

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 155****[USCG–1998–3417]****RIN 2115–AF60****Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise the vessel response plan salvage and marine firefighting requirements for tank vessels carrying oil. These revisions will clarify the salvage and marine firefighting services that must be identified in vessel response plans. The proposed changes will assure the appropriate salvage and marine firefighting resources are identified and available for responding to incidents up to and including the worst-case scenario. The proposed rulemaking will also set new response time requirements for each of the required salvage and marine firefighting services.

**DATES:** Comments and related material must reach the Docket Management Facility on or before August 8, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 9, 2002.

**ADDRESSES:** To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–1998–3417), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at <http://dms.dot.gov>.

You must also mail comments on collection of information 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.

The Docket Management Facility maintains the public docket for this

rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

You may inspect the material proposed for incorporation by reference at room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–0448. Copies of the material are available as indicated in the “Incorporation by Reference” section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, before July 15, 2002, call Lieutenant Douglas Lincoln, Office of Response, Response Operations Division, Coast Guard Headquarters, telephone 202–267–0448, or via e-mail at [DLincoln@comdt.uscg.mil](mailto:DLincoln@comdt.uscg.mil), and after July 15, 2002, call Lieutenant Reed Kohberger telephone 202–267–0448 or via e-mail at [RKohberger@comdt.uscg.mil](mailto:RKohberger@comdt.uscg.mil). For questions on viewing, or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1998–3417), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them 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 they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received

during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

The Coast Guard plans to hold several public meetings. A notice with the specific dates and locations of the meetings will be published in the **Federal Register** at least 30 days prior to the meetings. In addition, known interested parties will be contacted via mail, e-mail, and telephone. If you wish to be contacted regarding the public meetings, contact Lieutenant Douglas Lincoln, listed under **FOR FURTHER INFORMATION CONTACT**.

**Background and Purpose**

Requirements for salvage and marine firefighting resources in vessel response plans have been in place since February 5, 1993 (58 FR 7376). The existing requirements are general. The Coast Guard did not originally develop specific requirements because salvage and marine firefighting response resource requirements were viewed as unique to each vessel. The Coast Guard's intent was to rely on the planholders to prudently identify contractor resources to meet their needs. The Coast Guard anticipated that the significant benefits of a quick and effective salvage and marine firefighting response would be sufficient incentive for industry to develop salvage and marine firefighting capabilities similar to the development of oil spill removal organizations. The existing requirements in 33 CFR 155.1050(k)(3) are general. They require that the planholder identify resources capable of being deployed to the port nearest to the area in which the vessel operates within 24 hours of notification.

Early in 1997, it became apparent that the anticipated salvage and marine firefighting capability development was not occurring. Instead, there was disagreement among planholders, salvage and marine firefighting contractors, maritime associations, public agencies, and other stakeholders as to what constituted adequate salvage and marine firefighting resources. There was also concern over whether these resources could respond to the port nearest to the vessel's operating area within 24 hours, even though industry had been given several years to develop these resources.

On June 24, 1997, a notice of meeting was published in the **Federal Register** (62 FR 34105) announcing a workshop to solicit comments from the public on potential changes to the salvage and marine firefighting requirements found in 33 CFR 155.

A public workshop was held on August 5, 1997, to address issues related to salvage and marine firefighting response capabilities, including the 24-hour response time requirement, which was then scheduled to become effective on February 18, 1998. The participants uniformly identified the following three issues that they felt the Coast Guard needed to address:

- (1) Defining the salvage and marine firefighting capability that is necessary in the plans;
- (2) Establishing how quickly these resources must be on-scene; and
- (3) Determining what constitutes adequate salvage and marine firefighting resources.

A copy of the summary report generated from this meeting is included in the project docket.

On February 12, 1998, a notice of suspension was published in the **Federal Register** suspending the 24-hour requirement, scheduled to become effective on February 18, 1998, until February 12, 2001 (63 FR 7069). On January 17, 2001, a second notice of suspension was published in the **Federal Register**, extending the suspension of the 24-hour requirement until February 12, 2004 (66 FR 3876).

The Coast Guard examined the information provided in the National Academy of Sciences 1994 Marine Board Report: "A Reassessment of the Marine Salvage Posture of the United States" (1994 Marine Board Report) as part of the information collected for this rulemaking. The 1994 Marine Board Report was authored by the National Research Council's Marine Board, Committee on Marine Salvage Issues (copy available for viewing at <http://books.nap.edu/books/0309051495/html/index.html>). This committee was established in April 1992 at the request of the U.S. Navy Supervisor of Salvage to examine issues related to jettisoning of cargo in salvage operations. At the request of the Coast Guard the committee's charter was expanded to include updating a 1982 report titled *Marine Salvage in the United States*.

The report addressed changes in the salvage industry on the East, West, and Gulf Coasts since 1982, national salvage posture issues, formulated conclusions about the salvage industry, and made specific recommendations to Congress, the U.S. Navy, and the Coast Guard on salvage issues. The information on changes in the salvage industry and national salvage posture issues was extremely valuable and many of the findings were adopted as part of this regulation.

Additionally, the Coast Guard was aware that the California Office of Spill

Prevention and Response (OSPR) had an implementation date of July 1, 2000, for State Salvage Equipment and Service requirements. In May 2000, the Coast Guard contacted OSPR to discuss extending the implementation date and provided them a draft copy of this proposed rulemaking. OSPR asked the Coast Guard to submit a formal request for the implementation delay, and on June 9, 2000, the request was sent to the OSPR Administrator. On June 14, 2000, OSPR informed the Coast Guard that they were extending their implementation date to September 30, 2000. Due to the extended period required to complete the regulatory analysis for this rulemaking, the Coast Guard informed OSPR in a letter on October 25, 2000, of our delay, although there had been several discussions of the status prior to this. On November 1, 2000, the State requirements became effective. Coordination with OSPR to develop a regulation that meets both the State and Federal requirements will continue. Copies of both of these letters are available for review in the public docket.

