movement of the pollution and whether the discharge is continuing;

(D) Any changes in the on-scene weather or sea conditions; and

(E) Actions being taken with regard to the discharge and the movement of the ship; and

(6) Identification of the person(s) to be notified of a vessel casualty potentially affecting the seaworthiness of a vessel and the information to be provided by the vessel's crew to shore-based personnel to facilitate the assessment of damage stability and stress.

(c) *Shipboard spill mitigation procedures section.* This section of the VRP must include—

(1) Procedures for the crew to mitigate or prevent any discharge or a substantial threat of a discharge of oil resulting from shipboard operational activities associated with internal or external oil transfers. Responsibilities of vessel personnel should be identified by job title and licensed/unlicensed position, if applicable. These procedures should address personnel actions in reference to—

(i) Internal transfer system leaks;

(ii) Fuel tank overflows;

(iii) Suspected tank or hull leaks;

(iv) Assessment and monitoring activities;

(v) Personnel protection issues;

(vi) Protective equipment;

(vii) Threats to health and safety;

(viii) Containment and other response techniques;

(ix) Isolation procedures;
(x) Decontamination of personnel; and
(xi) Disposal of removed oil and clean-up materials;

(2) Procedures in the order of priority for the crew to mitigate or prevent any discharge or a substantial threat of a discharge in the event of a casualty or emergency as listed in paragraphs (c)(2)(i) through (x) of this section. These procedures should be listed separately and reference specific vessel checklists required by the International Ship Management (ISM) Code, Section 8 (Resolution A.741(18), as amended by Resolution MSC.104(73)) (incorporated by reference, see § 155.140), or other means that will ensure consideration of all appropriate factors when addressing a specific casualty. In addition to the checklists, specific personnel assignments for anticipated tasks must be identified. Reference to existing fire control plans and muster lists is sufficient to identify personnel responsibilities in the following scenarios—
(i) Grounding or stranding;
(ii) Explosion or fire, or both;
(iii) Collision or allision;
(iv) Hull failure;
(v) Excessive list;
(vi) Containment system failure;
(vii) Submerged and foundered;
(viii) Wrecked and stranded;
(ix) Hazardous vapor release; and
(x) Equipment failure (e.g., main propulsion, steering gear, etc.);

(3) Procedures for the crew to deploy discharge removal equipment if the vessel is equipped with such equipment;

(4) The procedures for internal transfers of fuel in an emergency;

(5) The procedures for ship-to-ship transfers of fuel in an emergency—

(i) The format and content of the ship-to-ship transfer procedures should be consistent with the ''Ship to Ship Transfer Guide (Petroleum),'' published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF) (incorporated by reference, see § 155.140);

(ii) The procedures should identify the specific response resources necessary to carry out the internal or external transfers, including—

(A) Fendering equipment (ship-to-ship only);

(B) Transfer hoses and connection equipment;

(C) Portable pumps and ancillary equipment;

(D) Lightering or fuel removal and mooring masters (ship-to-ship only); and

(E) Vessel and barge brokers (ship-to-ship only);

(iii) Reference may be made to a separate fuel oil transfer procedure and lightering plan carried onboard the vessel, if safety considerations are summarized in the plan; and

(iv) The location of all equipment and fittings, if any, carried onboard the vessel to perform the transfers should be identified;

(6) The procedures and arrangements for emergency towing, including the rigging and operation of any emergency towing equipment, if any, carried onboard the vessel;

(7) The location, crew responsibilities, and procedures for use of shipboard equipment that might be carried to mitigate an oil discharge;

(8) The crew's responsibility, if any, for recordkeeping and sampling of spilled oil. Any requirements for sampling must address safety procedures to be followed by the crew;

(9) The crew's responsibilities, if any, to initiate a response and supervise shore-based response resources;

(10) Damage stability and hull stress considerations when performing shipboard mitigation measures. This section of the VRP should identify and describe—

(i) Activities in which the crew is trained and qualified to execute absent shore-based support or advice; and

(ii) The information to be collected by the vessel's crew to facilitate shore-based assistance;

(11) Location of vessel plans necessary to perform salvage, stability, and hull stress assessments—

(i) The vessel owner or operator should ensure that a copy of these plans is maintained ashore by either the vessel owner or operator or the vessel's recognized classification society, unless the vessel has prearranged for a shore-based damage stability and residual strength calculation program with the vessel's baseline strength and stability characteristics pre-entered. The VRP should indicate the shore location and 24-hour access procedures of the calculation program for the following plans, where available—

(A) General arrangement plan;
(B) Midship section plan;
(C) Lines plan or table of offsets;
(D) Tank tables;
(E) Load line assignment; and
(F) Light ship characteristics; and

(ii) The VRP should identify the shore location and 24-hour access procedures for the computerized, shore-based damage stability and residual structural strength calculation programs, if available; and

(12) Procedures for implementing personnel safety mitigation strategies for all personnel involved. These procedures may contain more, but must address the following—

(i) Assessment and monitoring activities;
(ii) Personnel protection issues;
(iii) Protective equipment;
(iv) Threats to health and safety;
(v) Containment and other response techniques;
(vi) Isolation procedures;
(vii) Decontamination of personnel; and
(viii) Disposal of removed oil and clean-up materials.

