



# Federal Register

---

Monday,  
August 31, 2009

---

## Part III

### Department of Homeland Security

---

Coast Guard

---

33 CFR Parts 151, 155, and 160  
Nontank Vessel Response Plans and  
Other Vessel Response Plan  
Requirements; Proposed 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 Vessel Response Plan Requirements**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security, United States Coast Guard, proposes this nontank vessel response plan rulemaking to further protect the Nation from the threat of oil spills in the maritime domain. The rule proposes regulations requiring 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. The proposed rule would specify the content of a response plan, and among other issues, address the requirement to plan for responding to a worst case discharge and a substantial threat of such a discharge. Additionally, this proposed rule would update the international Shipboard Oil Pollution Emergency Plan (SOPEP) requirements that apply to certain nontank vessels and tank vessels. Finally, this proposed rule would require vessel owners and 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:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before November 30, 2009 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before November 30, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG–2008–1070 using any one of the following methods:

- (1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- (2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below.

**Collection of Information Comments:** If you have comments on the collection of information, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov) (include the docket number and “Attention: Desk Officer for Coast Guard, DHS” in the subject line of the e-mail) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Lieutenant Jarrod DeWitz, U.S. Coast Guard, Office of Vessel Activities, Vessel Response Plan Review Team, telephone (202) 372–1219. You may also e-mail questions to [Jarrod.M.DeWitz@uscg.mil](mailto:Jarrod.M.DeWitz@uscg.mil).

**Note:** The technical expertise for the development of this proposed rule is credited to Commander Rob Smith. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:****Table of Contents for Preamble**

- I. Public Participation and Request for Comments
  - A. Submitting Comments
  - B. Viewing Comments and Documents
  - C. Privacy Act
  - D. Public Meeting
- II. Abbreviations
- III. Background and Purpose
  - A. Tank and Nontank Vessels—Oil and Hazardous Substance Discharge Response Plan Legislation
  - B. Tank Vessels
  - C. Nontank Vessels
  - D. Access to the NVICs

E. Shipboard Oil Pollution Emergency Plan (SOPEP)

F. Notice of Arrival Requirements and Vessel Response Plans

G. Customary International Law: Innocent Passage and Transit Passage

H. Definition of “United States” for Purposes of Vessel Response Plan Requirements

IV. Discussion of Proposed Rule

V. Incorporation by Reference

VI. Regulatory Analyses

A. Executive Order 12866

B. Small Entities

C. Assistance for Small Entities

D. Collection of Information

E. Federalism

F. Unfunded Mandates Reform Act

G. Taking of Private Property

H. Civil Justice Reform

I. Protection of Children

J. Indian Tribal Governments

K. Energy Effects

L. Technical Standards

**I. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

**A. Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1070), indicate the specific section of this document to which each comment applies, and give your reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means.

To submit your comment online, go to <http://www.regulations.gov> and click on the “submit a comment” box, which will then become highlighted in blue. Insert “USCG–2008–1070” in the Keyword box, click “Search”, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider

all comments and material received during the comment period and may change this proposed rule based on your comments.

### B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG–2008–1070) in the Keyword box, and click “Search”. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

### D. Public Meeting

We plan to hold one or more public meetings. The time and place of each public meeting will be announced by a later notice in the **Federal Register**.

## II. 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)  
 AMPD Average most probable discharge  
 BLS Bureau of Labor Statistics  
 CAP Capability  
 CFR Code of Federal Regulations  
 COTP Captain of the Port  
 DHS Department of Homeland Security  
 DOT Department of Transportation  
 EDAC Effective daily application capability  
 EEZ Exclusive economic zone  
 eNOAD Electronic Notice of Arrival/Departure  
 FOSC Federal On-Scene Coordinator  
 FWPCA Federal Water Pollution Control Act (33 U.S.C. 1251 through 1387)  
 GSA Geographic-specific appendix  
 IAP Incident Action Plan  
 IMO International Maritime Organization  
 IOPP International Oil Pollution Prevention  
 ISM International Ship Management  
 ITB Integrated tug barge

MARPOL International Convention for the Prevention of Pollution from Ships  
 MEPC Marine Environment Protection Committee  
 MISLE Marine Information for Safety and Law Enforcement  
 MMPD Maximum most probable discharge  
 MOA Memorandum of Agreement  
 MOU Memorandum of Understanding  
 MTR Marine transportation-related  
 NCP National Oil and Hazardous Substances Pollution Contingency Plan (also known as National Contingency Plan)  
 NLS Noxious Liquid Substance  
 NM Nautical mile  
 NOA Notice of arrival  
 NTVRP Nontank vessel response plan  
 NVIC Navigation and Vessel Inspection Circular  
 NVMC National Vessel Movement Center  
 OCIMF Oil Companies International Marine Forum  
 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  
 PV Present value  
 P&I Protection and Indemnity  
 PREP National Preparedness for Response Exercise Program  
 PWSA Ports and Waterways Safety Act (Pub. L. 92–340, 86 Stat. 424)  
 QI Qualified individual  
 SBA Small Business Administration  
 SLS Saint Lawrence Seaway  
 SLSDC Saint Lawrence Seaway Development Corporation  
 SOPEP Shipboard oil pollution emergency plans  
 SMT Spill management team  
 TVRP Tank vessel response plan  
 VRP Vessel response plan  
 UNCLOS United Nations Convention on the Law of the Sea, 1982  
 U.S.C. United States Code  
 WCD Worst case discharge

## III. Background and Purpose

This proposed rule is intended to improve our nation’s pollution response planning and preparedness posture and help limit the environmental damage resulting from nontank vessel marine casualties.

In recent years, several catastrophic nontank vessel oil spills have threatened the marine environment along the coastal areas of the United States. Among these spills were—

- The grounding of the M/V NEW CARISSA on the Oregon coast on February 4, 1999, during a storm, which resulted in the loss of the vessel and a spill of approximately 70,000 gallons of the 400,000 gallons of “Bunker C” fuel oil on board;
- The grounding of the M/V SELENDANG AYU in the Aleutian Islands of Alaska on December 8, 2004, during a storm, which resulted in the loss of the vessel and a spill of approximately 336,000 gallons of fuel oil and diesel fuel; and

- The allision of the M/V COSCO BUSAN with the San Francisco-Oakland Bay Bridge in San Francisco Bay on November 7, 2007, in foggy conditions, which resulted in severe damage to the vessel and a spill of approximately 53,000 gallons of fuel oil.

Each of these spills resulted in damage to the marine environment, including the loss of fish and wildlife. The spills have also affected key maritime industry stakeholders by disrupting maritime commerce and normal operations in the affected ports and waterways.

Groundings, allisions, and collisions are among the many types of casualties that may befall any vessel while at sea or in port. Congress enacted the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380, 104 Stat 484) following a series of tank vessel casualties, including most notably the grounding of the M/V EXXON VALDEZ on March 24, 1989, on Bligh Reef in Prince William Sound near Valdez, Alaska. OPA 90, which applies primarily to tank vessels, focuses on preventing and mitigating oil spills via actions in several broad areas, including Liability and Compensation, Prevention, Preparedness, Response, and Research and Development. Simultaneously at the international level, the International Maritime Organization (IMO) enhanced worldwide pollution prevention and response standards with a series of amendments to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). Finally, in 2004 and 2006, Congress amended the Federal Water Pollution Control Act (FWPCA), section 311(j)(5), to require tank and nontank vessel owners and operators to prepare and submit oil and hazardous substance discharge response plans to the Coast Guard. The following sections will summarize these domestic and international pollution preparedness and planning actions.

### A. Tank and Nontank Vessels—Oil and Hazardous Substance Discharge Response Plan Legislation

Section 311(j)(5) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(j)(5), as established by section 4202 of the Oil Pollution Act of 1990; and as amended by 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 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. A response plan under this legislation must:

- Be consistent with the requirements of the National Contingency Plan and Area Contingency Plans<sup>1</sup>;
- 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;
- 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;
- Be updated periodically; and
- Be resubmitted for approval of each significant change.

#### B. Tank Vessels

The response plan regulations for tank vessels were established during a previous rulemaking (61 FR 1052, January 12, 1996) and are located at 33 CFR part 155, subpart D. It is important to briefly discuss those regulations, because the proposed rule for nontank vessels is similar to the tank vessel regulations.

Congress enacted OPA 90 in response to several marine pollution incidents. Section 4202 of OPA 90 amended section 311(j) of the FWPCA (33 U.S.C. 1321(j)) by, among other requirements, requiring tank vessel owners or operators to prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge of oil or a hazardous substance. With the exceptions listed in paragraph (c) of 33 CFR 155.1015, these tank vessel response plan requirements apply to each vessel that carries oil in bulk as cargo or oil cargo residue, and that:

- Is a vessel of the United States;
- Operates on the navigable waters of the United States; or

- Transfers oil in a port or place subject to the jurisdiction of the United States.

These requirements also apply to each vessel that engages in oil lightering operations in the marine environment beyond the baseline from which the territorial sea is measured, when the cargo lightered is destined for a port or place subject to the jurisdiction of the United States.

#### C. Nontank Vessels

On August 9, 2004, the President signed the Coast Guard and Maritime Transportation Act of 2004. Section 701 of the 2004 Act amended subsections 311(a) and (j) of the FWPCA by requiring nontank vessel owners or operators to prepare and submit oil discharge response plans no later than August 8, 2005. The 2004 Act defines a "nontank vessel" as a self-propelled vessel of 400 gross tons or greater, other than a tank vessel, that carries oil of any kind as fuel for main propulsion, and that is a vessel of the United States or operates on the navigable waters of the United States.

In addition to the preparation and submission of response plans by nontank vessel owners or operators, the 2004 Act also requires the issuance of response plan regulations detailing the requisite components of a response plan. In consideration of the time required to publish the regulations, and in an effort to assist industry in meeting the August 2005 statutory deadline, the Coast Guard announced the availability of the Navigation and Vessel Inspection Circular 01-05 (NVIC 01-05) in the **Federal Register** on February 16, 2005 (70 FR 7955). NVIC 01-05 provides the public with guidance on the preparation and submission of oil spill response plans until regulations are in effect.

Later, on June 24, 2005, the Coast Guard published further response plan guidance in a Notice and Request for Comments (70 FR 36649). That notice addressed concerns on the size of the vessel population to be affected by the 2004 Act; Coast Guard's enforcement of the 2004 Act; and the Coast Guard's actions to assist the public in conforming to the mandates of the 2004 Act.

In February 2006, as a result of questions received from the marine industry, the Coast Guard announced the availability of Change 1 to NVIC 01-05 (71 FR 9367, February 23, 2006). Change 1 to NVIC 01-05 provided guidance to the public on how to draft a nontank vessel response plan, suggested plan content, and addressed issues of concern regarding the development of these plans.

Additionally, NVIC 01-05 Change 1 discusses the Coast Guard process for issuing Interim Operating Authorization letters to nontank vessel owners or operators to document interim compliance with 33 U.S.C. 1321(j)(5).

Finally, in July 2006, Congress amended the definition of nontank vessel in the Coast Guard and Maritime Transportation Act of 2006 (2006 Act). Section 608 of the 2006 Act clarified the tonnage applicability of this statutory requirement, and therefore this proposed rule, by setting the tonnage threshold as 400 gross tons or greater, 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. The 2006 Act further established that it applies to vessels that operate on the navigable waters of the United States, and it referenced a 12 nm territorial seas for those navigable waters, as defined in 46 U.S.C. 2101.

#### D. Access to the NVICs

A copy of the nontank vessel response plan NVICs can be found in the docket at <http://www.regulations.gov> and at <http://www.uscg.mil/hq/g-m/nvic/>. For those individuals without internet access, a copy of the NVIC may be obtained by contacting the Vessel Response Plan (VRP) Program staff at 202-372-1209 or your local U.S. Coast Guard Sector Office.

#### E. Shipboard Oil Pollution Emergency Plan (SOPEP)

In addition to establishing a regulation for the preparation and submission of oil spill response plans for nontank vessels, this proposed rule would align our domestic shipboard oil pollution emergency plan (SOPEP) requirements in 33 CFR 151.26 with the current international SOPEP 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).

MARPOL Annex I contains international regulations for the prevention of pollution by oil. The Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*) authorizes the Coast Guard to administer and enforce MARPOL Annex I and certain other MARPOL Annexes.

In 1991, in response to Article 3(1)(a) of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) adopted MARPOL

<sup>1</sup> FWPCA elements require consistency with 40 CFR 300.210 (Federal contingency plans section of the National Contingency Plan (NCP)).

Annex I, Regulation 26. This regulation established an international requirement for SOPEPs and set out:

- Procedures to be followed to report an oil spill;
- Requirements to provide a list of authorities or persons to be contacted in the event of an oil pollution incident;
- Requirements to provide a detailed description of the immediate actions to mitigate the impact of a spill; and
- Procedures and point of contact information for coordinating shipboard action with national and local authorities in combating a pollution incident.

In 1994, the Coast Guard issued regulations requiring all U.S. flag oil tankers of 150 gross tons and above and all other U.S. flag ships of 400 gross tons and above to carry approved SOPEPs (59 FR 51332, October 7, 1994). These regulations in 33 CFR part 151 implemented the requirements of Regulation 26 of MARPOL Annex I and required foreign oil tankers of 150 gross tons and above and other foreign ships of 400 gross tons and above to carry on board a SOPEP approved by its flag State as evidence of compliance with Regulation 26 when in the navigable waters of the United States.