In addition to discussions with OSPR, the Coast Guard met with members of the salvage industry, represented by the American Salvage Association, and a representative group of marine firefighters to discuss issues affecting them. A regulation concept paper was made available to participants to facilitate the discussions. Participants were made aware that the concept paper was just a model of what the regulation concept was in 1998, and that it may not accurately reflect the current composition of the draft regulation. The following issues were discussed:

- How salvors and marine firefighters will be integrated into the planholder's response plan;
- Response times for salvage and marine firefighting services;
- Training requirements for marine firefighters; and
- Issues related to the "contract or other approved means" definition and requirements that appears in 33 CFR 155.1020 of the current regulation.

These meetings were held at the request of the interested parties. No changes to the regulation were made based upon these meetings.

#### Discussion of Proposed Rule

The public workshop conducted on August 5, 1997, showed that tank vessel owners and operators wanted more specificity in the salvage and marine firefighting requirements in the vessel response plan regulations (33 CFR 155). To address this, the Coast Guard is proposing that planholders of a vessel

carrying groups I through IV petroleum oil as primary cargo will need to identify, in their plans, a salvage and marine firefighting resource provider (or providers) that performs the specific salvage and marine firefighting services identified in proposed Table 155.4030(b), Salvage and Marine Firefighting Services.

The proposed tables of services provide the specificity that was previously lacking while still maintaining flexibility for each vessel. Requiring "services" rather than specifying types and amounts of equipment was deemed to be more practical for the planholder, since the amount and type of equipment will vary depending on the vessel's characteristics and operating environment. The services we propose requiring were derived from the 1994 Marine Board Report and from the comments received at the August 5, 1997, public workshop.

The intent of requiring planholders to identify specific resource providers for the specific services listed in proposed Table 155.4030(b), Salvage and Marine Firefighting Services, is to require that the listed service provider be contacted in the event of a marine incident requiring that service. If another service provider, not listed in the approved plan for the specific service required, is contracted for a specific response, justification for the selection of that service provider needs to be provided and approved by the Federal On Scene Coordinator (FOSC). Only under exceptional circumstances will the FOSC authorize deviation from the service provider listed in the approved plan. It is also understood that some resources such as public firefighting resources may respond because of jurisdictional requirements, although these resources may not have been listed by the planholder.

While resource providers are usually private contractors, planholders may list public marine firefighting resources in their plans under the conditions detailed in proposed § 155.4020 and § 155.4045. They may list public marine firefighters as a resource provider for firefighting services only out to the maximum extent of the public resource's jurisdiction. Typically jurisdictional boundaries extend only out to three miles, but some states have adopted greater jurisdictional boundaries. A public marine firefighting resource may agree to respond beyond their jurisdictional limits, but the Coast Guard considers it unreasonable to expect public marine firefighting resources to be used for fighting fires beyond their own jurisdictional limits.

It must be understood that because public marine firefighting services have jurisdictional boundaries, it may not be appropriate to select one public marine firefighting service to cover a whole Captain of the Port (COTP) zone. Since the Oil Pollution Act of 1990 emphasizes the use of private over public resources, public marine firefighting resource providers should only be listed when the planholder has determined no private resources are available that can meet the response times and the public resource has a responsibility to respond to incidents in the area specified in the plan. Also, the public resource must agree, in writing, to be included in the plan.

Planholders would be able to identify one or more resource providers within their plan. The 1994 Marine Board Report stated that it is unlikely any single salvage and marine firefighting contractor would be able to perform all of the elements (services) of salvage and marine firefighting in every region of the United States. Thus, more than one contractor may be necessary to perform all the services needed. The planholder would be required to list each service and the resource provider to perform it in each COTP zone the vessel transits. Planholders may list more than one resource provider for a salvage or marine firefighting service within a single COTP zone, but a primary provider must be identified. Different primary resource providers can be listed for the same service in different COTP zones.

Planholders must have discussions with resource providers to ensure that proper resources are identified for their type of vessel and cargo. For example, extinguishing agents must be identified that are compatible with the cargo onboard the vessel. Planholders would be allowed to include portable and non-portable off-vessel firefighting systems (or both) in their plans, so long as these resources are capable of responding within the time frames listed in this proposed rulemaking. Planholders would only list in their plan resource providers who have provided written consent to be included. This consent would include a statement from the resource provider that they are capable of providing the salvage and/or marine firefighting services they have been requested to provide within the response times in proposed Table 155.4030(b), Salvage and Marine Firefighting Services. Additionally, the proposed regulations would require that plans be certified by the planholder and state that the resource provider(s) capabilities have been reviewed by the planholder, and the minimum selection

criteria in proposed § 155.4050 were considered during selection of the resource provider(s).

Only marine firefighting contractors that meet the National Fire Protection Association (NFPA) Standards 1001, 1021, 1405, and 1561, or show equivalent training, or qualification through experience, should be included in the plan. The Coast Guard proposes to incorporate these standards by reference into the rulemaking.

The public workshop showed a need to identify practical on-scene response times for salvage and marine firefighting services. This proposed rulemaking would set specific response times (in hours) for each of the salvage and marine firefighting services that must be included in plans.

Resource providers, in their written agreement with the planholder, must provide a statement that they are able to meet the required response times for each service they would provide. This agreement need not be provided as part of the plan, but must be available for inspection upon request by the Coast Guard. The time frame starts when someone in the planholders response organization receives notification of a potential or actual incident. It ends when the end point requirement listed in proposed Table 155.4040(c), Response Time End Points is met. The measurement of the 12 and 50 mile point will be from the boundary lines or the line of demarcation (COLREG lines) for the Gulf of Mexico for CONUS operations, and from the harbor of the COTP city closest to the potential or actual discharge for OCONUS operations.

Planholders would be responsible for ensuring that contract negotiations with salvage and/or marine firefighting providers do not delay response efforts. In order to ensure this, the Coast Guard is proposing to require, as part of the "contract or other approved means" in § 155.4025, that planholders develop and sign a written funding agreement between themselves and the resource providers. The funding agreement should contain an agreed upon pricing list for services and equipment that the resource providers might need to provide in order to meet the requirements. This agreement should state how long the agreement remains in effect and must be available to the Coast Guard upon request. If Lloyd's Standard Form of Salvage Agreement is to be used, this should be stated in place of a pricing list for services.

The public workshop also showed a need to identify qualified salvage and marine firefighting resource providers. In the absence of national and/or

international certification or qualification programs for determining the adequacy of private salvage and marine firefighting resources, planholders will be responsible for determining the adequacy of these resources on their own. The 1994 Marine Board Report, on page 35, made recommendations as to the minimum attributes that a salvor should possess in order to be considered a professional. These attributes and others have been compiled into a comprehensive list that the Coast Guard feels planholders need to consider when choosing resource providers.