(d) *Shore-based response activities section.* This section of the VRP should include the following information—

(1) The qualified individual's (QI) responsibilities and authority, including immediate communication with the Federal On-Scene Coordinator (FOSC) and notification of the oil spill removal organization(s) identified in the VRP;

(2) If applicable, procedures for transferring responsibility for direction of response activities from vessel personnel to the shore-based spill management team;

(3) The procedures for coordinating the actions of the vessel owner or operator or qualified individual with the predesignated FOSC responsible for overseeing or directing those actions;

(4) The organizational structure that would be used to manage the response actions. This structure should include the following functional areas and information for key components within each functional area—

(i) Command and control;
(ii) Public information;
(iii) Safety;
(iv) Liaison with government agencies;
(v) Spill response operations;
(vi) Planning;
(vii) Logistics support; and
(viii) Finance; and

(5) The responsibilities and duties of, and functional job descriptions for each oil spill management team position within the organizational structure identified in paragraph (d)(4) of this section.

(e) *List of contacts section.* The name, location, and 24-hour contact information for the following key individuals and organizations must be included in this section of the VRP or, if more appropriate, in a GSA, and referenced in this section of the VRP—

(1) Vessel owner or operator;

(2) Qualified individual and alternate qualified individual for the vessel's area of operation;

(3) Applicable insurance provider, representative, or surveyor for the vessel's area of operation;

(4) The vessel's local agent(s) for the vessel's area of operation, or a reference

to the 24-hour point of contact as listed on the vessel's notice of arrival;

(5) Person(s) within the oil spill removal organization to notify for activation of that oil spill removal organization for the three spill scenarios identified in paragraph (i)(1)(v) of this section for the vessel's area of operation;

(6) Person(s) within the identified response organization to notify for activating the organizations to provide—

(i) The required emergency lightering and fuel offloading required by §§ 155.5050(i) and 155.5052 as applicable;

(ii) The required salvage and marine firefighting required by §§ 155.5050(i) and 155.5052 as applicable;

(iii) The required dispersant response equipment required by § 155.5050(j), as applicable; and

(iv) The required aerial oil spill tracking and observation resources required by § 155.5050(k), as applicable; and

(7) Person(s) to notify for activation of the spill management team for the spill response scenarios identified in paragraph (i)(5) of this section for the vessel's area of operation.

(f) *Training procedures section.* This section of the VRP must address the training procedures and programs of the vessel owner or operator to meet the requirements in § 155.5055.

(g) *Exercise procedures section.* This section of the VRP must address the exercise program to be carried out by the vessel owner or operator to meet the requirements in § 155.5060.

(h) *Plan review, update, revision, amendment, and appeal procedure section.* This section of the VRP must address the procedures the vessel owner or operator must follow—

(1) To meet the requirements of §§ 155.5070 and 155.5075; and

(2) For any post-discharge review of the VRP to evaluate and validate its effectiveness.

(i) *GSAs for each COTP zone in which a vessel operates section.* A GSA must be included for each COTP zone identified.

(1) The appendices must include the following information or identify the location of such information within the VRP—

(i) A list of the geographic areas (port areas, rivers and canals, Great Lakes, inland, nearshore, offshore, and open ocean areas) in which the vessel intends to handle, store, or transport oil as fuel or cargo within the applicable COTP zone;

(ii) The volume and group of oil on which the required level of response resources are calculated;

(iii) Required Federal or State notifications applicable to the geographic areas in which a vessel operates;

(iv) Identification of the QI; and

(v) Identification of the oil spill removal organization(s) (OSRO) that are identified and ensured available, through contract or other approved means, and the spill management team to respond to the following spill scenarios, as applicable—

(A) Average most probable discharge;

(B) Maximum most probable discharge; and

(C) Worst case discharge.

(2) Nontank vessels with a capacity less than 250 barrels must plan for and identify maximum most probable discharge response resources in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(3) The organization(s) identified to meet the requirements of paragraph (i)(1)(v) of this section must be capable of providing the equipment and supplies necessary to meet the requirements of §§ 155.5050 and 155.5052, as appropriate, and sources of trained personnel to continue operation of the equipment and staff the OSRO(s) and spill management team identified for the first 7 days of the response.

(4) The GSA must list the response resources and related information required under §§ 155.5050, 155.5052, and appendix B of this part, as appropriate.

(5) If the Coast Guard has evaluated an OSRO and has determined the OSROs capability is equal to or exceeds the response capability needed by the vessel, the GSA may identify only the OSRO and their applicable classification and not the information required in paragraph (i)(4) of this section. This information is subject to Coast Guard verification at any time during the validity of the VRP.

(6) The GSA must also separately list the companies identified to provide the salvage, emergency lightering, and marine firefighting resources required in this subpart. The GSA must list the response resources and related information required in paragraph (i)(4) of this section. This information is subject to Coast Guard verification at any time during the validity of the VRP.

(i) Nontank vessels with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, need only plan for and identify salvage, emergency lightering, and marine firefighting response resources, as required by subpart I, in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(ii) Nontank vessels with a capacity less than 250 barrels need only plan for and identify salvage response resources in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(7) For nontank vessels with a capacity of 2,500 barrels or greater that carry group II through group IV petroleum oils as fuel or cargo and that operate in waters where dispersant use pre-authorization agreements exist, the GSA must also separately list the resource providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide, if appropriate, the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means. The dispersant resources to be listed within this section must include the following—

(i) Identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of § 155.5050(j) of this chapter; and

(ii) Identification of the platform type, resource provider, location, and dispersant payload for each dispersant-application platform identified. Location data must identify the distance between the platform's home base and the identified primary dispersant-staging site(s) for this section.