Since 1994, the Coast Guard has updated our SOPEP regulations twice. Once, in 1997, to implement the provisions of Article 15 of the Protocol on Environmental Protection to the Antarctic Treaty and address response to pollution from vessels (62 FR 18045, April 14, 1997) and once in 2001, when we inserted a reference to IMO Resolution A.851(20) that had superseded an earlier IMO resolution (66 FR 55571, November 2, 2001).

In 2004, the IMO MEPC adopted Resolution MEPC.117(52) that revised MARPOL Annex I and redesignated Regulation 26 as Regulation 37. This revision incorporated new SOPEP guidelines from IMO Resolution MEPC.86(44), which are intended to assist parties to MARPOL Annex I in developing regulations for domestic implementation of Regulation 37. These changes to Regulation 37 pertain to required SOPEP text, additional categories addressing steps to control discharges, crew personnel assignments, and required notifications. Also, Regulation 37 requires all oil tankers of 5,000 tons deadweight or more to have prompt access to computerized, shore-based damage stability and residual structural strength calculation programs. While the oil tanker amendment is already reflected elsewhere in our domestic regulation, 33 CFR 155.240, this proposed rule would align our domestic SOPEP requirements in 33

CFR 151.26 with the current international SOPEP requirements reflected in MARPOL Annex I, Regulation 37.

#### *F. Notice of Arrival Requirements and Vessel Response Plans*

Under authority of the Ports and Waterways Safety Act (PWSA) (Pub. L. 92-340, 86 Stat. 424), as amended, the Coast Guard has established notice of arrival (NOA) requirements in 33 CFR part 160. These NOA regulations require certain vessels bound for a U.S. port or place to submit information to the Coast Guard, including information about the vessel and its voyage.

These NOA regulations do not currently require submission of the vessel response plan control number assigned by the Coast Guard to VRPs. For purposes of protecting navigation and the marine environment, this VRP-related addition to NOA reporting requirements is being proposed under authority of section 4 of the PWSA, 33 U.S.C. 1223. This additional information would better enable the Coast Guard to determine if a vessel has an approved VRP geographic-specific appendix (GSA) for the Captain of the Port (COTP) zone in which the vessel intends to call.

#### *G. Customary International Law: Innocent Passage and Transit Passage*

##### *Innocent Passage*

The Supreme Court has long held that, unless no other construction is possible, statutes of Congress must be construed consistent with those principles of international law recognized by the United States. *Lauritzen v. Larsen*, 345 U.S. 571, 578 (1953); *Murray v. The Charming Betsey*, 6 U.S. (2 Cranch.) 64, 118 (1804). The Coast Guard interprets "innocent passage" in territorial seas consistent with customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), principally articles 17 through 21. In 1983, President Reagan issued policy guidance for the Federal government, requiring compliance with the navigational provisions of the UNCLOS. All subsequent Administrations have confirmed that approach to the law of the sea, and have sought to promote the inclusive rights of innocent passage and transit passage in coastal waters worldwide.

Existing vessel response plan regulations for tank vessels in 33 CFR part 155, subpart D, apply to vessels that operate on the navigable waters of the United States or transfer oil in a port or place subject to the jurisdiction of the

United States, but specifically exclude foreign flag vessels merely engaged in innocent passage. See 33 CFR 155.1015(c)(7). In this proposed rule, we are expanding the jurisdictional scope of the regulations. However, we have included an exception for foreign nontank vessels engaged in innocent passage. See proposed 33 CFR 155.1015(c)(7) and 155.5015(c)(2).

The requirement that a vessel response plan include geographic-specific appendices for each COTP zone a vessel transits has caused some confusion with respect to innocent passage through our territorial seas, perhaps because some COTP zones extend beyond the territorial seas and to the outer boundary of the exclusive economic zone (EEZ). See definition of COTP zone found in 33 CFR 155.1020. For purposes of nontank vessel response plan (NTVRP) regulations, our territorial seas extend out 12 nautical miles (nm) from the baseline from which the territorial sea is measured, 33 CFR 2.22(a)(1), while the EEZ normally extends out 200 nm seaward of the baseline. 33 CFR 2.30.

If a foreign flag vessel is subject to Coast Guard regulations requiring it to have a USCG-approved vessel response plan, it would also be required to have a Coast Guard approved geographic-specific appendix for each COTP Zone where it intends to operate or transit through. See existing 33 CFR 155.1035(i), 155.1040(j) and 155.1045(i), and proposed 33 CFR 155.5035(i). However, a vessel merely engaged in innocent passage (see proposed 33 CFR 155.1015(c)(7) and 155.5015(c)(2)) transiting through a COTP zone is not required to submit a vessel response plan.

If a vessel is departing a foreign port and is bound for a U.S. port and must cross through one or several COTP zones in order to get there, the vessel would have to have a USCG-approved vessel response plan and an approved geographic-specific appendix for each of the COTP zones that it crosses, regardless if it intends to call upon the respective ports within these COTP zones to transfer cargo, take on bunkers, or engage in other activities. Geographic-specific appendices would need to be submitted and approved for each COTP zone that a vessel intends to transit through while calling upon the United States.

##### *Transit Passage*

Transit passage through straits used for international navigation is a more inclusive right than innocent passage, extending to aircraft overflights, submerged transits, and transits of other

vessels in their normal mode of operations. UNCLOS, Arts. 37–39. International law provides that vessels passing through U.S. waters in transit passage may not pollute, conduct any other activity not having a direct bearing on transit, or engage in activities otherwise proscribed by international law. UNCLOS, Arts. 37–39. In most respects, however, coastal States may not suspend or even hamper the right of vessels to engage in transit passage. UNCLOS, Art. 44.

The term ‘coastal State’ in this proposed rule refers to a nation off whose coast a ship is transiting without calling at its internal waters, ports, or roadsteads. The explanation of this term is provided to assist the reader in understanding the provisions of this proposed rule, and is not intended as a comprehensive definition of this term. Nor is it to be understood to express a view as to the jurisdictional competence or authority of the nation in its capacity as a coastal State.

One area of the United States where transit passage is of special concern is Unimak Pass in the Aleutian Islands. Unimak Pass is a strait used for international navigation located on the Great Circle Route from Asia to the West Coast of North America. Several thousand vessels a year use the Pass. Because the Pass narrows to as little as 10 nm, the 12-nm territorial sea of the United States overlaps the waters of Unimak Pass. Although the United States is not yet Party to UNCLOS, the United States has long accepted the navigational provisions of the Convention, including Art. 34 through 44 relevant to transit passage, as reflecting the applicable rules of customary international law. Vessels transiting Unimak Pass, other straits used for international navigation, and their approaches enjoy the right of transit passage.

The United States may only exercise jurisdiction over foreign-flagged vessels engaged in transit passage through Unimak Pass if the vessel is either bound to or from a port or place in the United States, or has engaged in activities that international law proscribes, such as intentional acts of serious pollution. Acknowledging the applicable rules of customary international law, we propose to exclude foreign vessels in transit passage from VRP requirements when not bound for, or departing from, the United States. See proposed 33 CFR 155.1015(c)(7) and 155.5015(c)(2).

Although transit passage applies with respect to passage through straits, long-standing agreements between nations bordering a strait used for international

navigation may limit transit rights. For example, the Saint Lawrence Seaway (SLS) is part of the Saint Lawrence River and is an international river governed by long-standing agreements between the United States and Great Britain/Canada. Although, based solely on its geographic location and its extensive use for international navigation, it could potentially be considered an international strait under which the right of transit or non-suspendable innocent passage applies, Part III of UNCLOS (Straits Used for International Navigation) simply does not apply to the Saint Lawrence. The Danube River and the Turkish Straits offer examples of international waterways “in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.” UNCLOS, Art. 35(c). Nothing in Part III of UNCLOS affects the long-standing legal regime in the Saint Lawrence River.

The international negotiations dealing with the Saint Lawrence River go back as far as 1854, with serious additional discussions or agreements in 1871, 1896, 1902, 1909, 1940, 1952, 1959, and 1963. The Boundary Water Treaty concluded between the United States and the United Kingdom (for Canada) of January 11, 1909, was a particularly important watershed in the development of the Saint Lawrence River regime. The focus of these various bilateral agreements was on three key subjects: (1) The use of the river for navigation; (2) development of its potential to produce hydro-electric power; and (3) combating pollution.

The U.S. Congress has enacted several statutes to carry out its international responsibilities with respect to the Saint Lawrence River. Particularly relevant is the establishment of the Saint Lawrence Seaway Development Corporation, 33 U.S.C. 981–984, and the International Joint Commission, 22 U.S.C. 267b–268. These responsible agencies have issued implementing regulations. See, e.g., 33 CFR part 401 and 22 CFR part 401.

The U.S. Secretary of Transportation has delegated authority under Section 1223, 1224, 1225, 1227, 1231, and 1232 of Title 33 U.S.C. to the Administrator of the Saint Lawrence Seaway Development Corporation (SLSDC) with respect to the Saint Lawrence Seaway (SLS). The United States Coast Guard has jurisdiction over all remaining navigable waters of the United States.

The U.S. Coast Guard and the SLSDC have established a Memorandum of Understanding (MOU) and a Memorandum of Agreement (MOA) to address areas of mutual interest and joint agency coordination. The current

MOA was signed in May of 1992 and was last updated in March of 1997. The MOA addresses topics of concern such as policy, communications, ports and waterways safety, vessel traffic control, pilotage, pollution, vessel casualties, aids to navigation, search and rescue, vessel boardings, and ice breaking. The recent MOA was signed in February of 2008 and addresses the collection of pre-arrival information from vessels entering the SLS system.

Although the SLSDC has exclusive jurisdiction upon the SLS, the U.S. Coast Guard will, upon request and within its resources, assist the SLSDC in the execution of those responsibilities. The U.S. Coast Guard is the pre-designated Federal On-Scene Coordinator (FOSC) for oil or hazardous materials spilled into the U.S. waters of the SLS. The USCG and the SLSDC have agreed that, among other goals, the basic goals of their joint oversight of vessels navigating upon the SLS is to ensure that 100 percent of vessels are cleared in advance of Montreal and to ensure that the international shipping on the Great Lakes and the SLS continues to meet high standards of safety and environmental protection.

One of the points agreed upon by both the USCG and the SLSDC are protocols for both screenings and inspections of vessels. The SLSDC is authorized to ask the USCG to receive pre-arrival information for the SLSDC electronically using the USCG’s electronic Notice of Arrival/Departure (eNOAD) system. In July of 2007, the SLSDC requested that the USCG National Vessel Movement Center (NVMC) be the direct clearinghouse for arrival information for vessels bound for the SLS.

Passage through the Saint Lawrence River and into the Great Lakes is completely regulated by the existing bilateral agreements and the implementing regulations. Although there is a general presumption both in international law and in the agreements that the Saint Lawrence River is freely open to international navigation, any vessel operator who wishes to take advantage of this presumption must comply with both the applicable U.S. and Canadian statutory and regulatory provisions. Therefore, this proposed rule would apply to vessels transiting through the Saint Lawrence River.

Jurisdiction of vessels on the navigable waters of the United States is clearly conveyed by the FWPCA (33 U.S.C. 1321(j)(5)). Since enforcement of the PWSA has been delegated to the SLSDC for the SLS, the Coast Guard works closely with the SLSDC regarding how vessels would be prohibited from

entering the SLS due to noncompliance with U.S. law.

#### *H. Definition of "United States" for Purposes of Vessel Response Plan Requirements*

While the FWPCA contains a definition of "United States", that definition does not control in this context. For purposes of vessel oil spill response plans, for tank and nontank vessels, the "United States" as defined in Presidential Proclamation 5928 and 46 U.S.C. 114 establishes the geographic parameters for determining applicability of vessel oil spill response plan requirements as set forth in 33 U.S.C. 1321(j)(5) (as amended). Because both OPA 90 and the 2006 Act incorporate by reference definitions of tank vessel and nontank vessel, respectively, from title 46 of the United States Code, neither the definition of "United States" as set forth in OPA 90 (which created § 1321(j)(5)), nor as set forth in the FWPCA, applies to vessel oil spill response plan requirements.

The pertinent portion of the controlling definition of "United States", unlike the FWPCA definition, does not include reference to the "Trust Territories of the Pacific Islands", but instead refers to "the Northern Mariana Islands, and any other territory or possession of the United States." 46 U.S.C. 114. Of the former Trust Territories of the Pacific Islands, only the Northern Mariana Islands is considered part of the geographic definition of the United States for purposes of this proposed rule.

#### **IV. Discussion of Proposed Rule**

This discussion provides a broad overview of our proposed changes to our SOPEP regulations, tank vessel oil spill response plan regulations, nontank vessel oil spill response plan regulations, and notice of arrival regulations. Immediately following the overview, we discuss specific sections of the regulatory text.

##### *Proposed Changes to SOPEP Regulations*

We propose alignment of our existing SOPEP regulations with current IMO MARPOL 73/78 Shipboard Oil Pollution Emergency Plan regulations. Compliance with our domestic SOPEP regulations serve as, among other things, evidence of compliance with IMO MARPOL 73/78 Annex I Regulations.