In proposed § 155.4050, we recommend that a planholder choose resource providers who meet the following criteria:

- (1) Are currently performing the needed response service(s).
- (2) Have a documented history of participation in successful salvage and/or marine firefighting operations, including salvage and/or marine firefighting equipment deployment.
- (3) Own or have contracts for equipment needed to perform response services.
- (4) Have personnel with documented training certification and degree experience (Naval Architecture, Fire Science, etc.).
- (5) Have 24-hour availability of personnel and equipment, and a history of response times compatible with the time requirements in this rulemaking.
- (6) Have an on-going continuous training program, and meet the training guidelines in NFPA 1001, 1021, 1405, and 1561, or equivalent.
- (7) Have a successful record of participation in drills and exercises.
- (8) Have sample salvage or marine firefighting plans used and approved during real incidents.
- (9) Have membership in relevant national and/or international organizations.
- (10) Have insurance that covers the salvage and/or marine firefighting services which they intend to provide.
- (11) Have sufficient up front capital to support an operation.
- (12) Have equipment and experience to work in the specific regional geographic environment(s) that the vessel operates in (e.g., bottom type, water turbidity, water depth, currents, temperature extremes, etc.).
- (13) Have the logistical and transportation support capability required to sustain operations for extended periods of time.

A resource provider need not meet all of the selection criteria in order to be considered, in fact some criteria will not apply to all resource providers.

Planholders would be required to certify that these factors were considered when choosing a resource provider. This includes determining that some of the selection criteria do not apply.

Planholders who are unable to obtain a salvage and/or marine firefighting resource provider(s) that can meet the specified response times may submit a request for a temporary waiver. The details of the waiver process and the waiver time limits are listed in proposed § 155.4055. The waiver request must specifically identify the salvage or marine firefighting service, response time, COTP zone, and operating environment (e.g., inland, nearshore, offshore, OCONUS). The waiver request must first be submitted to the cognizant COTP. The COTP will evaluate and comment on the waiver request, and then forward the waiver request, via the District and Area Commanders, on to Commandant (G-MOR). Commandant (G-MOR) shall make the final determination on approving the waiver. The emergency lightering requirements that are detailed in this rulemaking are not subject to waiver. Planholders are already required to comply with these requirements, as in 33 CFR 155.1050(l).

During the development of the regulation, the Coast Guard decided that group V petroleum products would not be covered under this rulemaking. This decision was based on the differences in response procedures for dealing with group V petroleum cargoes and the relative differences in cargo volumes transported. For group V petroleum products, the existing planning requirements in 33 CFR 155.1052(f) will remain the same. In other words, these proposed regulations will not apply to group V petroleum products. The suspension in 33 CFR 155.1052(f) will be cancelled once these proposed salvage and marine firefighting requirements become final.

#### Incorporation by Reference

Material proposed for incorporation by reference appears in §§ 155.4035 and 155.4050. 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.

#### Regulatory Evaluation and Unfunded Mandates Reform Act Assessment

##### *Unfunded Mandates Reform Act Assessment*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually.

The legal authority for this proposed rulemaking is provided by the Oil Pollution Act of 1990 (OPA 90). Response plans are required by the Federal Water Pollution Control Act 33 USC 1321(j)(5) as amended by Section 4202(a) of OPA 90.

The proposed rule will not result in expenditures by State, local, or tribal governments because public vessels are exempt from the requirements of this rulemaking. This rule is expected to cost the private sector more than \$100 million in the first year the rule is in effect as salvage and firefighting companies invest in capital equipment. The Regulatory Evaluation below provides an overview of the rulemaking and the costs and benefits of this rulemaking. A more detailed discussion of costs and benefits can be found in the Regulatory Assessment for the proposed rule, which is available in the docket as indicated under **ADDRESSES**. The Regulatory Assessment also presents alternatives to the proposed rule, which are contained in the Initial Regulatory Flexibility Act Analysis.

##### *Regulatory Evaluation*

This proposed rule is a “significant regulatory action” under section 3(f) of Executive Order 12866 and has been

reviewed by the Office of Management and Budget. Section 6(a)(3) of Executive Order 12866 states that an assessment of potential costs and benefits must be conducted. This evaluation is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A more detailed draft Regulatory Assessment is available in the docket as indicated under **ADDRESSES**.

##### *Summary of Cost*

This rule is economically significant because the costs for the first year the rule is in effect exceed \$100 million. Costs are presented in 2001 dollars, and the analysis covers the period 2001–2030. These costs are considered accurate for 2002. Detail of these costs is described below.

The total net present value (NPV) cost for the period 2001–2030 is \$491.7 million (7 percent discount rate, 2001 dollars). Of this, \$127.9 million (\$111.7 million NPV) is for the initial acquisition of salvage and firefighting equipment in 2003, when the proposed rule will become effective. An estimated \$28.4 million (\$24.8 million NPV) is for initial paperwork requirements in 2003 for salvage and firefighting companies, vessel planholders, and companies that prepare response plans for planholders. This rule is estimated to cost \$30.9 million annually (undiscounted) for operations, maintenance, and paperwork costs. This cost will first be incurred in 2004 and will be incurred through the assessment period (until 2030). Capital equipment initially acquired in 2003 will be replaced at various times throughout the assessment period.

We believe that the capital and annual costs incurred by salvage and firefighting companies will be, to the extent possible, passed on to vessel planholders through retainer fees or increased costs for services provided.

A summary of the estimated cost for the proposed rule is presented in Table 1.

TABLE 1.—TOTAL NET PRESENT VALUE COST OF THE PROPOSED RULE

[2001 \$Millions, 7 Percent Discount Rate, Assessment Period 2001–2030]

Affected Entity	Equipment	Personnel	Paperwork	Total
Salvage Companies .....	\$349.8	\$38.7	\$0.6	\$389.1
Firefighting Companies .....	21.3	39.9	16.6	77.8
Planholders/Plan Preparers .....	0	0	24.4	24.4
Coast Guard .....	0	0	0.4	0.4
<b>Total .....</b>	<b>371.1</b>	<b>78.6</b>	<b>42.0</b>	<b>491.7</b>

Equipment and personnel costs were developed using information from representatives of the salvage and marine firefighting industry, other experts, and the Coast Guard. Paperwork costs were based on previous regulatory analysis of paperwork requirements for the original vessel response plan rulemaking for salvage and marine firefighting and the hazardous substance response plan rulemakings.