(8) For each unit of dispersant stockpile required to support the effective daily application capacity of each dispersant-application platform necessary to sustain each intended response tier of operation, identify the dispersant product resource provider, location, and volume. Location data must include the distance from the stockpile to the primary staging sites where the stockpile would be loaded on

to the corresponding platforms. If the Coast Guard has evaluated an OSRO and has determined its capability meets the response capability needed by the vessel owner or operator, the section may identify the OSRO only, and not the information required in paragraphs (i)(7)(i), (i)(7)(ii), and (i)(8) of this section.

(9) Nontank vessels with an oil capacity of 250 barrels or greater, but less than 2,500 barrels, that carry group II through group IV petroleum oils as fuel or cargo and that operate in waters where dispersant use pre-authorization agreements exist, need only plan for and identify dispersant response resources but not ensure their availability by contract. Submission of a written consent from the dispersant response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(10) For nontank vessels with a fuel and cargo capacity of 2,500 barrels or greater not operating exclusively on the inland areas of the United States, the GSA must also separately list the resource providers and specific resources necessary to provide oil spill tracking capabilities required in this subpart. The oil spill tracking resources to be listed within this section must include the following—

(i) The identification of a resource provider; and

(ii) The type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil spill tracking requirements of § 155.1050(k) of this part.

(11) Nontank vessels with a capacity of 250 barrels or greater, but less than 2,500 barrels, need only plan for and identify aerial oil spill tracking response resources in the VRP, but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, ''Contract or other approved means'', paragraph (5).

(j) *Appendices for vessel-specific information section.* This section of the VRP must include for each vessel covered by the VRP the following information, as applicable—

(1) List of the vessel's principal characteristics;

(2) Capacities of all cargo, fuel, lube oil, ballast, and fresh water tanks;

(3) The total volume and groups of oil that would be involved in a—

(i) Maximum most probable discharge; and

(ii) Worst case discharge;

(4) Diagrams showing location of all cargo, fuel, lube oil, and slop tanks, as applicable;

(5) General arrangement plan (can be maintained separately onboard the vessel providing the VRP identifies the specific location);

(6) Midships section plan (can be maintained separately onboard the vessel providing the VRP identifies the specific location);

(7) Cargo and fuel piping diagrams and pumping plan, as applicable (can be maintained separately onboard the vessel providing the VRP identifies the specific location);

(8) Damage stability data (can be maintained separately, providing the VRP identifies the specific location);

(9) Location of cargo and fuel stowage plan for vessel; and

(10) Location of information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the fuel and cargo oil onboard the vessel. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, cargo information required by 33 CFR 154.310, or equivalent, will meet this requirement. This information can be maintained separately.

(k) *Required appendices for MARPOL 73/78 Annex I, Regulation 37, Shipboard Oil Pollution Emergency Plan (SOPEP) information.* U.S.-flag vessels not certificated for coastwise or oceans operating routes and foreign-flag vessels that are in compliance with Regulation 37 of MARPOL 73/78 Annex I are not required to comply with this paragraph. A vessel owner or operator of a U.S.-flag vessel constructed or certificated for coastwise or oceans operating routes, but that does not engage in international voyages, may request to be exempted from compliance with this paragraph through submission of a certified statement, attesting same, to Commandant (CG–CVC), Office of Commercial Vessel Compliance, which must accompany the new nontank vessel response submission or resubmission. U.S.-flag vessels that must comply with this paragraph must label the cover of their VRP as a MARPOL 73/78 Annex I, Regulation 37 Shipboard Oil Pollution Emergency Plan (SOPEP) and Coast Guard Nontank Vessel Response Plan. The following information must be submitted consistent with Regulation 37 of MARPOL 73/78 Annex I as set forth in 33 CFR 151.26—

(1) The introductory text required by 33 CFR 151.26(b)(1);

(2) The preamble statement regarding the purpose of the plans and how the plan relates to other shore-related plans as required by 33 CFR 151.26(b)(2);

(3) The information on authorities or persons to be contacted in the event of an oil pollution incident as required 33 CFR 151.26(b)(3)(iii). This information must also clearly specify who will be responsible for informing the necessary parties from the coastal State contacts, the port contacts, and the ship interest contacts. This information must include—

(i) An appendix containing coastal State contacts for those coastal States in which the vessel regularly transits the exclusive economic zone. The appendix should list those agencies or officials of administrations responsible for receiving and processing pollution incident reports;

(ii) An appendix of port contacts for those ports at which the vessel regularly calls; and

(iii) For Antarctica, reports must also be directed to any Antarctic station that may be affected in accordance with 33 CFR 151.26(b)(3)(iii)(C);

(4) Include the procedures and point of contact on the ship for coordinating shipboard activities with national and local authorities in combating an oil spill incident in accordance with 33 CFR 151.26(b)(5). The plan should address the need to contact the coastal State to advise them of action(s) being implemented and determine what authorization(s), if any, are needed; and

(5) Required information lists in separate appendices per 33 CFR 151.26(b)(6)(ii).

§ 155.5050 Response plan development and evaluation criteria for nontank vessels carrying groups I through IV petroleum oil.