The Coast Guard implemented MARPOL Annex I SOPEP standards in 33 CFR part 151. However, since our implementation, IMO has made substantive changes to the international SOPEP standards. These changes

resulted in the promulgation of new IMO SOPEP requirements found at MARPOL Annex I, Regulation 37 (previously these requirements were located at Annex I, Regulation 26). Some of the changes found in Regulation 37 include: changes to required SOPEP text; changes to the categories for addressing steps to control discharges; changes for crew personnel assignment requirements; and updates to the required notifications in the event of an oil spill. (See generally, IMO Resolution MEPC.86(44).) Further, the IMO implemented a new section to Annex I requiring that all oil tankers of 5,000 tons deadweight or more have prompt access to computerized, shore-based damage stability and residual structural strength calculation programs. (See generally, MEPC.117(52).)

Amending our SOPEP regulations to reflect changes to the international standard will, among other things, negate the need for more than one oil spill response plan aboard a vessel.

##### *Proposed Changes to Existing Tank Vessel Response Plan Regulations*

We propose amendment to existing tank vessel response plan regulations found in 33 CFR part 155, subpart D, and the associated appendices (B and C) to ensure the relevant portions of that part are made applicable to nontank vessels and those nontank vessels carrying oil as a cargo.

##### *Proposed Nontank Vessel Response Plan Regulations*

The Coast Guard proposes new oil spill response plan regulations for nontank vessels within 33 CFR part 155, subpart J. This rulemaking will deliver field-tested and proven regulations to the nontank vessel community, facilitating one national planning standard for applicable vessels. Most of the criteria that would apply to nontank vessels (e.g., general plan provisions, qualified individual (QI) & alternate QI provisions, training, and exercise requirements) would remain relatively consistent with subpart D. However, there are areas where tank vessel planning standards would not be applicable due to the differences in potential risk posed by nontank vessels. The proposed resource requirements for a nontank vessel will be tiered, based on the vessel's fuel and cargo oil capacity.

This proposed rule would establish regulations under 33 U.S.C. 1321(j)(5) requiring response plans from owners or operators of nontank vessels, which are defined by statute as self-propelled vessels of 400 gross tons or greater that operate on the navigable waters of the United States as defined in 46 U.S.C.

2101(17a), carry oil of any kind as fuel for main propulsion, and are not tank vessels. The proposed rule would 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.

##### *Proposed Changes to Notice of Arrival Regulations in 33 CFR Part 160*

We propose to amend 33 CFR part 160 by requiring vessel owners and operators to submit their vessel response plan control number as part of the notice of arrival information.

#### **Section-specific Discussion of Proposed Rule Part 151 Discussion of Proposed Changes**

##### *Section 151.09 Applicability (SOPEP)*

We propose to amend this section to relieve vessel owners and operators who satisfy nontank vessel oil spill response plan requirements under subpart J from the burden of preparing and maintaining a separate oil spill response plan for the purposes of meeting IMO MARPOL 73/78 Annex I, Regulation 37 Shipboard Oil Pollution Emergency Plan requirements.

##### *Section 151.26 Shipboard Oil Pollution Emergency Plans (SOPEP)*

We propose to amend this section to align our SOPEP regulations with IMO Resolution MEPC.86(44) in the areas of oil spill reporting, contact information, mitigation procedures, and response coordination. Certain language, including use of the term "lightening," is taken directly from the SOPEP development guidelines. Lightening is the process of making a vessel less heavy by removing certain items, such as oil, cargo (liquid or dry), and any other items that are not permanently affixed to the vessel. Further, we propose amending this section so as to harmonize the data set reporting requirements for SOPEP and VRP standards and to clarify the requirements for identifying the party responsible for reporting the data. Also, for the purpose of assisting with the interpretation of worst case discharge and the harmonization of our regulation with MEPC.86(44), we propose amending this section to clearly articulate requirements for the submission of plans, requirements for drawings and ship-specific details, and requirements for tank capacity descriptions. Next, we propose to amend mitigation activity requirements so as to align our regulation with Resolution MEPC.86(44) and harmonize existing tank vessel response plan



regulations with the proposed nontank vessel response plan mitigation activities. Lastly, we propose to amend § 151.26 to align our regulation with Resolution MEPC.117(52), which requires oil tankers of 5,000 tons deadweight or more to have prompt access to computerized, shore-based damage stability and residual structural strength calculation programs.

*Sections 151.27 and 151.28 Plan Submission, Approval, Review, and Revision*

In § 151.27, we propose the removal of the Coast Guard's practice of returning a copy of the approved plan, however we will continue to issue approval letters.

In §§ 151.27 and 151.28, we propose the use of a Coast Guard form entitled "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) as an optional alternative to a cover letter for a plan submission and approval application. When submitted properly, this application form would satisfy the two certification statement requirements for submission. Submissions would be sent to the Coast Guard's Office of Vessel Activities (CG-543) and directed to the attention of that Office's Vessel Response Plan Review Team.

**Part 155 Subpart D Discussion of Proposed Changes**

*Section 155.1020 Tank Vessel Response Plan (TVRP) Definitions*

The *vessels carrying oil as a secondary cargo* definition was revised to direct vessels over the 400 gross tons limit to subpart J. In revising that definition, we introduced the term *nontank vessel* and have provided a definition for that term in this section.

*Sections 155.1065 and 155.1070 TVRP Plan Submission and Review Procedures*

In these sections we proposed amendments that would reference subpart J, where applicable, so as to provide vessel owners and operators with flexibility in adding nontank vessels to their existing tank vessel response plans in an effort to comply with both subparts D and J.

We propose the use of Coast Guard form CG-6083. When submitted properly, this application form would satisfy the two certification statement requirements for submission.

**Part 155 Subpart J Discussion of Proposed Regulations**

*Section 155.5010 Nontank Vessel Response Plan (NTVRP) Purpose*

In this section, we propose a description of the purpose of subpart J. We specifically note that the requirements set forth in the proposed rule are for improving oil spill response preparedness. The specific criteria for response resources and their arrival times are not performance standards. These proposed criteria are to be used by a vessel owner or operator in developing a plan to respond to a vessel's worst case discharge or threat of such a discharge. The text in this section varies slightly from 33 CFR part 155, subpart D, to specifically address nontank vessel response plans.

*Section 155.5012 Deviation From Response Plan*

This section of the proposed rule describes when an owner or operator of a nontank vessel may be permitted to deviate from an approved nontank vessel oil spill response plan. The "Chaffee Amendment," section 1144 of the Coast Guard Authorization Act of 1996 [see Pub. L. 104-324, October 19, 1996, 110 Stat 3901], amended the FWPCA regarding the use of spill response plans by stating that an "owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator 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." See 33 U.S.C. 1321(c)(3)(B). The Coast Guard interprets section 1144 as applicable to the use of contracted resources, qualified individuals, and other significant deviations from the plan. In the event of a marine casualty, the Coast Guard intends to give precedence to the Incident Action Plan (IAP) as developed by a Unified Command. The IAP may also include, as a sub plan, a salvage response plan, an emergency lightering plan, a shoreline clean up plan, etc.

*Section 155.5015 Applicability*

Paragraph (a). In this paragraph, we propose the applicability of subpart J to be those vessels that are not tank vessels carrying oil of any kind as fuel for main propulsion, that operate on the navigable waters of the United States, and are 400 gross tons or greater, 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.

Paragraph (b). In this paragraph, we propose the applicability requirements for integrated tug barge (ITB) units that do not carry oil in bulk on the barge.

Paragraph (c). In this paragraph, we provide a list of vessels the Coast Guard proposes to exempt from complying with subpart J. The proposed exemptions include public vessels, foreign flag vessels engaged in innocent passage, certain foreign flag vessels engaged in transit passage, vessels carrying oil as a primary cargo, vessels that are not constructed to carry oil as fuel or cargo, permanently moored craft, and inactive vessels.

*Public vessels.* We exempted public vessels from subpart J requirements, because 33 U.S.C. 1321(a) defined "vessel" to exclude public vessels.

*Foreign flag vessels engaged in innocent passage.* We proposed exemption of these vessels because of our recognition of the customary international law of the sea, as reflected in the UNCLOS. Our exemption of these vessels in this subpart is consistent with subpart D. For further information regarding foreign flag vessels engaged in innocent passage, please see Background and Purpose, section III.G.

However, the public should take note that the Coast Guard intends to apply this proposed rule to foreign flag nontank vessels engaging in voyages to or from a port or place subject to the jurisdiction of the United States. Further, if a foreign flag vessel is subject to nontank vessel response plan requirements of this subpart, that foreign flag nontank vessel will also be required to have a Coast Guard-approved geographic-specific appendix for each COTP zone where it intends to operate or transit through bound for or departing from a port or place subject to the jurisdiction of the United States; this will be the standard regardless of whether the foreign flag vessel intends to call upon the respective ports within these COTP zones to transfer cargo, take on bunkers, etc. In contrast, when a nontank vessel is in innocent passage (see 33 CFR 155.5015(c)(2)) to a foreign port and must cross through a COTP zone (see definition in proposed 33 CFR 155.1020) to get there, the submission and approval of a USCG vessel response plan is not required.

*Foreign flag vessels engaged in transit passage.* We propose exemption of foreign flag vessels engaged in transit passage through a straight used for international navigation, unless bound for or departing from a port or place of the United States. For an in depth discussion on the Coast Guard's interpretation of our proposed rule in



this area, please see Background and Purpose, section III.G.

*Vessels carrying oil as a primary cargo.* All vessels carrying oil as a primary cargo that are required to submit a response plan under subpart D are exempt from subpart J. If you own or operate a vessel carrying oil as a secondary cargo, and that vessel is less than 400 gross tons, then your vessel would not be a nontank vessel by definition, and would be covered by subpart D (see proposed 33 CFR 155.1020 "Vessels carrying oil as a secondary cargo").

*Vessels not constructed or operated in such a manner allowing it to carry oil of any kind.* These vessels are proposed to be exempted, because they pose no oil spill risk.

*Permanently moored craft.* We propose exemptions for those watercraft that are permanently moored or rendered incapable of movement because they do not fit the definition of "vessel" under 1 U.S.C. 3 as interpreted by *Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2005). Further, these watercraft represent minimal risk due to their immobile status.

*Inactive vessels.* We propose exemptions for inactive vessels, as defined in § 155.5020, which is described immediately below.

#### Section 155.5020 Definitions

The definitions in 33 CFR 155.110 and 155.1020 are applicable to nontank vessel response plans, unless otherwise defined in § 155.5020.

In § 155.5020, we propose the following definitions: *cargo*, *contract or other approved means*, *fuel*, *inactive vessel*, *integrated tug barge or ITB*, *maximum most probable discharge or MMPD*, *navigable waters of the United States*, *nontank vessel*, *oil spill removal organization or OSRO*, *permanently moored craft*, *qualified individual or QI* and *alternative qualified individual*, *substantial threat of such a discharge*, *tier*, and *worst case discharge or WCD*.

A proposed definition of *cargo* is introduced in subpart J to clarify that oil carried in addition to fuel used for propulsion of the vessel is considered to be cargo and is subject to the provisions of subpart J where applicable.

A proposed definition of *contract or other approved means* describes the options for fulfilling the requirement for contracting or providing response resources. Paragraph (1) describes a written contract between a vessel owner or operator and the particular response resource provider. Paragraph (2) proposes requirements for self certification by the vessel owner or operator that it can provide the response

resources required. Paragraph (3) describes requirements when a vessel owner or operator chooses an active membership with a local or regional response resource provider. Paragraph (4) is an agreement between the vessel owner or operator and a resource provider that the resource provider intends to commit the agreed upon resources in the event of a response. Finally, paragraph (5) specifically describes when the use of "other approved means" may be permissible as a method of ensuring the availability of response resources in lieu of a contract. It also describes six proposed categories of vessels that may be eligible to use "other approved means" as a method of compliance.

The Coast Guard interprets 33 U.S.C. 1321(j)(5)(D)(iii) as imposing an obligation for nontank vessel owners and operators to ensure the availability of response resources by contract or other approved means. Thus, agreements including contracts between nontank vessel owners or operators and entities that do not physically control response equipment or entities that merely serve as conduits to the owners of the response equipment will not satisfy the statutory mandate of 33 U.S.C. 1321(j)(5) nor will such contracts meet the requirements of proposed subpart J.

A proposed definition of *fuel* is introduced to include oils of any kind, which may be used to supply power or lubrication for primary or auxiliary purposes aboard the vessel in which it is carried. This definition was drafted to convey that, when planning for a worst case discharge, the vessel owner or operator must include in their analysis all oils carried aboard as fuel or cargo. While only vessels that use oil for primary fuel and not auxiliary fuel are required to submit nontank vessel response plans, those nontank vessels that do carry auxiliary fuel must include auxiliary fuel in the total fuel capacity for nontank vessel response planning volume calculations.

A proposed definition of *inactive vessel* is introduced to include those vessels taken out of service or placed in a laid up status, maintaining only the minimum amount of fuel necessary for the maintenance of the material condition of the vessel. Such vessels are not considered to be in operation on the navigable waters of the United States by virtue of the minimal threat they pose to the marine environment in that status. This section further proposes that the local Coast Guard Captain of the Port will determine whether an inactive vessel poses a threat to the marine

environment, thereby requiring the submission of a vessel response plan.