#### *Summary of Benefit*

Benefit of the proposed rule is expressed in barrels of oil not spilled. We assessed the benefit of the proposed rule using a modeling tool developed for the Oil Pollution Act of 1990 Programmatic Regulatory Assessment (OPA 90 PRA). The PRA assessed the costs and benefits of 11 “core group” rules enacted under OPA 90. These included such rules as double hulls, financial responsibility, and the original vessel response plan rulemakings. The PRA assessed the overlapping effects (and therefore benefits) of these 11 major rulemakings and avoided the double counting of barrels of oil not spilled. A copy of the OPA 90 PRA can be found in the docket for this proposed rulemaking.

The benefit analysis for the proposed rulemaking used the PRA modeling tool and adjusted estimates of effectiveness specific to this proposed rulemaking. Effectiveness factors (i.e., the quantified effect of the proposed rule) were developed through an expert panel. We assume benefits will be accrued beginning in 2004 after equipment has been purchased and response plans have been developed. The number of barrels of oil not spilled over the assessment period (2001–2030) as a result of this rulemaking is 87,282 NPV (7 percent discount rate), or approximately 87,300 NPV barrels.

The cost effectiveness of the rule is the NPV cost of the rule (in dollars) divided by the NPV of the oil not spilled (in barrels) as a result of the rule. The cost effectiveness of the proposed salvage and firefighting rulemaking is \$5,634 (\$491.7 million/87,282 barrels), or approximately \$5,600/barrel. This means it costs society \$5,600 to keep each barrel of oil from being spilled into the water.

#### **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 fewer than 50,000.

From our analysis, the Coast Guard concluded that the requirements for salvage and marine firefighting might have a significant impact on a substantial number of small entities. There are an estimated 710 vessel companies that will be affected by the proposed rule. Of these, an estimated 191 of them are small businesses. We estimate that the proposed rule will have a no more than 10-percent affect on annual revenues for 90 percent of these 191 small businesses. Under the proposed rulemaking, some businesses may be eligible for a limited time waiver of the salvage and marine firefighting requirements. This waiver may help offset the financial impacts of the proposed rulemaking on affected small businesses.

A complete Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under **ADDRESSES**. This analysis also presents alternatives to the proposed rule that the Coast Guard considered.

#### **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 rule would effect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Douglas Lincoln at 202–267–0448.

#### **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, record keeping, 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 proposed rule affects an existing OMB approved collection of information.

*Title:* Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Response Equipment Requirements for Prince William Sound.  
*OMB Number:* 2115–0595.

*Summary of the Collection of Information:* Vessels carrying oil in bulk as cargo, and operating in U.S. waters are required by section 4202(a)(6) of the Oil Pollution Act of 1990, and amended section 311(j) of the Federal Water Pollution Control Act to prepare and submit a written response plan for a worst case discharge of oil. The information in these plans contain:

- Names and contact information for salvage and marine firefighting responders for each vessel with appropriate equipment and resources located in each zone in which the vessel operates.
- Specific lists of equipment that the resource providers will make available in case of an incident in each zone.

- Certification that the responders are qualified and have given their permission to be included in the plan.

The collection of information period is 2003–2005 (3 years). We use this period rather than 2001–2003 because collection of information requirements under this rulemaking are anticipated to begin in 2003.

*Need for Information:* The collection of information is necessary to ensure that salvage and marine firefighting resources appropriate for each vessel and type of cargo are available if an incident occurs to prevent or mitigate the discharge of oil into the environment.

*Proposed Use of Information:* The information in the salvage and marine firefighting sections of vessel response plans is necessary to show evidence that vessel planholders have done proper planning to prevent or mitigate oil outflow from vessel casualties, and to provide that information to the Coast Guard for their use in emergency response.

*Description of the Respondents:* Respondents are vessel owners and operators, known as planholders. Planholders also include small entities, such as tank barge companies, and tank ship or mixed fleet companies. Respondents are also the companies that may prepare response plans for planholders. Finally, respondents are the salvage and firefighting companies that will provide the equipment requirements under the proposed rule.

*Number of Respondents:* The proposed rule affects 710 of the 5,127

respondents who are planholders and plan preparers to the collection of information. The proposed rule also affects 50 salvage and firefighting companies. In the first year the rule is in effect (estimated in 2003), there will be  $710 + 50 = 760$  respondents. In the 2nd and 3rd years of the 3-year collection of information period (2004–2005), there will be 710 respondents (planholders/plan preparers only).

**Frequency of Response:** The proposed rule accounts for 710 of the 5,207 total annual responses for the collection of information. In addition, there are 50 responses from salvage and firefighting companies. In the first year the rule is in effect (estimated in 2003), there will be  $710 + 50 = 760$  responses (one response for each respondent). In the 2nd and 3rd years of the 3-year collection of information period (2004–2005), there will be 710 responses (one for each planholder/plan preparer).

**Burden of Response:** The primary burden of response consists of:

- Initial preparation of the vessel response plan.
- Consultation and negotiation between salvage and firefighting companies and planholders/plan preparers.
- Submission of the plan to the Coast Guard for approval.
- Submission of revisions or modifications to a response plan as material changes occurs for the vessel to prepare.
- Resubmission of the vessel response plan to the Coast Guard.

The plans are to be resubmitted every 5 years, and the paperwork burden for the resubmission is expected to be the same as for the annual review.

**Estimate of Total Annual Burden:** The total estimated burden for planholders and plan preparers to comply with the proposed rulemaking is 100,520 hours for the first year (2003), and 17,750 hours for each subsequent year (2004–2005). Total estimated burden for salvage and firefighting companies is 196,840 hours for the first year and 0 hours for each subsequent year. The total burden for the first year the rule is in effect is 297,360 hours. The total burden for subsequent years is 17,750. The total burden of the proposed rule during the 3-year period of the collection of information (2003–2005) is 297,360 hours.