(a) *Criteria for evaluating operability of response resources.* The criteria used to evaluate the operability of response resources identified in a vessel response plan (VRP) for specified operating environments must be in accordance with 33 CFR 155.1050(a).

(b) *Operating environment reclassification of specific bodies of water.* Captain of the Port (COTP) reclassification of a specific body of water or location within the COTP zone must be in accordance with 33 CFR 155.1050(b).

(c) *Criteria for response equipment.* Response equipment must—

(1) Meet or exceed the criteria listed in Table 1 of appendix B of this part;

(2) Be capable of functioning in the applicable operating environment; and

(3) Be appropriate for the amount of oil capable of being carried.

(d) *Average most probable discharge.* (1) The owner or operator of a nontank vessel that carries groups I through IV petroleum oil as cargo must identify in the VRP and ensure the availability of, through contract or other approved means, the response resources that will respond to a discharge up to the vessel's average most probable discharge (AMPD). Nontank vessels that carry oil as cargo must meet the requirements for AMPD coverage, as applicable, per 33 CFR 155.1050(d).

(2) Nontank vessels that only carry groups I through IV petroleum oil as fuel do not have to ensure the availability of AMPD resources by contract or other approved means, but must plan for and identify response resources required in § 155.1050(d)(1) and list this information in the applicable geographic-specific appendix for bunkering or fueling operations. Permission or acknowledgement from the listed resource providers is not required.

(e) *Maximum most probable discharge.* (1) The owner or operator of a nontank vessel with a capacity of 250 barrels or greater carrying groups I through IV petroleum oil as fuel or cargo must identify in the VRP and ensure the availability of, through contract or other approved means, the response resources necessary to respond to a discharge up to the vessel's maximum most probable discharge (MMPD) volume. For the purposes of meeting the requirements of this paragraph, vessel owners or operators must meet 33 CFR 155.1050(e).

(2) The owner or operator of a nontank vessel with a capacity less than 250 barrels must plan for and identify MMPD response resources in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(f) *Worst case discharge.* The owner or operator of a nontank vessel with a capacity of 2,500 barrels or greater carrying groups I through IV petroleum oil as fuel or cargo must identify in the VRP and ensure the availability of, through contract or other approved means, the response resources necessary to respond to discharges up to the worst case discharge (WCD) volume of the oil to the maximum extent practicable. For the purposes of meeting the requirements of this paragraph, vessel owners or operators must meet 33 CFR 155.1050(f). Nontank vessels need only plan for Tier 1 response resources.

(g) *Tier 1 response times.* Response equipment identified to respond to a WCD should be capable of arriving on scene within the times specified in this paragraph for the applicable response in a higher volume port area, Great Lakes, or in other areas. Table 155.5050(g) details response times for this tier, from the time of discovery of a discharge.

TABLE 155.5050(G)—RESPONSE TIMES FOR TIER 1

Tier 1	
Higher volume port area	12 hrs.
Great Lakes	18 hrs.
All other operating environments, including rivers and canals, inland, nearshore, offshore, and open ocean areas.	24 hrs.

(h) *Planning standards for the mobilization and response times for required MMPD and WCD response resources.* For the purposes of arranging for MMPD or WCD response resources through contract or other approved means, response equipment identified for plan credit should be capable of being mobilized and en route to the scene of a discharge within 2 hours of notification. The notification procedures identified in the VRP should provide for notification and authorization for mobilization of response resources—

(1) Either directly or through the qualified individual; and

(2) Within 30 minutes of a discovery of a discharge or substantial threat of discharge.

(i) *Salvage, emergency lightering, and marine firefighting requirements.* The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo must plan for salvage, emergency lightering, and marine firefighting response resources, as applicable.

(1) Nontank vessels with a capacity of 2,500 barrels or greater must meet the salvage, emergency lightering, and marine firefighting requirements found in subpart I of this part.

(2) Nontank vessels with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, need to plan for and identify salvage, emergency lightering, and marine firefighting response resources found in subpart I in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(3) Nontank vessels with a capacity less than 250 barrels need to plan for and identify salvage response resources found in subpart I in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(j) *Dispersants.* (1) The owner or operator of a nontank vessel carrying groups II through IV petroleum oil as fuel or cargo with a capacity of 2,500 barrels or greater that operates in any area pre-authorized for dispersant use must identify in their VRP, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas. Vessel owners or operators must meet 33 CFR 155.1050(k). These nontank vessels must meet Tier 1 for dispersant effective daily application capability.

(2) The owner or operator of a nontank vessel with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, needs to plan for and identify dispersant response resources in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(k) *Aerial oil spill tracking and observation response resources.* (1) The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo with a capacity of—

(i) 2,500 barrels or greater must identify in the VRP, and ensure availability of, through contract or other approved means, the response resources necessary to provide aerial oil spill tracking to support oil spill assessment and cleanup activities. Vessel owners or operators of these vessels must meet 33 CFR 155.1050(l).

(ii) Less than 2,500 barrels, but greater than 250 barrels, need to plan for and identify aerial oil tracking response resources in the VRP but do not have to

ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, ''Contract or other approved means'', paragraph (5).

(2) Nontank vessels operating exclusively on the inland areas of the United States are not required to comply with paragraph (k) of this section.