A proposed definition of an *integrated tug barge or ITB* is introduced to describe when these vessels, operating as a single unit (for example, nontank barge with machinery and tug) pose the same level of oil spill threat as a large freight vessel of the same aggregate tonnage. Beyond the definition introduced in § 155.5020, and consistent with Coast Guard Inspection Guidance Regarding Integrated Tug Barge Combinations (NVIC 2-81, Change 1), an integrated tug barge combination will be considered an ITB, when the tug:

- Cannot operate with barges other than those barges specifically designed for joint operation with the tug; or
- Cannot engage in hawser towing (does not meet the towline pull stability criteria or does not have necessary towing equipment installed); or
- Requires significant reinforcement of internal structure to accommodate shelves, wedges or other interlocking mechanisms; or
- Is restrained in the notch of a barge to the extent that the speed and weather operating capabilities of the combined unit approach those of a single vessel.

A proposed definition of *maximum most probable discharge or MMPD* is introduced to provide that 2,500 barrels of discharged oil will be considered the maximum most probable discharge for those vessels with a fuel and cargo capacity equal or greater than 25,000 barrels; for those vessels with fuel and cargo capacity of less than 25,000 barrels, the maximum most probable discharge will be 10 percent of the vessel's fuel and cargo capacity. Maximum most probable discharge is a required level of oil spill removal organization coverage necessary to address spill scenarios less than a vessel's worst case discharge where the substantial threat of such a discharge may occur. Maximum most probable discharge planning standards are commonly applied to spills resulting from collisions, allisions, groundings, or other scenarios where a portion of a vessel's oil capacity is discharged or could be discharged and an appropriate response is mounted to mitigate the impact of the resulting spill or to prevent a discharge from occurring.

A proposed definition of *navigable waters of the United States* is introduced to clarify that for nontank vessels regulations the territorial seas is considered to be 12 nm seaward of the baseline. The authority to require nontank vessel response plans comes from sec. 311 of the FWPCA, 33 U.S.C. 1321. Generally, for 33 U.S.C. chapter 26, "navigable waters" means "the

waters of the United States, including the territorial seas." 33 U.S.C. 1362(7). In 1972, when this "navigable waters" definition first appeared, our territorial seas were limited to 3 nm in breadth. (See sec. 502 (8) of FWPCA, Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 886, specifically limiting territorial seas to 3 nm.) The Presidential Proclamation No. 5928 of December 27, 1988, which extended the territorial seas of the United States to 12 nm, is not construed to have changed that 3 nm limit. However, in 2006, Congress revised the FWPCA and defined nontank vessels to include self-propelled vessels "on the navigable waters of the United States, as defined in section 2101(17a) of [46 U.S.C.]." 33 U.S.C. 1321(a)(26). That Title 46 navigable waters definition "includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988," which states 12 nm. 33 CFR 2.22(a)(1). Therefore, while we generally construe seaward extent of FWPCA provisions to be limited to 3 nm out from our territorial sea baseline—see 33 CFR 2.22(a)(2) (limiting territorial seas to 3 nm) and 2.28(a) (pointing to 3 nm limit of territorial seas when defining FWPCA contiguous zone)—our NTVRP regulations would extend out to 12 nm.

A proposed definition of *nontank vessel* is introduced that is consistent with, and derived from, the 2004 and 2006 Acts. Section 701 of the 2004 Act specified that an owner or operator of a self-propelled vessel of 400 gross tons or greater, which is a vessel of the United States or operates on the navigable waters of the United States and carries oil as fuel and is not a tank vessel, must prepare and submit an oil spill response plan. Section 608 of the 2006 Act clarified the tonnage applicability of this statutory requirement by setting the tonnage threshold as 400 gross tons or greater, 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. The 2006 Act further established that it applies to vessels that operate on the navigable waters of the United States, as described in Presidential Proclamation No. 5928, December 27, 1988.

A proposed definition of *oil spill removal organization* or *OSRO* is introduced to describe who or what may be identified as an OSRO and the function(s) of an OSRO. This proposed definition is consistent with the Coast Guard's OSRO Classification guidelines. For more information on the OSRO classification system, see <http://>

[www.uscg.mil/hq/nswfweb/nsfcc/ops/ResponseSupport/RRAB/informationonclassifiedosros.html](http://www.uscg.mil/hq/nswfweb/nsfcc/ops/ResponseSupport/RRAB/informationonclassifiedosros.html).

A proposed definition of *permanently moored craft* is introduced to provide that permanently moored, or otherwise rendered practically incapable of transportation or movement, watercraft would not be considered to be vessels under subpart J, because they do not meet the statutory definition in 1 U.S.C. 3, as interpreted by the Supreme Court in *Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2005). *Stewart v. Dutra* addressed the concept of permanently moored vessels, and the language used by the court regarding a description of such vessels was used to develop the definition of "permanently moored craft" and exempt such craft from the proposed rule. For tank and nontank vessels, the controlling definition of vessel is in 46 U.S.C. 115, which cites 1 U.S.C. 3. We propose that permanently moored craft be excluded from the nontank vessel response plan regulations under § 155.5015.

A proposed definition of *qualified individual* or *QI* and *alternative qualified individual* is introduced, and provides that these individuals are shore-based representatives of a vessel owner or operator meeting specific requirements. This proposed definition is similar to subpart D.

A proposed definition of *substantial threat of such a discharge* is introduced to include a threat of a discharge from fuel as well as cargo oil, as applicable to nontank vessels.

A proposed definition of *tier* is introduced to describe the combination of required response resources and response times within which the response must arrive on scene.

A proposed definition of *worst case discharge* or (*WCD*) is introduced to describe the discharge of a vessel's entire fuel and cargo oil during adverse weather conditions.

#### *Section 155.5021 Operating Restrictions*

In this proposed section, we identify scenarios when a nontank vessel may not be permitted to operate on the navigable waters of the United States. These proposed operating restrictions are similar to those found in § 155.1025(a).

#### *Section 155.5023 Interim Operating Authorization*

In this section, we propose interim operating authorization for nontank vessels up to 2 years after the date of submission of the oil spill response plan if the owner or operator has received written authorization from the Coast

Guard to continue such operations. We also describe the proposed steps the vessel owner or operator should complete to obtain the interim authorization. These proposed requirements are aligned with § 155.1025(c) and (d).

#### *Section 155.5025 One-Time Port Waiver*

In this section, we propose that an owner or an operator may seek one-time authorization to enter a geographic-specific area not covered by the nontank vessel response plan upon approval by a cognizant Captain of the Port. This provision could also be used in an emergency situation, such as an impending hurricane, where a vessel owner or operator may need to enter a geographic-specific area not covered by the nontank vessel response plan for a specified temporary period of time. The proposed requirements are aligned with § 155.1025(e) to ensure consistency of this proposed procedure with the tank vessel response plan regulations.

#### *Section 155.5026 Qualified Individual and Alternate Qualified Individual*

In this proposed section, we introduce the requirement to identify a qualified individual and an alternate qualified individual that must be available to the vessel owner or operator 24 hours a day. Identification of a qualified individual and alternate qualified individual is a statutory requirement from 33 U.S.C. 1321(j)(5) and is consistent with the existing qualified individual and alternate qualified individual requirements of 33 CFR 155.1026.

#### *Section 155.5030 Nontank Vessel Response Plan Requirements: General Content*

In this proposed section, we describe the general content of a nontank vessel response plan. The requirements were taken directly from the existing tank vessel requirements of 33 CFR 155.1030, and modified to fit the requirements of a nontank vessel. Section 155.5030(h) proposes that compliance with subpart J will constitute compliance with 33 CFR 151.26 and Regulation 37 of Annex I of MARPOL 73/78, eliminating the need to prepare two separate oil spill response plans. Lastly, in order to meet statutory mandates, the general content of nontank vessel response plan requirements are proposed to be consistent with the national contingency plan (40 CFR part 300.210).

*Section 155.5035 Nontank Vessel Response Plan Requirements: Specific Content*

In this section, we propose additional specific content requirements for nontank vessel response plans. Except where noted below, the requirements were taken directly from the existing tank vessel requirements of § 155.1035 and were modified to fit nontank vessel requirements and ensure consistency with § 151.26 requirements for SOPEPs. Section 155.5035(a)(2) proposes the submission of the nontank vessel owner or operator's mailing address, current e-mail addresses, and telephone number to facilitate communications that are a central part of this plan. Section 155.5035(b)(5)(i)(O) adds to the list of initial notification requirements, details of the vessel owner or operator's pollution insurer, and/or Protection and Indemnity (P&I) Club and Local Correspondent, as applicable. Section 155.5035(c) proposes regulations that align § 151.26 and Regulation 37 of Annex I of MARPOL 73/78 shipboard spill mitigation procedures with the existing requirements for shipboard mitigation procedures as listed in § 155.1035(c). Section 155.5035(e) proposes an enhanced list of contact requirements to reflect the full spectrum of required response resources per proposed § 155.5050. This proposed section contains fewer requirements for nontank vessels with fuel and cargo capacities less than 2,500 barrels. Section 155.5035(k) proposes the additional requirements that U.S. nontank vessels, certificated for coastwise or oceans operating routes must meet for compliance with Regulation 37 of Annex I of MARPOL 73/78.

*Section 155.5050 Response Plan Development and Evaluation Criteria for Nontank Vessels Carrying Groups I Through IV Petroleum Oil*

The proposed requirements for the response plan development and evaluation criteria for nontank vessels carrying groups I through IV petroleum oil as fuel or cargo are contained in this section. Except where noted below, the requirements were taken directly from the existing tank vessel requirements of § 155.1050, however modified to address specific nontank vessel requirements. To the maximum extent practicable, a tiered approach is proposed to classify three separate categories of NTVRP response resource requirements based upon a vessel's fuel and cargo oil capacity. See the proposed Table 155.5050(p), Nontank Vessel Response Plan Required Response

Resources Matrix, to better understand the intended tiered strategy.

*Paragraph (a) of Section 155.5050 Criteria for Evaluating Operability of Response Resources*

This paragraph of the proposed rule, which adopts tank vessel criteria from § 155.1050(a), identifies criteria that would need to be used to evaluate the operability of response resources identified in a nontank vessel response plan for specified operating environments. It directs that the criteria in 33 CFR part 155's Appendix B, Table 1 are to be used solely for identification of appropriate equipment in a response plan, and it notes these criteria do not reflect conditions that would limit response actions or affect normal vessel operations. Conditions identified in the Area Contingency Plans for the COTP zones in which the vessel operates, such as ice conditions, debris, temperature ranges, and weather-related visibility, would also need to be factored in.

*Paragraph (b) of Section 155.5050 Operating Environment Reclassification of Specific Bodies of Water*

This paragraph of the proposed rule, which adopts tank vessel requirements from § 155.1050(b), notes that a COTP may reclassify a specific body of water or location within the COTP zone to a more stringent operating environment or a less stringent operating environment based on the prevailing wave conditions. Any reclassifications would be identified in the applicable Area Contingency Plan.

*Paragraph (c) of Section 155.5050 Criteria for Response Equipment*

This paragraph, which adopts tank vessel requirements from § 155.1050(c), would require that response equipment meet or exceed the response resource operating criteria listed in 33 CFR part 155's Appendix B, Table 1, be capable of functioning in the applicable operating environment, and be appropriate for the petroleum oil carried.

*Paragraph (d) of Section 155.5050 Average Most Probable Discharge*

This paragraph of the proposed rule, like its tank vessel counterpart in subpart D, § 155.1050(d), would require nontank vessels that carry groups I through IV petroleum oil as cargo to ensure the availability of average most probable discharge (AMPD) resources by contract or other approved means. Nontank vessels that only carry groups I through IV oil as fuel would not have to ensure the availability of AMPD resources by contract or other approved

means because the facility providing the bunker to the nontank vessel is already required to have planned for the AMPD resources covering the transfer. However, the owner or operator of a nontank vessel carrying groups I through IV oil as fuel would be required to plan for and identify the response resources required in § 155.1050(d)(1) for bunkering or fueling operations.

Identification of a marine transportation-related (MTR) facility required to maintain a response plan under 33 CFR part 154 or a tank vessel's oil spill response resources does not relieve a nontank vessel owner or operator from the responsibility to independently identify appropriate response resources within a COTP zone to respond to an AMPD. Permission from the AMPD response provider is not required for the purpose of listing this resource in a nontank vessel response plan for this planning and identification purpose.

*Paragraph (e) of Section 155.5050 Maximum Most Probable Discharge*

This paragraph of the proposed rule adopts tank vessel standards from § 155.1050(e), but would impose one less requirement for nontank vessels with lower oil capacity. 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 would need to comply with requirements in § 155.1050(e) and identify in the response plan 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 volume.

Under this paragraph of the proposed rule, nontank vessels with an oil capacity of less than 250 barrels would only be required to identify response resources planned for in the nontank vessel response plan to be within the stipulated response times in the specified geographic areas, but these nontank vessels would not be required to ensure by contract that these resources be made available.

Submission of a written consent from the response resource provider to be listed in the response plan would need to accompany the plan for approval. Compliance with these requirements would be considered to be consistent with the "other approved means," paragraph (5) portion of the definition of "Contract or other approved means" in 33 CFR 155.5020.