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 dates under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

#### Federalism

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

This regulation covers vessel response plans for salvage and marine firefighting resources, aimed at reducing cargo loss should a marine casualty occur. As discussed in the Background and Purpose section above, the Coast Guard has consulted with state agencies, such as California's OSPR, to ensure these proposed regulations will not interfere with or preempt state regulations on the same subject. We will continue to do so, until a Final Rule is published.

#### Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 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.

#### 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 does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Consultation and Coordination With Indian Tribal Governments

This proposed rule will not have tribal implications; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period we will undertake appropriate consultations With the affected Indian tribal officials.

#### 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 this might be classified as a "significant energy action" under that order because it is a "significant regulatory action" under Executive Order 12866 and might have a significant adverse effect on the supply, distribution, or use of energy. The Coast Guard is establishing a waiver provision for this proposed rule, and we do not anticipate adverse energy consequences during that time. After this waiver period, we do not expect a national impact on energy supply, distribution or use. We cannot rule out however, effects on local markets. We would appreciate comments discussing any likely significant adverse effects on the supply, distribution, or use of energy. Submit these comments to one of the locations listed under **ADDRESSES**. We will analyze all comments and, if necessary, prepare a full Statement of Energy Effects with the Final Rule for this project.

## Environment

The Coast Guard considered the environmental impact of vessel response plans as a whole during an April 1992, Environmental Assessment (EA), and a November 1992 Supplemental Statement, and concluded that a Finding of No Significant Impact (FONSI) was appropriate. The 1992 EA and FONSI are sufficiently broad in scope to cover these new requirements. Therefore, we have determined that it is not necessary to complete another EA solely for these salvage and marine firefighting revisions. The 1992 EA and FONSI are available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 155 as follows:

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

1. The authority citation for part 155 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46, 1.46(iii).

Sections 155.110–155.130, 155.110–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

**Note:** Additional requirements for vessels carrying oil or hazardous materials appears in 46 CFR parts 30 through 36, 150, 151, and 153.

2. Add a note following § 155.130 to read as follows:

### § 155.130 Exemptions.

\* \* \* \* \*

**Note to § 155.130:** Additional exemptions/temporary waivers related to salvage and marine firefighting requirements can be found in § 155.4055.

3. Amend § 155.140 by adding alphabetically to paragraph (b):

### § 155.140 Incorporation by reference.

\* \* \* \* \*

(b) \* \* \*

National Fire Protection Association (NFPA)  
Batterymarch Park, Quincy, MA 02269–9101  
NFPA 1001, Standard for Fire Fighter  
Professional Qualifications, 1997  
Edition—155.4050

NFPA 1021, Standard for Fire Officer  
Professional Qualifications, 1999  
Edition—155.4050

NFPA 1405, Guide for Land-based Fire  
Fighters who Respond to Marine Vessel  
Fires, 1996 Edition 155.4035; 155.4050

NFPA 1561, Standard on Fire Department  
Incident Management System, 2000  
Edition 155.4050

\* \* \* \* \*

4. In § 155.1020, revise the definition of “Oil Spill Removal Organization” to read as follows:

### § 155.1020 Definitions.

\* \* \* \* \*

*Oil spill removal organization (OSRO)* means an entity that provides oil spill response resources.

\* \* \* \* \*

5. Amend § 155.1050 by revising paragraph (k) to read as follows:

### § 155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.

\* \* \* \* \*

(k) *Salvage* (including lightering) and *marine firefighting* requirements are found in subpart I of this part.

\* \* \* \* \*

6. Add subpart I, consisting of § 155.4010 through § 155.4055, to read as follows:

## Subpart I—Salvage and Marine Firefighting

Sec.

155.4010 What is the purpose of this subpart?

155.4015 Who must follow this subpart?

155.4020 When must my plan comply with this subpart?

155.4025 Definitions.

155.4030 What salvage and marine firefighting services are required to be listed in my plans?

155.4035 What pre-incident information and arrangements are needed for the salvage and marine firefighting resource providers in my plans?

155.4040 What are the response times for each salvage and marine firefighting service?

155.4045 What agreements or contracts must I have with the salvage and marine firefighting resource providers?

155.4050 How can I ensure that the salvors and marine firefighters are adequate?

155.4055 What if I am unable to obtain a salvage or marine firefighting resource provider that can meet one or more of the specified response times?

### § 155.4010 What is the purpose of this subpart?

The purpose of this subpart is to establish vessel response plan *salvage* and *marine firefighting* requirements for vessels that are required by § 155.1015 to have a response plan. *Salvage* and

*marine firefighting* actions can save lives, property, and prevent the escalation of potential oil spills to worst case events.

### § 155.4015 Who must follow this subpart?

You must follow this subpart if your vessel meets the vessel response plan applicability requirements of § 155.1015.

### § 155.4020 When must my plan comply with this subpart?

(a) If you have an existing approved vessel response plan, you must have your plan updated and submitted to the Coast Guard by [Date Six Months After Publication of a Final Regulation].

(b) All new or existing vessels entering United States that meet the applicability requirements of § 155.1015, that do not have an approved vessel response plan, must comply with § 155.1065.

(c) Your vessel may not conduct oil operations if—(1) You have not submitted a plan to the Coast Guard in accordance with § 155.1065 prior to [Date Six Months After Publication of a Final Regulation];

(2) The Coast Guard determines that the response resources referenced in your plan do not meet the requirements of this subpart;

(3) The contracts or agreements cited in your plan have lapsed or are otherwise no longer valid;

(4) You are not operating in accordance with your plan; or

(5) The plan's approval has expired.

### § 155.4025 Definitions.

*Assessment of structural stability* means completion of a vessel's stability and structural integrity assessment through the use of a salvage software program. The data used for the calculations would include information collected by the on-scene salvage professional. The assessment is intended to allow sound decisions to be made for subsequent salvage efforts.

*Continental United States (CONUS)* means the contiguous 48 states and the District of Columbia.

*Contract or other approved means* is any one of the following:

(1) A written contractual agreement between a vessel owner or operator and a resource provider. This agreement must expressly provide that the resource provider is capable of, and intends to commit to, meeting the plan requirements.

(2) A written certification that the personnel, equipment, and capabilities required by this subpart are available and under your direct control.

(3) An alternative approved by the Coast Guard (Commandant (G-MOR)).