(l) *Response resources necessary to perform shoreline protection operations.* The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo with a capacity of 250 barrels or greater must identify in the VRP, and ensure the availability of, through contract or other approved means, the response resources necessary to perform shoreline protection operations. The response resources must include the quantities of boom listed in Table 2 of appendix B of this part, based upon the specific COTP zones in which the vessel operates.

(m) *Shoreline cleanup operations.* The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo with a capacity of 250 barrels or greater must identify in the VRP, and ensure the availability of, through contract or other approved means, an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified petroleum oil to be planned for in shoreline cleanup operations. The shoreline cleanup resources required must be determined as described in appendix B of this part.

(n) *Practical and technical limits of response capabilities.* Appendix B of this part sets out response capability capacities (caps) that recognize the practical and technical limits of response capabilities for which an individual vessel owner or operator can contract in advance. Table 6 in appendix B lists the contracting caps that are applicable. The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo, with a capacity of 2,500 barrels or greater, whose required daily recovery capacity exceeds the applicable contracting caps in Table 6, must identify commercial sources of additional equipment equal to twice the cap listed for each tier or the amount necessary to reach the calculated planning volume, whichever is lower, to the extent that this equipment is available. The equipment so identified must be capable of arriving on scene no later than the applicable tier response times contained in § 155.5050(g) or as quickly as the nearest available resource permits. A VRP must identify the specific sources, locations, and quantities of this additional equipment. No contract is required.

(o) *Review of response capability limits.* The Coast Guard will continue to evaluate the environmental benefits, cost efficiency, and practicality of increasing mechanical recovery capability requirements. This continuing evaluation is part of the Coast Guard's long term commitment to achieving and maintaining an optimum mix of oil spill response capability across the full spectrum of response modes. As best available technology demonstrates a need to evaluate or change mechanical recovery capacities, a review of cap increases and other requirements contained within this subpart may be performed. Any changes in the requirements of this section will occur through a rulemaking process. During this review, the Coast Guard will determine if established caps remain practicable and if increased caps will provide any benefit to oil spill recovery operations. The review will include, at least, an evaluation of—

(1) Best available technologies for containment and recovery;

(2) Oil spill tracking technology;

(3) High rate response techniques;

(4) Other applicable response technologies; and

(5) Increases in the availability of private response resources.

(p) *Nontank vessel response plan required response resources matrix.* Table 155.5050(p) summarizes the VRP required response resources.

TABLE 155.5050(P)—NONTANK VESSEL RESPONSE PLAN REQUIRED RESPONSE RESOURCES MATRIX

Nontank vessel's fuel and cargo oil capacity	AMPD	MMPD	WCD	Salvage	Emergency lightering	Fire fighting	Dispersant [3]	Aerial tracking [4]	Shoreline protection	Shore line cleanup
2,500 barrels or greater	NO[1]	YES	YES	YES	YES	YES	YES	YES	YES	YES.
Less than 2,500 barrels, but greater than or equal to 250 barrels.	NO[1]	YES	NO	YES[2]	YES[2]	YES[2]	YES[2]	YES[2]	YES	YES.
Less than 250 barrels	NO[1]	YES[2]	NO	YES[2]	NO	NO	NO	NO	NO	NO.

[1]—For nontank vessels carrying oil as fuel only. Nontank vessels carrying oil as cargo must meet AMPD response resources in 33 CFR 155.5050(d)(1) as applicable.

[2]—The indicated response resources that must be located within the stipulated response times in the specified geographic areas need only be identified and planned for in the VRP, but not ensured available by contract. Submission of a written consent from the response resource provider must accompany the VRP for approval. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, ''Contract or other approved means'', paragraph (5).

[3]—Dispersant response resources are only required for waters where dispersant pre-authorization has been authorized IAW the Area Contingency Plan. See 33 CFR 155.5050(j).

[4]—Aerial oil spill tracking response resources are not required for inland areas.

§ 155.5052 Response plan development and evaluation criteria for nontank vessels carrying group V petroleum oil.

Owners or operators of nontank vessels that carry group V petroleum oil as fuel or cargo must meet the requirements of 33 CFR 155.1052.

§ 155.5055 Training.

(a) For nontank vessels with an oil capacity of 250 barrels or greater—

(1) A vessel response plan (VRP) submitted to meet the requirements of § 155.5035 must identify the training to be provided to persons having responsibilities under the VRP, including members of the vessel crew, the qualified individual, and the spill management team. The training program must differentiate between that training provided to vessel personnel and that training provided to shore-based personnel. Appendix C of this part provides additional guidance regarding training; and

(2) A vessel owner or operator must comply with the vessel response plan training requirements of 33 CFR 155.1055.

(b) For nontank vessels with an oil capacity of less than 250 barrels, a vessel owner or operator must comply with the VRP training requirements of paragraph (a) of this section or the Alternative Training and Exercise Program requirements of § 155.5061.

§ 155.5060 Exercises.

(a) For nontank vessels with an oil capacity of 250 barrels or greater—

(1) A vessel owner or operator required by § 155.5035 to have a vessel response plan (VRP) must conduct exercises as necessary to ensure that the VRP will function in an emergency. Vessel owners or operators must include both announced and unannounced exercises; and

(2) A vessel owner or operator must comply with the VRP exercise requirements of 33 CFR 155.1060.