*Paragraph (f) of Section 155.5050  
Worst Case Discharge*

This paragraph would adopt requirements from § 155.1050(f), but contains some provisions specific to nontank vessels carrying oil as fuel or cargo. 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 would need to comply with the requirements in § 155.1050(f) and identify in the response plan 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 volume of oil to the maximum extent practicable.

Nontank vessels need only plan for Tier 1 response resources. In proposed § 155.5020, *tier* is defined as the combination of required response resources and the times within which the resources must arrive on the scene, with the times being prescribed in § 155.5050(g) and Tables 5 and 6 of Appendix B offering guidance on calculating the response resources required by a tier for given categories of area: higher volume port areas, the Great Lakes, and all other operating environments.

Nontank vessels with a capacity of less than 2,500 barrels would not be required to contract with an OSRO that has a USCG classification to respond to a WCD level of response resources in order to comply with the statute's requirement to plan for the vessels' worst case discharge, because their total oil capacity can be completely covered by an OSRO with a USCG maximum most probable discharge (MMPD) classification rating. For additional information on USCG Classified OSROs, use the following link to download USCG OSRO Classification matrices: <http://www.uscg.mil/hq/nsfweb/nsfcc/ops/ResponseSupport/RRAB/informationonclassifiedosros.html>.

*Paragraph (g) of Section 155.5050 Tier 1 Response Times*

This paragraph of the proposed rule is similar to tank vessel requirements in § 155.1050(g), but would require nontank vessels to only plan for Tier 1 response resources and response times: 12 hours for higher volume port areas, 18 hours for the Great Lakes, and 24 hours for all other operating environments.

*Paragraph (h) of Section 155.5050  
Planning Standards for the Mobilization  
and Response Times for Required  
MMPD and WCD Response Resources*

This paragraph of the proposed rule contains requirements similar to those in § 155.1050(h) for tank vessels. Section 155.5050(h) proposes the planning standards for the mobilization and response times for maximum most probable discharge (MMPD) and worst case discharge (WCD) response resources.

Consistent with what are currently required for tank vessel response coverage, nontank vessels will be required to ensure that Tier 1 response resources are capable of being mobilized and enroute to the scene of a discharge within 2 hours of notification. The notification and mobilization of all required Tier 1 resources must be accomplished within 30 minutes or through notification of the qualified individual.

To use an example, on November 7, 2007, an oil spill response was initiated in San Francisco Bay in response to oil spilled from the M/V COSCO BUSAN. In that incident, the notification of the required MMPD resources was accomplished well within 30 minutes, and initial response resources were on scene well within the required timelines.

Initial MMPD response resources began to arrive on scene within 45 minutes of notification. San Francisco Bay is considered to be a higher volume port area (see proposed § 155.5020's reference to definitions in § 155.1020), and 33 CFR part 155's Appendix B, paragraph 4.3 stipulates that oil recovery devices necessary to meet the applicable maximum most probable discharge volume planning criteria must be located such that they can arrive on scene within 12 hours of the discovery of a discharge in higher volume port areas. Therefore, the initial response of resources to the M/V COSCO BUSAN incident was well within the planning standards for such oil spills.

*Paragraph (i) of Section 155.5050  
Salvage, Emergency Lightering, and  
Marine Firefighting Requirements*

This proposed paragraph is designed to be consistent with § 155.1050(j), and vessels with a capacity of 2,500 barrels or greater would have to meet salvage, emergency lightering, and marine firefighting requirements in subpart I of 33 CFR part 155. Nontank vessels with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, need only plan for and identify these response resources in the response plan

but do not have to ensure these resources by contract or a previous funding agreement. Nontank vessels with a capacity less than 250 barrels need only plan for and identify salvage response resources in the response plan, but do not have to ensure by contract or a previous funding agreement. See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

*Paragraph (j) of Section 155.5050  
Dispersants*

This proposed paragraph is designed to be consistent with § 155.1050(k) and it is proposed that vessels with a capacity of 2,500 barrels or greater would be required to ensure the availability of these response resources by contract or other approved means. Only Tier 1 for dispersant effective daily application capability (EDAC) would need to be met for nontank vessels. Nontank vessels with a capacity of less than 2,500 barrels, but greater than or equal to 250 barrels, would need to plan for and identify dispersant response resources per the other approved means standard described previously.

*Paragraph (k) of Section 155.5050  
Aerial Oil Spill Tracking and  
Observation Response Resources*

This proposed paragraph adopts tank vessel requirements from § 155.1050(m). It is proposed that nontank vessels with a capacity of 2,500 barrels or greater would be required to ensure the availability of these response resources by contract or other approved means.

Nontank vessels with a capacity of less than 2,500 barrels, but greater than or equal to 250 barrels, would need to plan for and identify aerial oil spill tracking and observation response resources under the other approved means standard described previously. The nontank vessel owner or operator would also be required to submit a written consent to be listed in the plan from the recognized response resource provider when submitting a plan for approval or revision. Compliance with these requirements would be considered to be consistent with the "other approved means," paragraph (5) portion of the definition of "Contract or other approved means" in 33 CFR 155.5020.

*Paragraph (l) of Section 155.5050  
Response Resources Necessary To  
Perform Shoreline Protection  
Operations*

This proposed paragraph adopts requirements from § 155.1050(n). It would require the owners and operators of nontank vessels carrying groups I through IV petroleum oil as fuel or cargo with a capacity of 250 barrels or greater

to identify in the response plan, and ensure the availability of, through contract or other approved means, response resources necessary to perform shoreline protection operations. The response resources must include the quantities of boom listed in 33 CFR part 155's Appendix B, Table 2, based upon the specific COTP zones in which the vessel operates.

*Paragraph (m) of Section 155.5050  
Shoreline Cleanup Operations*

This paragraph of the proposed rule adopts tank vessel requirements from § 155.1050(o). It would require 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 to identify in the response plan, 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. These shoreline cleanup resources required would need to be determined as described in 33 CFR part 155's Appendix B.

*Paragraph (n) of Section 155.5050  
Practical and Technical Limits of  
Response Capabilities*

This paragraph of the proposed rule, which adopts tank vessel criteria from § 155.1050(p), notes that Appendix B of 33 CFR part 155 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, would need to identify commercial sources of additional equipment equal to twice the cap listed for Tier 1 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 would need to be capable of arriving on scene no later than the applicable tier response times contained in proposed § 155.5050(g) or as quickly as the nearest available resource permits. A response plan would need to identify the specific sources, locations, and quantities of this

additional equipment. No contract, however, would be required.

*Paragraph (o) of Section 155.5050  
Review of Response Capability Limits*

This paragraph of the proposed rule, which adopts tank vessel criteria from § 155.1050(q), notes that 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.

*Paragraph (p) of Section 155.5050  
Nontank Vessel Response Plan Required  
Response Resources Matrix*

The table in this paragraph of the proposed rule summarizes nontank vessel response resources that would be required under the proposed rule. It shows the tiered regulatory approach toward how the requirements of § 155.5050 apply to various nontank vessels with a fuel and cargo capacity of less than 250 barrels, between 250 barrels and 2,500 barrels, and 2,500 barrels or greater.

*Section 155.5052 Response Plan  
Development and Evaluation Criteria for  
Nontank Vessels Carrying Group V  
Petroleum Oil*

This section of the proposed rule, which adopts the tank vessel requirements of § 155.1052, would require owners and operators of nontank vessels that carry group V petroleum oil as fuel or cargo to provide information in their plan that identifies procedures and strategies for responding to discharges up to a worst case discharge of group V petroleum oils to the maximum extent practicable, and that identifies sources of the equipment and supplies necessary to locate, recover, and mitigate such discharges.

The owner or operator would need to ensure that:

- Any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the nontank vessel operates, and consider the limitations identified in the Area Contingency Plans for the COTP zones in which the vessel operates;

- Through contract or other approved means, equipment identified in this section, including sonar, sampling equipment for locating the oil on the bottom or suspended in the water column, sorbent boom, silt curtains, dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline is made available and capable of being deployed within 24 hours of discovery of a discharge to the port nearest the area where the vessel is operating.

The owner or operator of a nontank vessel carrying group V petroleum oil as fuel or cargo would also need to identify in the response plan and ensure the availability, through contract or other approved means, a salvage company with appropriate expertise and equipment, a company with vessel firefighting capability that will respond to casualties in the area(s) in which the vessel is operating, and that the intended sources of these resources are capable of being deployed to the areas in which the vessel will operate.

In addition, the owner or operator would be required to identify in the response plan and ensure the availability of certain equipment facilitating ship-to-ship transfers of fuel or cargo in an emergency, including fendering equipment, transfer hoses, portable pumps and ancillary equipment, and lightering vessels. And these identified resources would need to be capable of reaching the locations in which the vessel operates within 12-to-36 hours depending on the type of water (e.g., inland, offshore, or open ocean).

*Section 155.5055 Training*

This section of the proposed rule, which adopts the requirements of § 155.1055 for tank vessels, describes the training requirements that an owner or operator of a nontank vessel must identify in his or her plan. The proposed rule does not require training in specific subjects or minimum training periods, but instead it requires a vessel owner or operator to identify the training programs they will establish or adopt to train any person with responsibilities in the response plan.

The training may vary widely based on those responsibilities. For example, a vessel's master would need different training than the engineer responsible for internal cargo transfers, just as the qualified individual would need different training than the cleanup manager in the vessel owner or operator's shore-based spill management team. This proposed section would require that the training program identified in the plan differentiate between training provided

to vessel personnel and shore-based personnel. This section points to 33 CFR 155's Appendix C, described below, as providing additional training guidance.

Under this proposed section, the owner or operator of a nontank vessel would need to maintain records sufficient to document training and make them available for inspection upon request by the Coast Guard, and ensure that any oil spill removal organization identified in its response plan also maintains records sufficient to document training for the organization's personnel. The owner or operator of the nontank vessel would need to maintain its training records for 3 years.

#### *Section 155.5060 Exercises*

This section of the proposed rule would require a nontank vessel owner or operator to conduct, as necessary, announced and unannounced exercises to ensure that the plan will function in an emergency. This proposed section adopts the minimum exercise requirements from § 155.1060 for tank vessels, as well as its requirements to:

- Participate in unannounced exercises, as directed by the COTP,
- Participate in Area exercises as directed by the applicable on-scene coordinator, and
- Maintain adequate records for 3 years following completion of the exercises.

This proposed section also adopts § 155.1060's provision that compliance with the National Preparedness for Response Exercise Program (PREP) Guidelines will satisfy nontank vessel response plan exercise requirements, as will an alternative program that meets the minimum exercise requirements and has been approved under alternative planning criteria in proposed § 155.5067.

#### *Section 155.5062 Inspection and Maintenance of Response Resources*

This proposed section, which adopts the corresponding tank vessel requirements in § 155.1062, would require nontank vessel owners or operators to ensure that containment boom, skimmers, vessels, and other major equipment listed or referenced in a vessel response plan are periodically inspected and maintained in good operating condition, in accordance with manufacturer's recommendations and best commercial practices. This proposed section notes that the Coast Guard may visit equipment locations listed in response plans to:

- Verify that the equipment inventories exist as represented;

- Verify that the records of inspection and maintenance reflect the actual condition of the equipment; and
- Inspect and require operational tests of equipment to verify readiness.

#### *Section 155.5065 Procedures for Plan Submission and Approval*

This section of the proposed rule identifies the procedures for submission and approval of response plans. The owner or operator of a nontank vessel would need to submit a complete vessel response plan, written in English, along with a statement certifying that the plan meets the requirements of subpart J as well as any applicable requirements in subparts D, E, F, or G.

In addition, the submission would need to include a statement specifically certifying that the "owner or operator has ensured the availability of, through contract or other approved means, the necessary private resources to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel."

We propose the use of a Coast Guard form entitled "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) as an optional alternative to a cover letter for a plan submission and approval application. When submitted properly, this application form would satisfy the two certification statement requirements for submission. Submissions would be sent in paper format to the Coast Guard's Office of Vessel Activities (CG-543), and directed to the attention of that Office's Vessel Response Plan Review Team.

The proposed requirements of § 155.5065 are derived from tank vessel requirements in § 155.1065 to ensure consistency with the procedures for vessel response plan submission and approval, but have been modified to be consistent with subpart J applicability. Additionally, appeal and alternative planning criteria procedures have been removed and put in their own respective sections.

#### *Section 155.5067 Alternative Planning Criteria*

This section of the proposed rule would allow the submission of a request for acceptance of alternative planning criteria from the owner or operator of a vessel who believes that national planning criteria contained elsewhere in 33 CFR part 155 are inappropriate, and explains who in the Coast Guard will grant or deny the request. The proposed requirements for alternative planning criteria have been derived from § 155.1065(f) and expanded to identify

essential elements of the request, and to require the endorsement (either favorable or unfavorable) of the COTP with jurisdiction over the geographic areas at issue before the request may be considered by the Coast Guard's Office of Vessel Activities (CG-543).