As part of the contract or other approved means you must develop and sign, with your resource provider, a written funding agreement. This funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. The funding agreement must include a statement of how long the agreement remains in effect, and must be available to the Coast Guard for inspection.

*Diving services support* means divers and their equipment to support salvage operations. This support may include, but not be limited to, underwater repairs, welding, placing lifting slings, or performing damage assessments.

*Emergency lightering* is the process of transferring oil between two ships or other floating or land-based receptacles in an emergency situation and may require pumping equipment, transfer hoses, fenders, portable barges, shore based portable tanks, or other equipment that circumstances may dictate.

*Emergency towing*, also referred to as rescue towing, means the use of towing vessels that can pull, push or make-up alongside a vessel. This is to ensure that a vessel can be stabilized, controlled or removed from a grounded position. Towing vessels must have the proper horsepower or bollard pull compatible with the size and tonnage of the vessel to be towed.

*External emergency transfer operations* means the use of external pumping equipment placed onboard a vessel to move oil from one tank to another, when the vessel's own transfer equipment is not working.

*External firefighting teams* means trained firefighting personnel, aside from the crew, with the capability of boarding and combating a fire on a vessel.

*External vessel firefighting systems* mean firefighting resources (personnel and equipment) that are capable of combating a fire from other than onboard the vessel. These resources include, but are not limited to, fire tugs, portable fire pumps, airplanes, helicopters, or shore side fire trucks.

*Funding agreement* is a written agreement between a resource provider and a planholder that identifies agreed upon rates for specific equipment and services to be made available by the resource provider under the agreement. The funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. This agreement must be part of the contract or other approved means, however, it does not need to be part of your plan.

*Great Lakes* means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

*Heavy lift* means the use of a salvage crane, A-frames, hydraulic jacks, winches, or other equipment for lifting, righting, or stabilizing a vessel.

*Inland area* means the area shoreward of the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) as defined in §§ 80.740 through 80.850 of this chapter. The inland area does not include the Great Lakes.

*Making temporary repairs* means action to temporarily repair a vessel to enable it to safely move to a shipyard or other location for permanent repairs. These services include, but are not limited to, shoring, patching, drill stopping, or structural reinforcement.

*Marine firefighting* means any firefighting related act undertaken to assist a vessel in potential or actual fire danger, to prevent loss of life, damage or destruction of the vessel, or damage to the marine environment.

*Nearshore area* means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, a nearshore area is one extending seaward 12 miles from the line of demarcation (COLREG lines) as defined in §§ 80.740 through 80.850 of this chapter.

*Offshore area* means the area up to 38 nautical miles seaward of the outer boundary of the nearshore area.

*On-site fire assessment* means that a marine firefighting professional is on scene, at a safe distance from the vessel or on the vessel, that can determine the steps needed to control and extinguish a marine fire, taking into consideration a vessel's stability and structural integrity.

*On-site salvage assessment* means that a salvage professional is on scene, at a safe distance from the vessel or on the vessel, that has the ability to assess the vessel's stability and structural integrity. The data collected during this assessment will be used in the salvage software calculations and to determine necessary steps to save the vessel.

*Other refloating methods* means those techniques for refloating a vessel aside from using pumps. These services include, but are not limited to, the use of pontoons, air bags or compressed air.

*Outside Continental United States (OCONUS)* means Alaska, Hawaii, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of

the Northern Marianas, and any other territory or possession of the United States.

*Remote assessment and consultation* means contacting the salvage and/or marine firefighting resource providers by phone or other communications to discuss and assess the situation.

*Resource provider* means an entity that provides personnel, equipment, supplies, and other capabilities necessary to perform salvage and/or marine firefighting services identified in the response plan. For marine firefighting services, resource providers can include public firefighting resources as long as they are able and willing to provide the services needed.

*Salvage* means any act undertaken to assist a vessel in potential or actual danger, to prevent loss of life, damage or destruction of the vessel and release of its contents into the marine environment.

*Salvage plan* means a plan developed to guide salvage operations except those identified as specialized salvage operations.

*Special salvage operations plan* means a salvage plan developed to carry out a specialized salvage operation, including heavy lift and/or subsurface product removal.

*Subsurface product removal* means the safe removal of oil from a vessel that has sunk or is partially submerged underwater. These actions can include pumping or other means to transfer the oil to a storage device.

*Underwater vessel and bottom survey* means having salvage resources on scene that can perform examination and analysis of the vessel's hull and equipment below the water surface. These resources also include the ability to determine the bottom configuration and type for the body of water. This service can be accomplished through the use of equipment such as sonar, magnetometers, remotely operated vehicles or divers. When divers are used to perform these services, the time requirements for this service apply and not those of diving services support.

#### **§ 155.4030 What salvage and marine firefighting services are required to be listed in my plans?**

(a) You must identify in your plan the *salvage and marine firefighting services* listed in Table 155.4030(b)—Salvage and Marine Firefighting Services. Additionally, you must list those *resource providers* that you have contracted to provide these services. You may list multiple *resource providers* for each service, but you must identify which one is your primary *resource provider* for each Captain of



the Port (COTP) zone in which you operate. A method of contact, consistent with the requirements in §§ 155.1035(e)(6)(ii) and 155.1040(e)(5)(ii), must also be listed adjacent to the name of the resource provider.

(b) TABLE 155.4030(b).—SALVAGE AND MARINE FIREFIGHTING SERVICES

Service		Location of incident response activity timeframe		
(1) Salvage		CONUS: near-shore area; inland waters; Great Lakes; and OCONUS: < or = 12 miles from COTP city (hours)	CONUS: offshore area; and OCONUS: < or = 50 miles from COTP city (hours)	
(i) <i>Assessment &amp; Survey:</i>				
(A) Remote assessment and consultation .....		1	1	
(B) Begin assessment of structural stability .....		3	3	
(C) On-site salvage assessment .....		6	12	
(D) Assessment of structural stability .....		12	18	
(E) Hull and bottom survey .....		12	18	
(ii) <i>Stabilization:</i>				
(A) Emergency towing .....		12	18	
(B) Salvage plan .....		16	22	
(C) External emergency transfer operations .....		18	24	
(D) Emergency lightering .....		18	24	
(E) Other refloating methods .....		18	24	
(F) Making temporary repairs .....		18	24	
(G) Diving services support .....		18	24	
(iii) <i>Specialized Salvage Operations:</i>				
(A) Special salvage operations plan .....		18	24	
(B) Heavy lift .....		72	84	
(C) Subsurface product removal .....		72	84	
(2) Marine firefighting		At pier (hours)	CONUS: Near-shore area; inland waters; great lakes; and OCONUS: < or = 12 miles from COTP city (hours)	CONUS: Offshore area; and OCONUS: < or = 50 miles from COTP city (hours)
(i) <i>Assessment &amp; Planning:</i>				
(A) Remote assessment and consultation .....		1	1	1
(B) On-site fire assessment .....		2	6	12
(ii) <i>Fire Suppression:</i>				
(A) External firefighting teams .....		4	8	12
(B) External vessel firefighting systems .....		4	12	18