(b) For nontank vessels with an oil capacity of less than 250 barrels, a vessel owner or operator must comply with the VRP exercise requirements of paragraph (a) of this section or the Alternative Training and Exercise Program requirements of § 155.5061.

§ 155.5061 Alternative Training and Exercise Program.

(a) Owners or operators of nontank vessels with an oil capacity of less than 250 barrels, in lieu of the training and exercise requirements of §§ 155.5055 and 155.5060, may meet an Alternative Training and Exercise Program that has been approved by the Commandant (CG–CVC) for meeting the requirements of this section.

(b) Vessel owners or operators must make available to the Coast Guard, upon request, any information related to implementation of an approved Alternative Training and Exercise Program.

(c) For approval of an Alternative Training and Exercise Program the vessel owners or operators must submit to the Commandant (CG–CVC) for review and approval: The Alternative Training and Exercise Program and the following information to assess the adequacy of the proposed Alternative Training and Exercise Program—

(1) A list of the vessels to which the Alternative Training and Exercise Program is intended to apply;

(2) An explanation of how the Alternative Training and Exercise Program addresses the requirements of 33 CFR 155.1055(b) through (f) and 33 CFR 155.1060; and

(3) An explanation of how vessel owners or operators must implement the Alternative Training and Exercise Program in its entirety, including performing verification of implementation.

(d) Amendments to the Alternative Training and Exercise Program approved under this section may be initiated by the submitter of an Alternative Training and Exercise Program.

(e) Approval of the Alternative Training and Exercise Program is required before a vessel may receive a nontank vessel response plan approval letter.

(f) The Commandant (CG–CVC) will examine each submission for compliance with this section and—

(1) If the submission meets all the requirements, the Coast Guard will consider the training and exercise program requirements under this section to be satisfactory; or

(2) If the Coast Guard determines that the submission does not meet all of the requirements, the submitter will be notified of the deficiencies. The submitter may then resubmit a revised request within the time period specified.

§ 155.5062 Inspection and maintenance of response resources.

The owner or operator of a nontank vessel required to submit a vessel response plan under this part must comply with the response resource inspection and maintenance requirements of 33 CFR 155.1062.

§ 155.5065 Procedures for plan submission and approval.

(a) An owner or operator of a nontank vessel, to which this subpart applies, must submit one complete English language copy of a vessel response plan (VRP) to Commandant (CG–CVC), Office of Commercial Vessel Compliance, U.S. Coast Guard, 2100 2nd St. SW. Stop 7581, Washington, DC 20593–7581, Attn: Vessel Response Plan Review Team. The VRP must be submitted at least 60 days before the vessel intends to operate upon the navigable waters of the United States.

(b) The owner or operator of a nontank vessel must include a statement certifying that the VRP meets the applicable requirements of this subpart and the requirements of subparts D, E, F, and G, if applicable. The vessel owner or operator must also include a statement certifying that the vessel owner or operator has ensured the availability of, through contract or other approved means, the necessary private response resources to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel as required under this subpart. VRPs should be submitted electronically by using the Vessel Response Plan Electronic Submission Tool available at *https://homeport.uscg.mil/vrpexpress.* If vessel owners or operators submit VRPs in paper format, CG Form ''Application for Approval/Revision of Vessel Pollution Response Plans'' (CG–6083) located at: *http://www.uscg.mil/forms/CG/CG_6083.pdf* meets the requirement for a VRP certification statement as required by this paragraph.

(c) If the Coast Guard determines that the VRP meets all requirements of this subpart, the Coast Guard will notify the vessel owner or operator with an approval letter. The VRP will be valid for a period of 5 years from the date of approval, conditional upon satisfactory annual updates.

(d) If the Coast Guard reviews the VRP and determines that it does not meet all of the requirements of this subpart, the Coast Guard will notify the vessel owner or operator of the VRP deficiencies. The vessel owner or operator must then resubmit a copy of the revised VRP or corrected portions of the VRP, within the time period specified in the written notice provided by the Coast Guard.

§ 155.5067 Alternative planning criteria.

(a) When the owner or operator of a nontank vessel believes that national planning criteria contained elsewhere in this part are inappropriate for the areas in which the vessel intends to operate, the vessel owner or operator may submit an alternative planning criteria request to the Coast Guard. Alternative planning criteria requests must be submitted 90 days before the vessel intends to operate under the proposed alternative, or as soon as is practicable. The alternative planning criteria request must be endorsed by the Captain of the Port (COTP) with jurisdiction over the geographic area(s) affected before being considered by Commandant (CG–CVC), Office of Commercial Vessel Compliance, for the review and approval of the respective vessel response plan (VRP). In any case, the request must be received by Commandant (CG–CVC) with an endorsement by the respective COTP no later than 21 days before the vessel intends to operate under the alternative planning criteria.

(b) The alternative planning criteria request should detail all elements of the VRP where deviations from the requirements in this subpart are being proposed or have not been met. Response equipment, techniques, or procedures identified in the alternative planning criteria request should be submitted in accordance with the evaluation criteria of appendix B of this part. The request should contain at a minimum—

(1) Reason(s) and supporting information for the alternative planning criteria request;

(2) Identification of regulations necessitating the alternative planning criteria request;

(3) Proposals for alternative procedures, methods, or equipment standards, where applicable, to provide for an equivalent level of planning, response, or pollution mitigation strategies;

(4) Prevention and mitigation strategies that ensure low risk of spills and adequate response measures as a result of the alternative planning criteria; and

(5) Environmental and economic impact assessments of the effects.