There are numerous remote areas in Alaska, as well as Guam and American Samoa, where it is noted that the level of required response resources do not meet the national planning requirements even for tank vessels under subpart D. It is anticipated that nontank vessels that transit or plan to transit these remote areas may have initial difficulty in meeting the proposed requirements of subpart J. Once the final regulations are implemented for subpart J, it is expected that any vessel owner or operator required, but unable, to meet the requirements due to this reason will meet with the cognizant Coast Guard Captain of the Port to discuss what resources are available and what alternative planning and mitigation strategies can be put in place to receive authorization for operations in these areas. We encourage Area [Planning] Committees, established under the National Contingency Plan (40 CFR 300), to address this issue and facilitate solutions to include recommending acceptable alternative planning criteria for nontank vessel response plan approval and building up required response resources in applicable areas.

#### *Section 155.5070 Procedures for Plan Review, Revision, and Amendment*

This section of the proposed rule would require nontank vessel owners or operators to review their response plans annually to ensure that the plan information is current. This review must occur within one month of the anniversary date of Coast Guard approval of the plan. Also, a vessel owner or operator would be required to submit a letter to Coast Guard certifying that they have conducted this review.

These proposed requirements in § 155.5070 are derived from § 155.1070 to ensure consistency with the procedures for tank vessel response plan review, revision, and amendment procedures, except for the following. To be consistent with plan review and revision requirements in 33 CFR 151.28(a), the owner or operator of a nontank vessel must submit a letter to the Coast Guard certifying that the annual review has been completed. This certification is necessary even if no changes have occurred.

We propose the use of a Coast Guard form entitled "Application for Approval/Revision of Vessel Pollution

Response Plans" (CG-6083) as an optional alternative to a cover letter for a plan annual review. When submitted properly, this application form would satisfy the annual review requirements found in proposed § 155.5070.

Submissions would be sent to the Coast Guard's Office of Vessel Activities, and directed to the attention of that Office's Vessel Response Plan Review Team.

#### *Section 155.5075 Appeal Procedures*

Consistent with tank vessel procedures in §§ 155.1065(h) and 155.1070(f), we propose allowing a nontank vessel owner or operator who disagrees with a deficiency determination to submit a petition for reconsideration to the Coast Guard and to appeal a Coast Guard decision not to approve the owner or operator's NTVRP.

A petition for reconsideration of a deficiency determination would need to be filed within the period required for compliance or within 5 days from receipt of the notice of deficiency determination to the owner or operator, whichever date occurs first. For 21 days following notification that a NTVRP is not approved, the vessel owner or operator would be allowed to appeal that determination to the Assistant Commandant for Marine Safety, Security, and Stewardship.

#### *Appendix B of 33 CFR 155*

Appendix B of 33 CFR part 155 describes the procedures for identifying response resources to meet VRP requirements of subparts D, E, F, and G. We propose revising Appendix B so that it also addresses our proposed addition of NTVRP regulations in subpart J.

In Appendix B paragraphs 1.1, 2.6, and 2.7, which describe the purpose of the Appendix and describe equipment operability and readiness, we simply propose adding a reference to subpart J. In paragraph 4.2.2 of Appendix B, we propose changing the 10 percent measure from "total cargo oil capacity" to "total oil capacity" in reference to maximum most probable discharge.

Section 3 of Appendix B deals with determining response resources required for the AMPD. In paragraph 3.1, after the words "vessel owner or operator," we propose adding the words "as applicable under the regulations prescribed in this part." Also, after the reference to a vessel carrying oil as a primary cargo, we propose adding "or a nontank vessel carrying oil as cargo as required by subpart J."

Section 5 of Appendix B deals with determining response resources required for the WCD to the maximum extent practicable. In paragraphs 5.1, and 5.3 through 5.7, after the words

"vessel owner or operator," we propose adding the words "as applicable under the regulations prescribed in this part." In paragraph 5.2, we propose to insert a reference to § 155.5050(g) when identifying the applicable tier for response time.

Section 7 of Appendix B describes determining the WCD planning volumes. In paragraphs 7.1, 7.2, and 7.2.4, after the words "vessel owner or operator," we propose inserting the words "as applicable under the regulations prescribed in this part." In paragraph 7.2.3, we propose inserting a clarifying statement that for nontank vessels, only Tier 1 is to be used with the oil recovery resource mobilization factor in determining the total on-water oil recovery capacity that must be identified or contracted for to arrive on scene within the applicable time for each response tier. In paragraph 7.2.4, we propose deleting a sentence on exceeding the 1993 planning volume cap that is no longer needed. In paragraph 7.3.1, we propose changing "total volume of oil cargo carried" to "total volume of oil carried."

Section 8 of Appendix B provides guidance on determining the availability of high-rate response methods. In paragraph 8.1.1, after the words "vessel owner or operator," we propose adding the words "as applicable under the regulations prescribed in this part."

#### *Appendix C of 33 CFR 155*

Appendix C of 33 CFR part 155 provides guidance to owners and operators of vessels on the development of the training portions of their response plans. We propose revising Appendix C so that it also addresses our proposed addition of NTVRP regulations in subpart J.

In Appendix C, section 2, the elements-to-be-addressed section, we propose:

- Expanding organizational activities in paragraph 2.2.3.1 from "cargo transfers" to "fuel and cargo transfers" in reference to procedures to mitigate or prevent any discharge or a substantial threat of a discharge of oil;
- Adding a suspected fuel tank leak in paragraph 2.2.14 to the list of items for which action must be taken; and
- Changing information on "cargoes handled" to information on "oil handled" in paragraph 2.2.15.

For paragraphs within 2.2.15, we propose adding "(including oil carried as fuel)" to paragraph 2.2.15.1 in reference to cargo material safety data sheets; and in reference to chemical properties, special handling procedures, health and safety hazards, and spill and firefighting procedures, we propose

revising "cargo" in paragraphs 2.2.15.2 through 2.2.15.5 to "all oils carried as fuel or cargo."

#### *33 CFR 160.206 Information Required in an NOA*

The proposed rule would amend 33 CFR part 160 by adding a requirement for vessel owners or operators to include the USCG vessel response plan control number in the notice of arrival submission. As noted in Section III.F, the VRP control number would better enable the Coast Guard to determine if the vessel has an authorized GSA for each of the USCG Captain of the Port Zones through which the vessel intends to transit. VRP GSA requirements are contained in proposed 33 CFR 155.5035(i) for nontank vessels, and in 33 CFR 155.1035(i), 155.1040(j), and 155.1045(i) for vessels subject to subpart D. For those vessels that are covered by more than one response plan, submission of the VRP control number will notify the Coast Guard as to which plan they are operating under.

#### **V. Incorporation by Reference**

Material proposed for incorporation by reference appears in § 155.5035. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 155.140.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

#### **VI. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### *A. Executive Order 12866*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. OMB has not reviewed it under that Order.

A combined Regulatory Analysis and an Initial Regulatory Flexibility Analysis is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. A summary of the analysis follows:

The proposed rule would implement the statutory requirements in 33 U.S.C. 1321(j)(5) for a U.S. and foreign flag vessel owner or operator to prepare and



submit an oil spill response plan to the Coast Guard. The type of vessels affected would be self-propelled, nontank vessels of 400 tons or greater as measured under the convention measurement system or regulatory measurement system, which operate on the navigable waters of the U.S., and carries oil of any kind as fuel for main propulsion.

The proposed rule would specify the content of a response plan, including the requirement to plan for a response to a worst-case discharge and a substantial threat of such a discharge. The proposed rule would also specify the procedures for submitting a plan to the Coast Guard.

There are four cost elements associated with this proposed rule: (1) The cost for nontank vessel plan development, maintenance, and submission (2) the cost for a nontank vessel owner or planholder to obtain the service of an Oil Spill Response Organization (OSRO), (3) the cost for a nontank vessel owner or planholder to contract with a Qualified Individual (QI) along with a Spill Management Team

(SMT), and (4) the cost for training and exercises.

We base the cost estimates for plan development on information contained in an OMB-approved collection of information (OMB 1625-0066). We base the cost estimates associated with exercises on a combination of information from the Bureau of Labor Statistics (BLS), the General Services Administration, the OMB-approved collection of information, publicly available information from OSRO contractors, and other industry information. The OSRO and QI/SMT costs are based upon information that we received from contacting plan preparers.

We estimate this proposed rule would affect about 2,951 U.S. flag vessels and 1,228 associated planholders. We estimate the proposed rule would also affect about 9,264 foreign flag vessels and about 1,544 associated planholders.

We present the costs of this proposed rule in 2008 dollars and discount these costs to their present value (PV) over a 10-year period of analysis, 2009-2018, using 7 and 3 percent discount rates. We

also estimate annualized costs of this proposed rule over the same 10-year period of analysis. We estimate the total 10-year PV cost of this proposed rule to U.S. flag nontank vessel owners and operators to be about \$111.4 million at a 7 percent discount rate and \$134.8 million at a 3 percent discount rate. We found the training and exercise requirements to be the most costly element, or over 90 percent of the total discounted cost of the proposed rule for vessel owners. We estimate the total U.S. annualized cost of this proposed rule over the 10-year period of analysis to be about \$15.8 million at both discount rates.

We estimate the total 10-year PV cost of this proposed rule to foreign flag nontank vessels owners and operators to be about \$151.6 million at a 7 percent discount rate and \$183.6 million at a 3 percent discount rate. We estimate annualized costs of this proposed rule to foreign flag nontank vessel owners and operators over the 10-year period of analysis to be about \$21.6 million at both discount rates. See Table 1 below.

TABLE 1—SUMMARY OF TOTAL 10-YEAR DISCOUNTED COSTS OF THE PROPOSED RULE  
[2009-2018, 7 and 3 Percent discount rates, \$Millions]

Cost item	Discount rates	
	7 Percent	3 Percent
U.S. vessel costs:		
Plan Development .....	\$5.3	\$6.0
Contracted OSRO Service .....	0.46	0.56
QI/SMT .....	5.7	6.9
Training, Drilling, and Exercises .....	99.9	121.4
Total U.S. Vessel Cost .....	111.4	134.8
Total U.S. Annualized Cost .....	15.8	15.8
Foreign vessel costs:		
Plan Development .....	6.7	7.5
Contracted OSRO Service .....	1.5	1.8
QI/SMT .....	17.8	21.7
Training, Drilling, and Exercises .....	125.7	152.6
Total Foreign Vessel Cost .....	151.6	183.6
Total Foreign Annualized Cost .....	21.6	21.6
Total Cost of Proposed Rule .....	263.0	318.4

Note: Totals may not sum due to rounding.

We estimate the total cost of the proposed rule to both the U.S. and foreign fleets over the 10-year period of analysis to be \$263.0 or \$318.4 million at 7 and 3 percent discount rates, respectively, with an annualized cost of about \$37.4 million at both discount rates. We expect this proposed rule to provide quantifiable benefits in the form of barrels of oil not spilled into the water in addition to qualitative benefits, which include improved preparedness and reaction to an incident, including a worst-case discharge, 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 (MISLE) 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 U.S. and that carried oil of any kind as fuel for main propulsion.

We estimate the proposed rule would prevent between 2,014 and 2,446 barrels

of oil from being spilled into the water during the 10-year period of analysis, 2009-2018. See the regulatory analysis in the docket for further detail.

*B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would 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.

We estimate that this proposed rule would affect about 1,228 U.S. companies that own approximately 2,951 nontank vessels identified for this proposed rule. We researched all 1,228 companies and found company-specific information on 640 of them (about 52 percent). From our analysis, we determined that 376 (about 59 percent) entities are small entities 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 found the remaining 588 of the 1,228 companies that we researched lacked company data such as revenues and employee size, which precluded us from using those companies in our analysis. We assume that a majority of these 588 companies may be small entities.

Using publicly available and proprietary data on owner revenue, we estimated the initial and annual impact to small entities as a percentage of annual revenue. We then determined the initial and annual cost impact of this proposed rule on small entities.

We found that the first year cost of the proposed rule would have a one percent or less impact on 50 percent of the small entities that we analyzed. We found that the first year cost of the proposed rule would have a 3 percent or less impact on 68 percent of the small entities that we analyzed.

We found that the annual cost of the proposed rule would have a 1 percent or less impact on 55 percent of the small entities that we analyzed. We found that the annual cost of the proposed rule would have a 3 percent or less impact on 73 percent of the small entities that we analyzed.

We are interested in the potential direct impacts of this proposed rule on small entities and we request public comment on these potential direct impacts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

### 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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Jarrod DeWitz at (202) 372-1219 or [Jarrod.M.DeWitz@uscg.mil](mailto:Jarrod.M.DeWitz@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 proposed rule would call 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 modifies two existing OMB-approved collections of information, 1625-0066 and 1625-0100. 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:** A nontank vessel owner or operator would need to prepare and submit to the Coast Guard a nontank vessel response plan in accordance with proposed 33 CFR part 155, subpart J. The content of the response plan would include the requirement to plan for responding to a worst case discharge and a substantial threat of such a discharge. Additionally, submissions of

international SOPEPs for certain U.S. flag nontank and tank vessels will require 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.

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

**Number of Respondents:** The existing OMB-approved number of respondents is 9,834. This proposed rule would increase that number by 772 respondents. The total number of respondents would be 10,606.

**Frequency of Response:** The existing OMB-approved number of responses is 32,675. This proposed rule would increase that number by 1,453 responses.

**Burden of Response:** The existing OMB-approved burden of response is a range of 3 to 40 hours per NTVRP activity (i.e., initial plan development, plan revision, annual recordkeeping, 5-year resubmission).

**Estimate of Total Annual Burden:** The existing OMB-approved total annual burden is 220,559 hours. This proposed rule would increase that number by 14,415 hours.