(c) *Integration into the response organization.* You must ensure that all salvage and marine firefighting resource providers are integrated into the response organizations listed in your plans. The response organization must be consistent with the requirements set forth in §§ 155.1030(d), 155.1040(d), and 155.1045(d).

(d) *Coordination with other response resource providers, response organizations and OSROs.* Your plan must include provisions on how the salvage and marine firefighting resource providers will coordinate with other response resources, response organizations, and OSROs. For example, you will need to identify how salvage and marine firefighting assessment personnel will coordinate response activity with oil spill removal

organizations. For services that, by law, require public assistance, there must be clear guidelines on how service providers will interact with those organizations.

(e) *Ensuring the proper emergency towing vessels are listed in your plans.* Your plans must identify towing vessels with the proper characteristics, horsepower, and bollard pull to tow your vessel(s). These towing vessels must be capable of operating in environments where the winds are up to 40 knots.

(f) *Ensuring the proper type and amount of transfer equipment is listed in your plans.* Your salvage resource provider must be able to bring on scene a pumping capability that can offload the vessel's largest cargo tank in 24 hours of continuous operation. This is

required for both emergency transfer and lightering operations.

(g) *Ensuring firefighting equipment is compatible with your vessel.* Your plan must list the proper type and amount of extinguishing agent needed to combat a fire involving your vessel's cargo, other contents, and superstructure. If your primary extinguishing agent is foam or water, you must identify resources in your plan that are able to pump, at a minimum, 0.16 gallons per minute per square foot of the deck area of your vessel, or an appropriate rate for spaces that this rate is not suitable for and if needed, an adequate source of foam.

(h) *Ensuring the proper subsurface product removal.* You must have subsurface product removal capability if your vessel(s) operates in waters of 40 feet or more. Your resource provider

must have the capability of removing cargo and fuel from your sunken vessel to a depth equal to the maximum your vessel operates in up to 150 feet.

(i) *Worker health and safety.* Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing *salvage and marine firefighting* services.

**§ 155.4035 What pre-incident information and arrangements are needed for the salvage and marine firefighting resource providers in my plans?**

(a) You must provide the information listed in §§ 155.1035(c), 155.1040(c), and 155.1045(c) to your *salvage and marine firefighting* resource providers.

(b) *Marine firefighting pre-fire plan.*

(1) You must prepare a vessel pre-fire plan in accordance with the National Fire Protection Association (NFPA) Standard 1405, Guide for Land-based Firefighters who Respond to Marine Vessel Fires, Chapter 7. If you meet this requirement through compliance with another regulation or international

standard, you need only to indicate this in your plan.

(2) The *marine firefighting resource provider(s)* you are required to identify in your plan must be given a copy of the plan. Additionally, they must certify in writing to you that they find the plan acceptable and agree to implement it to mitigate a potential or actual fire.

**§ 155.4040 What are the response times for each salvage and marine firefighting service?**

(a) You must ensure, by *contract or other approved means*, that your *resource provider(s)* is capable of providing the services within the required time frames.

(1) If your vessel is at the pier or transiting a COTP zone within the Continental United States (CONUS), the time frames in Table 155.4030(b) apply as listed.

(2) If your vessel is at the pier or transiting a COTP zone outside the Continental United States (OCNUS), the time frames in Table 155.4030(b) apply as follows:

(i) Inland waters and nearshore area time frames apply from the COTP city out to and including the 12 mile point.

(ii) Offshore area time frames apply from 12 to 50 miles outside the COTP city.

(3) If your vessel transits within an OCONUS COTP zone that is outside the areas described in paragraph (a)(2) of this section, but within the inland waters or the nearshore or offshore area, you must submit in writing, in your plan, the steps you will take to address *salvage and marine firefighting* needs in the event these services are required.

(b) The time frame starts when anyone in your response organization receives notification of a potential or actual incident. It ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 or 50-mile point from the COTP city, or a point identified in your response plan for areas OCONUS. Table 155.4040(c) provides additional amplifying information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city.

(c) Table 155.4040(c)—Response Time End Points (CONUS & Within 50 Miles of An OCONUS COTP City)

Service	Response time ends when
(1) Salvage:	
(i) Remote assessment and consultation .....	Salvor is in voice contact with QI/Master/Operator.
(ii) Begin assessment of structural stability .....	A structural assessment of the vessel has been initiated.
(iii) On-site salvage assessment .....	Salvor onboard vessel.
(iv) Assessment of structural stability .....	Initial analysis is completed. This is a continual process, but at the time specified an analysis needs to be completed.
(v) Hull and bottom survey .....	Survey completed.
(vi) Emergency towing .....	Towing vessel on scene.
(vii) Salvage plan .....	Plan completed and submitted to Incident Commander/Unified Command.
(viii) External emergency transfer operations .....	External pumps onboard vessel.
(ix) Emergency lightering .....	Lightering equipment on scene and alongside.
(x) Other refloating methods .....	Salvage plan approved & resources on vessel.
(xi) Making temporary repairs .....	Repair equipment onboard vessel.
(xii) Diving services support .....	Required support equipment & personnel on scene.
(xiii) Special salvage operations plan .....	Plan completed and submitted to Incident Commander/Unified Command.
(xiv) Heavy lift .....	Resources on scene.
(xv) Subsurface product removal .....	Resources on scene.
(2) Marine Firefighting:	
(i) Remote assessment and consultation .....	Firefighter in voice contact with QI/Master/Operator.
(ii) On-site fire assessment .....	Firefighter representative on site.
(iii) External firefighting teams .....	Team and equipment on scene.
(iv) External vessel firefighting systems .....	Personnel and equipment on scene.