(c) The determination of an alternative planning criteria request will

be conducted by Commandant (CG–CVC), Office of Commercial Vessel Compliance.

§ 155.5070 Procedures for plan review, revision, and amendment.

(a) The owner or operator of a nontank vessel must review the vessel response plan (VRP) annually. This review must occur within 1 month of the anniversary date of Coast Guard approval of the VRP.

(b) A VRP prepared and submitted under this subpart must be revised and amended, as necessary, in accordance with § 155.1070.

§ 155.5075 Appeal procedures.

(a) A vessel owner or operator who disagrees with a deficiency determination may submit a petition for reconsideration to the Commandant (CG–5PC), Director of Inspections and Compliance, U.S. Coast Guard, 2100 2nd St. SW Stop 7581, Washington, DC 20593–7581 or *vrp@uscg.mil* within the time period required for compliance or within 7 days from the date of receipt of the Coast Guard notice of a deficiency determination, whichever is less. After considering all relevant material presented, the Coast Guard will notify the vessel owner or operator of the final decision.

(1) Unless the vessel owner or operator petitions for reconsideration of the Coast Guard's decision, the vessel's owner or operator must correct the vessel response plan (VRP) deficiencies within the period specified in the Coast Guard's initial determination.

(2) If the vessel owner or operator petitions the Coast Guard for reconsideration, the effective date of the Coast Guard notice of deficiency determination may be delayed pending a decision by the Coast Guard. Petitions to the Coast Guard must be submitted in writing, via the Coast Guard official who issued the requirement to amend the VRP, within 5 days of receipt of the notice.

(b) Within 21 days of notification that a VRP is not approved, the vessel owner or operator may appeal that determination to the Director of Inspections and Compliance. This appeal must be submitted in writing to Commandant (CG–5PC), Director of Inspections and Compliance, U.S. Coast Guard, 2100 2nd St. SW. Stop 7581, Washington, DC 20593–7581.

■ 24. In appendix B to part 155, revise paragraphs 1.1, 2.6, 2.7, 3.1, 4.2.2, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 7.1, 7.2, 7.2.3, 7.2.4, 7.3.1, and 8.1.1 to read as follows:

Appendix B to Part 155—Determining and Evaluating Required Response Resources for Vessel Response Plans

* * * * *

1.1 The purpose of this appendix is to describe the procedures for identifying response resources to meet the requirements of subparts D, E, F, G, and J of this part. These guidelines will be used by the vessel owner or operator in preparing the response plan and by the Coast Guard to review vessel response plans. Response plans submitted under subparts F and G of this part will be evaluated under the guidelines in section 2 and Table 1 of this appendix.

* * * * *

2.6 The requirements of subparts D, E, F, G, and J of this part establish response resource mobilization and response times. The location where the vessel operates farthest from the storage location of the response resources must be used to determine whether the resources are capable of arriving on scene within the time required. A vessel owner or operator must include the time for notification, mobilization, and travel time of resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge requirements. For subparts D and E of this part, Tier 2 and 3 resources must be notified and mobilized as necessary to meet the requirements for arrival on scene. An on-water speed of 5 knots and a land speed of 35 miles per hour is assumed, unless the vessel owner or operator can demonstrate otherwise.

2.7 For subparts D, E, and J of this part, in identifying equipment, the vessel owner or operator must list the storage location, quantity, and manufacturer's make and model, unless the oil spill removal organization(s) providing the necessary response resources have been evaluated by the Coast Guard, and their capability has been determined to equal or exceed the response capability needed by the vessel. For oil recovery devices, the effective daily recovery capacity, as determined using section 6 of this appendix, must be included. For boom, the overall boom height (draft plus freeboard) must be included. A vessel owner or operator must ensure that identified boom has compatible connectors.

* * * * *

3.1 A vessel owner or operator must identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to the 50-barrel average most probable discharge at the point of an oil transfer involving a vessel that carries oil as a primary cargo or a nontank vessel carrying oil as cargo. The equipment must be designed to function in the operating environment at the point of oil transfer. These resources must include—

* * * * *

4.2.2 Ten percent of the total oil capacity.

* * * * *

5.1 A vessel owner or operator, as applicable under the regulations prescribed in this part, must identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to the worst case discharge of oil to the maximum extent practicable. Section 7 of this appendix describes the method to determine the required response resources.

5.2 Oil spill recovery devices identified to meet the applicable worst case discharge planning volume must be located such that they can arrive at the scene of a discharge within the time specified for the applicable response tier listed in §§ 155.1050(g) and 155.5050(g).

5.3 The effective daily recovery capacity for oil recovery devices identified in a response plan must be determined using the criteria in section 6 of this appendix. A vessel owner or operator, as applicable under the regulations prescribed in this part, must identify the storage locations of all equipment that must be used to fulfill the requirements for each tier.

5.4 A vessel owner or operator, as applicable under the regulations prescribed in this part, must identify the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery capacity must be downgraded to the limits of the available storage capacity.

5.5 When selecting response resources necessary to meet the response plan requirements, the vessel owner or operator, as applicable under the regulations prescribed in this part, must ensure that a portion of those resources are capable of being used in close-to-shore response activities in shallow water. The following percentages of the on-water response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth:

(i) Open ocean—none.