**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 proposed 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 would enable 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:** This information is required to control vessel traffic, develop contingency plans, and enforce regulations.

**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 9,206. This proposed rule would not change that number. The total number of respondents would remain 9,206.

**Frequency of Response:** The existing OMB-approved number of responses is 78,538. This proposed rule would not change that number. The total number of responses would remain 78,538.

**Burden of Response:** The existing OMB-approved burden of response is approximately 2.5 hours (150 minutes) per response. The additional burden imposed by this proposed 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 150-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 200,039 hours. Because the additional burden imposed by this proposed rule is estimated to be so minimal, it does not merit changing the approved annual burden. The estimated total annual burden would remain 200,039 hours.

In addition to this rulemaking, COI 1625-0066 is being revised by two other Coast Guard rulemakings. These rulemakings are: (1) Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil [Docket No. USCG-1998-3417; RIN 1625-AA19]; and (2) Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions [Docket No. USCG-2001-8661; RIN 1625-AA26]. Once these rulemakings are finalized, the hour burden for 1625-0066 will differ from the figures noted above. See the COI preamble section of each rulemaking for details on how the hour burden will differ.

In addition to this rulemaking, COI 1625-0100 is being revised by two other Coast Guard rulemakings. These rulemakings are: (1) Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System [Docket No. USCG-2005-21869;

RIN 1625-AA99]; and (2) Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission [Docket No. USCG-2004-19963; RIN 1625-AA93]. Once these rulemakings are finalized, the hour burden for 1625-0100 will differ from the figures noted above. See the COI preamble section of each rulemaking for details on how the hour burden will differ.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

#### *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, 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 casualty reporting and any other category in which Congress intended the Coast Guard to be the sole source of government-imposed vessel 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 (2000)).

This NPRM describes the proposed standards to which nontank vessel owners and operators would adhere when preparing and submitting plans for responding to a discharge of oil from their vessels. We have drafted this proposed rule to ensure that, to the extent practicable, it is consistent with any applicable State-mandated response plan in effect on August 9, 2004. To that end, we have conducted a search of State laws addressing NTVRPs and conclude that no State law would be preempted when this rule is made final. That said, we have found that a few State laws authorize nontank vessel owners and operators to, among other options, contract with intermediaries as a method of complying with State laws that require nontank vessel owners or operators to ensure the availability of oil spill removal organization by contract or other approved means. Those intermediaries, generally, do not own the oil spill removal resources and usually contract with third-party companies to fulfill the State requirement. Our proposed rule does not allow for the third-party intermediary option, because we interpret the OPA 90 to require a direct contractual relationship between vessel owners or operators and the organization owning the oil spill removal organization. Because the vessel owner or operator may comply with both State law and Federal law on this topic so long as, among other things, there is a direct contractual relationship between the vessel owner or operator and the oil spill removal organization, we believe this proposed rule will not preempt the various State laws on this topic. However, to ensure that those States that may have an interest in this rulemaking are provided with adequate opportunity to comment upon potential federalism issues, we will provide separate notice of this NPRM to the States.

#### *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 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### G. Taking of Private Property

This proposed rule would not effect 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### J. Indian Tribal Governments

We do not expect this proposed rule to have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because we do not expect it to 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. We invite your comments on this assessment and if tribal implications are identified during the comment period we will undertake appropriate consultations with the affected Indian tribal officials.

### K. Energy Effects

We have analyzed this proposed 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 because it is not a "significant regulatory action" under Executive Order 12866 and 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 the Office of Management and Budget, 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 proposed 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 proposed sections that reference these standards and the locations where these standards are available are listed in § 155.140.

### M. Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 023-01, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that, under the Commandant Instruction, this action is not likely to have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. We seek any comments or information that may lead to the discovery of a

significant environmental impact from this proposed rule.

### 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, 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 proposes to amend 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, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104-227 (110 Stat. 3034); E.O. 12777, 3 CFR, 1991 Comp. p. 351; Department of Homeland Security Delegation No. 0170.1.

2. In § 151.09, add a note to paragraph (c), remove the note following paragraph (e), and revise paragraph (d) to read as follows:

#### § 151.09 Applicability.

\* \* \* \* \*

(c) \* \* \*

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

(d) Sections 151.26 through 151.28—

(1) Do not apply to—

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

(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 nontank vessel holds a USCG-approved nontank vessel response plan and provides evidence of compliance with 33 CFR part 155, subpart J requirements.

\* \* \* \* \*

3. In § 151.26—

- a. In paragraph (b)(1)(i), remove "Regulation 26" and add "Regulation 37" in its place; and add the words "as amended by Resolution MEPC.86(44)" immediately after "MEPC.54(32)";
- b. Revise paragraph (b)(2) to read as set out below;
- c. Revise paragraphs (b)(3)(i)(A) and (b)(3)(ii) introductory text to read as set out below;
- d. Redesignate the introductory text of paragraph (b)(3)(iii)(A) as (b)(3)(iii)(A)(1), and add paragraphs (b)(3)(iii)(A)(2) and (b)(3)(iii)(D) to read as set out below;
- e. Revise the introductory text of paragraph (b)(4)(i) and all of paragraph (b)(4)(ii) to read as set out below;
- f. Revise paragraph (b)(4)(iii)(B), and add new paragraph (b)(4)(iii)(D) and (b)(4)(iii)(E) to read as set out below;
- g. Revise paragraph (b)(5)(i) to read as set out below;
- h. Remove paragraph (b)(7)(i); and
- i. Redesignate paragraphs (b)(7)(ii) through (b)(7)(vi) as (b)(7)(i) through (b)(7)(v).

**§ 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) \* \* \*

(2) 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;
- (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 the 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; and

\* \* \* \* \*

(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 shall show where current cargo, bunker or ballast information, including quantities and specifications, are available.

(5) *National and Local Coordination.*

(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,

a. Revise paragraphs (e) and (f);

b. Add paragraph (g) to read as set out below.

**§ 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 the corrected portions of the plan, within the time period specified in the written notice provided by the Coast Guard.

(g) CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) located at: <https://homeport.uscg.mil/vrpapplication> can be used in lieu of a cover letter to make initial application for plan submission and approval.

5. In § 151.28, add paragraph (g) to read as set out below:

**§ 151.28 Plan review and revision.**

\* \* \* \* \*

(g) CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) located at: <https://homeport.uscg.mil/vrpapplication> can 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 paragraph (a) of this section.

**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. 1231, 1321(j); E.O. 11735, 3 CFR, 1971-1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 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) to read as set out below; and

c. Add paragraph (f)(2) to read as set out below:

**§ 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), November 4, 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, November 27, 1997, incorporation by reference approved for § 155.5035.

\* \* \* \* \*

(5) Resolution MSC.104(73), Adoption of Amendments to the International Safety Management (ISM) Code, December 5, 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—

a. Revise (c)(7); and

b. Add a note to the end of the section as set out below.

**§ 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;

\* \* \* \* \*

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

9. In § 155.1020—

a. Revise the definition for "vessels carrying oil as a secondary cargo" to read as set out below; and

b. Add a definition for "nontank vessel" as set out below.

**§ 155.1020 Definitions.**

\* \* \* \* \*

*Nontank vessel* means a self-propelled vessel of 400 gross tons or greater, 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, that operates on the navigable waters of the United States, as defined in 46 U.S.C. 2101(17a), carries oil of any kind as fuel for main propulsion, and is not a tank vessel.

\* \* \* \* \*

*Vessels carrying oil as a secondary cargo* means vessels, other than vessels that carry oil as a primary cargo, and nontank vessels, carrying oil in bulk as cargo or cargo residue pursuant to a permit issued under 46 CFR 30.01-5, 70.05-30, or 90.05-35; an International Oil Pollution Prevention (IOPP) certificate (33 CFR 151.19) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35; or any uninspected vessel that carries oil in bulk as cargo or cargo residue.

\* \* \* \* \*

**§ 155.1055 [Amended]**

10. In § 155.1055, amend paragraph (a) by removing the phrase "§ 155.1035" and adding, in its place, the phrase "§§ 155.1035 or 155.5035".

**§ 155.1060 [Amended]**

11. In § 155.1060, amend paragraph (a) by removing the phrase "§§ 155.1035 and 155.1040" and adding, in its place, the phrase "§§ 155.1035, 155.1040 or 155.5035".

12. In § 155.1065—

a. In paragraph (b), remove the phrase "subparts D, E, F, and G of this part" and add, in its place, the phrase "subparts D, E, F, G, and J of this part, as applicable,".

b. In paragraph (b), add two new sentences at the end of the paragraph to read as set out below.

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

\* \* \* \* \*

(b) \* \* \* CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) located at: <https://homeport.uscg.mil/vrpapplication> can be used in lieu of a cover letter to make initial application for plan submission and approval. When submitted properly, this application form meets the requirement for a vessel response plan certification statement as required by this paragraph.

\* \* \* \* \*

13. In § 155.1070—

a. In paragraph (a)(2), add a new sentence at the end of the paragraph to read as set out below.

b. Revise paragraph (b) to read as set out below;

c. Revise paragraphs (c)(1), (c)(2), (c)(4), (c)(5), and (c)(8) to read as set out below; and

d. Revise paragraph (d) to read as set out below:

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

(a) \* \* \*

(2) \* \* \* CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) located at: https://homeport.uscg.mil/vrapplication can 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 owner or operator of a vessel 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 owner or operator of the vessel, if the previous owner or operator provided the certifying statement required by § 155.1065(b), then the new 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 owner or operator of the vessel, if that 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 aboard (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 owner or operator's certification required in §§ 155.1025(c) or 155.5023(b); or

\* \* \* \* \*

(d) Thirty days in advance of operation, the 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.

\* \* \* \* \*

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

Subpart J—Nontank Vessel Response Plans

Table with 2 columns: Sec. and Description. Rows include 155.5010 Purpose, 155.5012 Deviation from response plan, 155.5015 Applicability, 155.5020 Definitions, 155.5021 Operating restrictions, 155.5023 Interim operating authorization, 155.5025 One-time port waiver, 155.5026 Qualified individual and alternate qualified individual, 155.5030 Nontank vessel response plan requirements: general content, 155.5035 Nontank vessel response plan requirements: specific content, 155.5050 Response plan development and evaluation criteria for nontank vessels carrying groups I through IV petroleum oil, 155.5052 Response plan development and evaluation criteria for nontank vessels carrying group V petroleum oil, 155.5055 Training, 155.5060 Exercises, 155.5062 Inspection and maintenance of response resources, 155.5065 Procedures for plan submission and approval, 155.5067 Alternative planning criteria, 155.5070 Procedures for plan review, revision, and amendment, 155.5075 Appeal procedures.

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.

§ 155.5012 Deviation from response plan.

The owner or operator of a nontank vessel required to have a response plan under this subpart may not deviate from the approved plan unless the Federal On-Scene Coordinator determines that the deviation from the response plan 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 (c) 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;

(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) 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 WCD volume is the aggregate fuel oil capacity of the ITB combination.

(c) 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 response plan 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 aboard as fuel for propulsion or cargo;



- (5) Permanently moored craft; and  
 (6) Inactive vessels.

Note to § 155.5015: Response plan 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, secondary to the class or type of the vessel and is transported to, and off-loaded at, a destination by a vessel. It includes oil or oil residue carried pursuant to a permit issued under 46 CFR 30.01–5, 70.05–30, or 90.05–35; an International Oil Pollution Prevention (IOPP) certificate (33 CFR 151.19) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35; or any uninspected vessel that carries oil in bulk as cargo or cargo residue. It does not include oil that is carried as a primary cargo.

*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 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 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 "another approved means" for only:

(i) Nontank vessels with a fuel and cargo oil capacity of less than a 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)(10) 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 aboard 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* includes all waters of the territorial seas of the United States, extending 12 nautical miles (nm) seaward of the baseline, as described in Presidential Proclamation No. 5928, December 27, 1988.

*Nontank vessel* means a self-propelled vessel of 400 gross tons or greater, 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, that operates on the navigable waters of the United States, carries oil of any kind as fuel for main propulsion, and is not a tank vessel.

*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 an 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.

*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.

*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.

*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.

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

#### § 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 plan 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 plan; or

(4) The period of the response plan authorization has expired.

#### § 155.5023 Interim operating authorization.

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

(b) To receive this authorization, the nontank vessel owner or operator must certify in writing with an original or electronic signature to the Coast Guard that the owner or operator has identified and has ensured, by contract or other approved means, the availability of the necessary private 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 without an approved plan pending formal Coast Guard approval must comply with the provisions of 33 CFR 155.1070(c), (d), and (e).

#### § 155.5025 One-time port waiver.

An owner or operator of a nontank vessel may be authorized by the cognizant U.S. Coast Guard Captain of the Port to have that vessel make one voyage in a geographic-specific area not covered by the vessel's response plan. All requirements of this subpart must be met for any subsequent voyages to a previously requested geographic-specific area. To be considered for a one-time port waiver, the owner or operator must certify in writing, prior to the vessel's entry into the COTP zone, that it has met the requirements of 33 CFR 155.1025(e)(1) through (4).

#### § 155.5026 Qualified individual and alternate qualified individual.

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

(b) The plan 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 nontank vessel response plan (NTVRP) 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 for each 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 plan.