(d) *How to apply the time frames to your particular situation.* To apply the time frames to your vessel's situation, follow these procedures:

(1) Identify if your vessel operates CONUS or OCONUS.

(2) If your vessel is calling at any CONUS pier or an OCONUS pier within 50 miles of a COTP city, you must list the pier location by facility name or city and ensure that the firefighting *resource*

*provider* can reach the location within the specified response times in the table in § 155.4030(b).

(3) If your vessel is transiting within CONUS inland waters, nearshore or offshore areas or the Great Lakes, you must ensure the listed *salvage and marine firefighting* services are capable of reaching your vessel within the appropriate response times listed in the table in § 155.4030(b).

(4) If your vessel is transiting within 12 miles or less from an OCONUS COTP city, you must ensure the listed *salvage and marine firefighting* services are capable of reaching a point 12 miles from the harbor of the COTP city within the nearshore area response times listed in the table in § 155.4030(b).

(5) If your vessel is transiting between 12 and 50 miles from an OCONUS COTP city, you must ensure the listed

*salvage* and *marine firefighting* services are capable of reaching a point 50 miles from the harbor of the COTP city within the offshore area response times listed in the table in § 155.4030(b).

(6) If your vessel transits inland waters or the nearshore or offshore areas OCONUS, but is more than 50 miles from a COTP city, you must still contract for *salvage* and *marine firefighting* services and provide a description of how you intend to respond and an estimated response time when these services are required, however, none of the time limits listed in the table in § 155.4030(b) will apply to these services.

**§ 155.4045 What arrangements or contracts must I have with the salvage and marine firefighting resource providers?**

(a) You may only list resource providers in your plan that have been arranged by *contract or other approved means*.

(b) You must obtain written consent from the *resource provider* stating that they agree to be listed in your plan. This consent must state that the *resource provider* agrees to provide the services that are listed in §§ 155.4030(a) through 155.4030(g), and that these services are capable of arriving within the response times listed in the table in § 155.4030(b). This consent may be included in the contract with the *resource provider* or in a separate document.

(c) This written consent must be available to the Coast Guard for inspection. The response plan must identify the location of this written consent, which must be—

- (1) On board the vessel; or
- (2) With a planholder representative located in the United States.

(d) Public marine firefighters may only be listed out to the maximum extent of the public resource's jurisdiction, unless other agreements are in place. A public marine firefighting resource may agree to respond beyond their jurisdictional limits, but the Coast Guard considers it unreasonable to expect public marine firefighting resources to do this.

**§ 155.4050 How can I ensure that the salvors and marine firefighters are adequate?**

(a) You are responsible for determining the adequacy of the *resource providers* you intend to include in your plan.

(b) When determining adequacy of the resource provider, you must consider as

a minimum the following selection criteria:

(1) *Resource provider* is currently working in response service needed.

(2) *Resource provider* has documented history of participation in successful *salvage* and/or *marine firefighting* operations, including equipment deployment.

(3) *Resource provider* owns or has contracts for equipment needed to perform response services.

(4) *Resource provider* has personnel with documented training certification and degree experience (Naval Architecture, Fire Science, etc.).

(5) *Resource provider* has 24-hour availability of personnel and equipment, and history of response times compatible with the time requirements in the regulation.

(6) *Resource provider* has on-going continuous training program. For *marine firefighting* providers, they must meet the training guidelines in NFPA Standards 1001, 1021, 1405, and 1561, or show equivalent training, or qualification through experience.

(7) *Resource provider* has successful record of participation in drills and exercises.

(8) *Resource provider* has *salvage* or *marine firefighting* plans used and approved during real incidents.

(9) *Resource provider* has membership in relevant national and/or international organizations.

(10) *Resource provider* has insurance that covers the *salvage* and/or *marine firefighting* services which they intend to provided.

(11) *Resource provider* has sufficient up front capital to support an operation.

(12) *Resource provider* has equipment and experience to work in the specific regional geographic environment(s) that the vessel operates in (e.g., bottom type, water turbidity, water depth, and temperature extremes).

(13) *Resource provider* has the logistical and transportation support capability required to sustain operations for extended periods of time.

(c) A *resource provider* need not meet all of the selection criteria in order for you to choose them as a provider.

(d) You must certify in your plan that these factors were considered when you chose your *resource provider*.

**§ 155.4055 What if I am unable to obtain a salvage and/or marine firefighting resource provider that can meet one or more of the specified response times?**

(a) You may submit a request for a temporary waiver of a specific response

time requirement, if you are unable to identify a resource provider who can meet the response time.

(b) Your request must be specific as to the COTP zone, operating environment, *salvage* or *marine firefighting* service, and response time.

(c) Emergency lightering requirements set forth in § 155.4030(b) will not be subject to the waiver provisions of this subpart.

(d) You must submit your request to the Commandant (G-MOR) via the local COTP for final approval. The local COTP will evaluate and comment on the waiver before forwarding the waiver request, via the District and Area Commanders, to the Commandant (G-MOR) for final approval.

(e) Your request must include the reason why you are unable to meet the time requirements. It must also include how you intend to correct the shortfall, the time it will take to do so, and what arrangements have been made to provide the required response resources and their estimated response times.

(f) The Commandant will only approve waiver requests up to a specified time period, depending on the service addressed in the waiver request, the operating environment, and other relevant factors. These time periods are listed in the table in § 155.4055(g).

(g) Table 155.4055(g)—Service Waiver Time Periods.

Service	Maximum waiver time period (years)
(1) Remote salvage assessment & consultation .....	0
(2) Remote firefighting assessment & consultation .....	0
(3) On-site salvage & firefighting assessment .....	1
(4) Hull and bottom survey .....	2
(5) Salvage stabilization services .....	3
(6) Fire suppression services ...	4
(7) Specialized salvage operations .....	5

(h) You must submit your waiver request 30 days prior to any plan submission deadlines identified in this or any other subpart of part 155 in order for your vessel to continue oil operations.

Dated: May 1, 2002.

James M. Loy,

Admiral, U.S. Coast Guard, Commandant.

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