(ii) Offshore—10 percent.

(iii) Nearshore, inland, Great Lakes, and rivers and canals—20 percent.

5.6 In addition to oil spill recovery devices and temporary storage capacity, a vessel owner or operator, as applicable under the regulations prescribed in this part, must identify in the response plan and ensure the availability of, through contract or other approved means, sufficient boom that can arrive on scene within the required response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the specific recovery equipment and strategies employed. Table 2 of this appendix lists the minimum quantities of additional boom required for shoreline protection that a vessel owner or operator must identify in the response plan and ensure the availability of, through contract or other approved means.

5.7 A vessel owner or operator, as applicable under the regulations prescribed in this part, must also identify in the response plan and ensure, by contract or other approved means, the availability of an oil spill removal organization capable of responding to a shoreline cleanup operation involving the calculated volume of emulsified oil that might impact the affected shoreline. The volume of oil for which a vessel owner or operator should plan for should be calculated through the application of factors contained in Tables 3 and 4 of this appendix. The volume calculated from these

tables is intended to assist the vessel owner or operator in identifying a contractor with sufficient resources. This planning volume is not used explicitly to determine a required amount of equipment and personnel.

* * * * *

7.1 A vessel owner or operator, as applicable under the regulations prescribed in this part, must plan for a response to a vessel's worst case discharge oil planning volume. The planning for on-water recovery must take into account a loss of some oil to the environment due to evaporation and natural dissipation, potential increases in volume due to emulsification, and the potential for deposit of some oil on the shoreline.

7.2 The following procedures must be used to calculate the planning volume used by a vessel owner or operator, as applicable under the regulations prescribed in this part, for determining required on-water recovery capacity:

* * * * *

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in Table 5 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted for to arrive on scene within the applicable time for each response tier. Table 5 specifies three tiers. For higher volume port areas, the contracted tiers of resources must be located such that they can arrive on scene within 12, 36, and 60 hours of the discovery of an oil discharge. For the Great Lakes, these tiers are 18, 42, and 66 hours. For rivers and canals, inland, nearshore, and offshore, these tiers are 24, 48, and 72 hours. For the open ocean area, these tiers are 24, 48, and 72 hours with an additional travel time allowance of 1 hour for every additional 5 nautical miles from shore. For nontank vessels, only Tier 1 is specified.

7.2.4 The resulting on-water recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable geographic area. The equipment must be capable of sustaining operations for the time period specified in Table 3 of this appendix. A vessel owner or operator, as applicable under the regulations prescribed in this part, must identify and ensure the availability of, through contract or other approved means, sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap described in Table 6 of this appendix, then a vessel owner or operator must contract only for the quantity of resources required to meet the cap, but must identify sources of additional resources as indicated in § 155.1050(p). For a vessel that carries multiple groups of oil, the required effective daily recovery capacity for each group is calculated and summed before applying the cap.

* * * * *

7.3.1 The following must be determined: The total volume of oil carried; the appropriate group for the type of petroleum oil carried [persistent (groups II, III, and IV) or non-persistent (group I)]; and the geographic area(s) in which the vessel operates. For a vessel carrying different oil groups, each group must be calculated separately. Using this information, Table 3 of this appendix must be used to determine the percentages of the total oil volume to be used for shoreline cleanup resource planning.

* * * * *

8.1.1 A vessel owner or operator, as applicable under the regulations prescribed in this part, must plan either for a dispersant capacity to respond to a vessel's worst case discharge of oil, or for the amount of the dispersant resource capability as required by § 155.1050(k)(3) of this subchapter, whichever is the lesser amount. When planning for the cumulative application capacity that is required, the calculations should account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure should be used to determine the cumulative application requirements:

* * * * *

■ 25. In appendix C to part 155, revise paragraphs 2.2.3.1, 2.2.14, 2.2.15, 2.2.15.1, 2.2.15.2, 2.2.15.3, 2.2.15.4, and 2.2.15.5 to read as follows:

Appendix C to Part 155—Training Elements for Oil Spill Response Plans

* * * * *

2.2.3.1 Operational activities associated with internal or external fuel and cargo transfers;

* * * * *

2.2.14 Actions to take, in accordance with designated job responsibilities, in the event of a transfer system leak, tank overflow, or suspected fuel or cargo tank or hull leak.

2.2.15 Information on the oil handled by the vessel or facility, including familiarity with—

2.2.15.1 Cargo material safety data sheets (including oil carried as fuel);

2.2.15.2 Chemical characteristics of all oils carried as fuel or cargo;

2.2.15.3 Special handling procedures for all oils carried as fuel or cargo;

2.2.15.4 Health and safety hazards associated with all oils carried as fuel or cargo; and

2.2.15.5 Spill and firefighting procedures for all oils carried as fuel or cargo.

* * * * *

PART 160—PORTS AND WATERWAYS SAFETY–GENERAL

■ 26. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

§ 160.206 [Amended]

■ 27. In § 160.206, in Table 160.206—

■ a. In the Required information column, after item (1)(viii), add ''(ix) USCG Vessel Response Plan Control Number, if applicable''; and

■ b. In each of remaining three columns of the newly added row (1)(ix), add an ''X''.

Dated: August 16, 2013.

Robert J. Papp, Jr.,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 2013–22059 Filed 9–27–13; 8:45 am]

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