(d) A vessel owner or operator with multiple vessels may submit one plan for each class of vessel (*i.e.*, subpart D—Manned vessels carrying oil as primary cargo & 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 geographic-specific appendix for each COTP zone in which the vessel(s) will operate.

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

(f) The information contained in a vessel response plan must be consistent with the:

(1) 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 response plan; or

(2) More 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 vessel response plan must be available as follows:

(1) The owner or operator of all vessels must ensure that one English language copy of the plan and the original Coast Guard approval letter or notarized copy of the approval letter are maintained aboard the vessel. If applicable, additional copies of the required plan sections must be in the language understood by crew members with responsibilities under the plan and maintained aboard the vessel.

(2) The vessel owner or operator must also 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.

(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 Annex I of MARPOL 73/78 as long as the additional requirements listed in § 155.5035(k) are met. A U.S. flagged 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 plan 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 plan covers multiple vessels, this information should be provided for each vessel;

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

(3) A list of the 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 response plan to locate the specific sections of the plan; and

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

(b) *Notification procedures section.* This section of the plan 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) MARPOL 73/78 (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. 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 nontank 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 § 155.5035(b)(1).

(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 plan must specify that the notification include 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 on board;

(H) Nature and detail of defects, deficiencies, and damage (e.g., overflow 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 P&I Club and Local Correspondent, as applicable.

(ii) The plan 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 on board;

(B) Additional details on the condition of the vessel and 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.

(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 plan 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 leak;

(ii) Fuel tank overflow;

(iii) Suspected tank or hull leak;

(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 below 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)," Fourth Edition 2005, 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 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 aboard the vessel, if safety considerations are summarized in the plan;

(iv) The location of all equipment and fittings, if any, carried aboard 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 aboard 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 plan 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 owner or operator should ensure that a copy of these plans are 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 response plan should indicate the shore location and 24-hour access procedures of the calculation program or 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.

(ii) The plan 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.

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

(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 plan should include the following information:

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

(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 nontank vessel owner or operator or qualified individual with the predesignated Federal On-Scene Coordinator 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.

(5) The responsibilities of, 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.* The name, location, and 24-hour contact information for the following key individuals and organizations must be included in this section of the response plan or, if more appropriate, in a geographic-specific appendix and referenced in this section of the response plan:

(1) Vessel owner or operator.

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

(3) Applicable insurance representatives or surveyors for the vessel's area of operation.

(4) The vessel's local agent(s) for the vessel's area of operation.

(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)(5) 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.

(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.* This section of the response plan must address the training procedures and programs of the nontank vessel owner or operator to meet the requirements in § 155.5055.

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

(h) *Plan review, update, revision, amendment, and appeal procedure.* This section of the response plan must address:

(1) The procedures to be followed by the nontank vessel owner or operator to meet the requirements of §§ 155.5070 and 155.5075; and

(2) The procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(i) *Geographic-specific appendices for each COTP zone in which a vessel operates.* A geographic-specific appendix must be included for each COTP zone identified. The appendices must include the following information or identify the location of such information within the plan:

(1) 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.

(2) The volume and group of oil on which the required level of response resources is calculated.

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

(4) Identification of the qualified individuals.

(5) Identification of the oil spill removal organization(s) 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:

(i) Average most probable discharge.

(ii) Maximum most probable discharge.

(iii) Worst case discharge.

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

(6) The organization(s) identified to meet the requirements of paragraph (i)(5) 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 oil spill removal organization, required response resource providers and spill management team identified for the first seven days of the response.

(7) The geographic-specific appendix must list the response resources and related information required under §§ 155.5050, 155.5052, and Appendix B of this part, as appropriate.

(8) If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the vessel, the appendix may identify only the organization and their applicable classification and not the information required in paragraph (i)(7) of this section. This information is subject to USCG verification at any time during the validity of the vessel response plan.

(9) The appendix must also separately list the companies identified to provide the salvage, emergency lightering, and marine firefighting resources required in this subpart. The appendix must list the response resources and related information required in paragraph (7) of this section. This information is subject to USCG verification at any time during the validity of the vessel response plan.

(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 in the response plan but do not have to ensure by contract or a previous funding agreement.

Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

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

(10) 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 appendix 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;

(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.

(iii) For each unit of dispersant stockpile required to support the effective daily application capacity (EDAC) 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 an oil spill removal

organization has been evaluated by the Coast Guard and its capability has been determined to meet the response capability needed by the owner or operator, the section may identify the oil spill removal organization only, and not the information required in paragraphs (i)(10)(i) through (i)(10)(iii) of this section.

(iv) 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 plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(11) For nontank vessels with a fuel and cargo capacity of 2,500 barrels or greater not operating exclusively on the inland rivers of the United States, the appendix 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 chapter.

(iii) 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 response plan, but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan 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.* This section of the plan must include for each vessel covered by the plan 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 the:

(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 aboard the vessel providing the response plan identifies the specific location).

(6) Midships section plan (can be maintained separately aboard the vessel providing the response plan identifies the specific location).

(7) Cargo and fuel piping diagrams and pumping plan, as applicable (can be maintained separately aboard the vessel providing the response plan identifies the specific location).

(8) Damage stability data (can be maintained separately, providing the response plan identifies the specific location).

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

(10) Location of information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the fuel or cargo oil aboard 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 Annex I or MARPOL 73/78 are not required to comply with this paragraph. An 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, Office of Vessel Activities (CG-543), 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 nontank vessel response plan as a MARPOL 73/78 Annex I, Regulation 37 Shipboard Oil Pollution Emergency Plan (SOPEP) and USCG Nontank Vessel Response Plan. The following information is required to be submitted

consistent with Regulation 37 of Annex I of MARPOL 73/78 and 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 contact. 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.

(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 nontank vessel response plan for specified operating environments must be in accordance with 33 CFR 155.1050(a).

(b) *Operating environment reclassification of specific bodies of water.* 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 petroleum oil carried.

(d) *Average most probable discharge.* The owner or operator of a nontank vessel that carries groups I through IV petroleum as cargo must identify in the response plan 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 average most probable discharge coverage, as applicable, per 33 CFR 155.1050(d). Nontank vessels that only carry groups I through IV oil as fuel do not have to ensure the availability of average most probable discharge 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 acknowledgment from the listed resource providers is not required. Their contact information is for nontank vessel owner or operator reference purposes only. Listing of a marine transportation-related facility's or a bunker supplier's AMPD resources is not authorized, as these AMPD resources are already required by either 33 CFR 154.545, § 154.1045(c), or § 155.1050(d)(2).

(e) *Maximum most probable discharge.* 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 response plan 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 volume. For the purposes of meeting the requirements of this paragraph, the standards listed in 33 CFR 155.1050(e) must be met. Nontank vessels with a capacity less than 250 barrels must plan for and identify maximum most probable discharge response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(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 response plan 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 volume of the oil to the maximum extent practicable. For the purposes of meeting this paragraph, the standards listed in 33 CFR 155.1050(f) must be met. Nontank vessels need only plan for Tier 1 response resources.

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

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 maximum most probable discharge (MMPD) or worst case discharge (WCD) response resources through contract or other approved means, response equipment identified for plan credit should be capable of being mobilized and enroute to the scene of a discharge within 2 hours of notification. The notification procedures identified in the plan 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.

(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 only plan for and identify salvage, emergency lightering, and marine firefighting response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(3) Nontank vessels with a capacity less than 250 barrels need only plan for and identify salvage response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan 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) *Dispersants.* 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 response plan, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas. The standards of 33 CFR 155.1050(k) must be met. Only Tier 1 for dispersant effective daily application capability (EDAC) must be met for nontank vessels. Nontank vessels with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, need only plan for and identify dispersant response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(k) *Aerial oil spill tracking and observation response resources.* 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 must identify in the response plan, and ensure their availability, through contract or other approved means, response resources necessary to provide aerial oil spill tracking to support oil spill assessment and cleanup activities. The standards of



33 CFR 155.1050(l) must be met. Nontank vessels operating exclusively on the inland rivers of the United States are not required to comply with this paragraph. Nontank vessels with a capacity of 250 barrels or greater, but less than 2,500 barrels, need only plan for and identify aerial oil tracking response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(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 response plan, and ensure the availability of, through contract or other approved means, 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 response plan, 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 response plan 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) is a summary of the nontank vessel response plan 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 <sup>3</sup>	Aerial tracking <sup>4</sup>	Shoreline protection	Shore line cleanup
2,500 barrels or greater .....	NO <sup>1</sup> ...	YES ....	YES ....	YES .....	YES .....	YES .....	YES .....	YES .....	YES .....	YES.
Less than 2,500 barrels, but greater than or equal to 250 barrels.	NO <sup>1</sup> ...	YES ....	NO ....	YES <sup>2</sup> .....	YES <sup>2</sup> .....	YES <sup>2</sup> .....	YES <sup>2</sup> .....	YES <sup>2</sup> .....	YES .....	YES.
Less than 250 barrels .....	NO <sup>1</sup> ...	YES <sup>2</sup> ..	NO ....	YES <sup>2</sup> .....	NO .....	NO .....	NO .....	NO .....	NO .....	NO.

<sup>1</sup> 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) as applicable.  
<sup>2</sup> For nontank vessels with a fuel and cargo capacity less than 2,500 barrels, 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 nontank vessel response plan, but not ensured available by contract. Submission of a written consent from the response resource provider must accompany the plan for approval. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

<sup>3</sup> 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).

<sup>4</sup> Aerial oil spill tracking response resources are not required on Rivers.

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

Owners and 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) A nontank vessel response plan submitted to meet the requirements of § 155.5035 must identify the training to

be provided to persons having responsibilities under the plan, 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.

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

**§ 155.5060 Exercises.**

(a) A nontank vessel owner or operator required by § 155.5035 to have a response plan must conduct exercises as necessary to ensure that the plan will function in an emergency. Both

announced and unannounced exercises must be included.

(b) A nontank vessel owner or operator must comply with the vessel response plan exercise requirements of 33 CFR 155.1060.

**§ 155.5062 Inspection and maintenance of response resources.**

The owner or operator of a nontank vessel required to submit a 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, in paper format, of a nontank vessel response plan to Commandant, Office of Vessel Activities (CG-543), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, *Attn:* Vessel Response Plan Review Team. The plan 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 nontank vessel response plan meets the applicable requirements of this subpart and the requirements of subparts D, E, F, and G if applicable. The owner or operator must also include a statement certifying that the owner or operator has ensured the availability of, through contract or other approved means, the necessary private 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. CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) located at: <http://homeport.uscg.mil/vrpapplication> can be used in lieu of a cover letter to make initial application for plan submission and approval. When submitted properly, this application form meets the requirement for a vessel response plan certification statement as required by this paragraph.

(c) If the Coast Guard determines that the plan meets all requirements of this subpart, the Coast Guard will notify the vessel owner or operator with an approval letter. The plan 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 plan and determines that it does not

meet all of the requirements, the Coast Guard will notify the vessel owner or operator of the nontank vessel response plan deficiencies. The nontank vessel owner or operator must then resubmit the revised plan or corrected portions or pages of the plan, 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 to the vessel for the areas in which it is intended to operate, the owner or operator may request acceptance of alternative planning criteria by the Coast Guard. Submission of an alternative planning criteria request must be made 120 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 COTP with jurisdiction over the geographic area(s) affected before being considered by Commandant, Office of Vessel Activities (CG-543), for the review and approval of the respective nontank vessel response plan. In any case, the request must be received by CG-543 with an endorsement by the respective COTP no later than 45 days before the vessel intends to operate under the alternative planning criteria.

(b) The alternative planning criteria request should detail all elements of the nontank plan 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 granting or denial of an alternative planning criteria request will be decided by Commandant, Office of Vessel Activities (CG-543), and will be issued in writing.

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

(a) The owner or operator of a nontank vessel must review the nontank vessel response plan annually and submit a letter to Commandant, Office of Vessel Activities (CG-543) certifying that the review has been completed. This review must occur within one month of the anniversary date of Coast Guard approval of the plan.

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

**§ 155.5075 Appeal procedures.**

(a) A nontank vessel owner or operator who disagrees with a deficiency determination may submit a petition for reconsideration to the Assistant Commandant for Marine Safety, Security and Stewardship, Commandant (CG-5), Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, within the time period required for compliance or within seven 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 response plan 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 response plan, within five days of receipt of the notice.

(b) Within 21 days of notification that a nontank vessel response plan is not approved, the vessel owner or operator may appeal that determination to the Assistant Commandant for Marine Safety, Security and Stewardship. This appeal must be submitted in writing to Commandant (CG-5), Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001.

15. In appendix B to Part 155,  
 a. 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, and 7.3.1; and  
 b. Add paragraph 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 that 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 shall 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 is responsible for ensuring that the 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, shall 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 shall 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 evaporations 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. Three tiers are specified. 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, shall 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 shall 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 (WCD) of oil, or for the amount of the dispersant resource capability as required by § 155.1050(k)(3) of this chapter, 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:

\* \* \* \* \*

16. In appendix C to Part 155—  
a. 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**

17. 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]**

18. In § 160.206, in Table 160.206—

a. In 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 14, 2009.

**Lincoln D. Stroh,**

*Captain, U.S. Coast Guard, Acting Director of Prevention Policy.*

[FR Doc. E9-20310 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-15-P