

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 155**

[Docket No. USCG–1998–3417]

RIN 1625–AA19 (Formerly RIN 2115–AF60)

Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the vessel response plan salvage and marine firefighting requirements for tank vessels carrying oil. These revisions clarify the salvage and marine firefighting services that must be identified in vessel response plans and set new response time requirements for each of the required salvage and marine firefighting services. The changes ensure that the appropriate salvage and marine firefighting resources are identified and available for responding to incidents up to and including the worst case discharge scenario.

DATES: This final rule is effective January 30, 2009, except for the amendment to § 155.1050, which is effective February 12, 2009. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on January 30, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1998–3417 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–1998–3417 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, or for questions regarding the Vessel Response Plan Program, contact Lieutenant Commander Ryan Allain at 202–372–1226 or Ryan.D.Allain@uscg.mil. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program

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I. Abbreviations

Abbreviations	Explanation
ACP	Area Contingency Plan.
ANSI	American National Standards Institute.
ASTM	American Society for Testing and Materials.
BOA	Basic Ordering Agreement.
CONUS	Continental United States.
COTP	Captain of the Port.
EA	Environmental Assessment.
FONSI	Finding of No Significant Impact.

Abbreviations	Explanation
FOSC	Federal On-Scene Coordinator.
FWPCA	Federal Water Pollution Control Act.
ICS	Incident Command System.
IMO	International Maritime Organization.
LOI	Letter of Intent.
MARAD	Maritime Administration.
MFSA	Maritime Fire and Safety Association.
NARA	National Archives and Records Administration.
NEPA	National Environmental Policy Act.
NFPA	National Fire Protection Association.
NIMS	National Incident Management System.
NPRM	Notice of Proposed Rulemaking.
NPV	Net Present Value.
NTTAA	National Technology Transfer and Advancement Act.
NVIC	Navigation and Vessel Inspection Circular.
OCIMF	Oil Companies International Marine Forum.
OCONUS	Outside the Continental United States.
OPA 90	Oil Pollution Act of 1990.
OSHA	Occupational Safety and Health Administration.
OSRO	Oil Spill Removal Organization.
P&I	Protection and Indemnity.
PRA	Programmatic Regulatory Assessment.
QI	Qualified Individual.
SERT	Salvage Engineering Response Team.
SOLAS	International Convention for the Safety of Life at Sea, 1974.
STCW	International Convention on Standards of Training, Certification and Watchkeeping, 1978.
UCS	Unified Command System.
VRP	Vessel Response Plan.
VTS	Vessel Traffic Service.

II. Regulatory History

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 part 155.

The 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, found at 33 CFR 155.1050(k), 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 for 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 where indicated under **ADDRESSES**.

Based on comments received during the workshop, the Coast Guard determined that it should better define the key elements within the requirements. Regulatory language such as "a salvage company with expertise and equipment" or "firefighting capability" needed to be further specified before the Coast Guard could expect vessel owners or operators to comply with any related time requirements. Therefore, the Coast Guard determined that it should suspend the 24-hour response time requirement that stated: "identified salvage and firefighting resources must be capable of being deployed to the port nearest to the area in which the vessel operates within 24 hours of notification" for plans that are submitted (or resubmitted) for approval after that time. (33 CFR 155.1050(k))

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) so that the Coast Guard could address issues identified at the public workshop through a rulemaking that would revise the existing salvage and marine firefighting requirements.

On January 17, 2001, a second notice of suspension was published in the **Federal Register** suspending the 24-hour requirement scheduled to become effective on February 12, 2001, until February 12, 2004 (63 FR 7069) because the potential impact on small businesses from this new rulemaking required the preparation of an initial regulatory flexibility analysis under the Small Business Regulatory Enforcement Fairness Act of 1996. This was not determined until a draft regulatory assessment was completed in November 2000.

On May 10, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled *Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil* [USCG-1998-3417] in the **Federal Register** (67 FR 31868). The 90-day comment period was to close on August 8, 2002. We received 104 letters commenting on the

proposed rule. The majority of these letters contained multiple comments.

During the comment period, we held four public meetings. On June 12, 2002, a notice of public meetings was published in the **Federal Register** (67 FR 40254) announcing the dates and location for the first three public meetings:

- Texas City, TX, on July 9, 2002;
- Philadelphia, PA, on July 17, 2002;
- Seattle, WA, on July 25, 2002.

On August 7, 2002, a notice was published in the **Federal Register** (67 FR 51159) announcing the extension of the comment period until October 18, 2002, and the date and location for a 4th public meeting:

- Louisville, KY, on September 26, 2002.

On January 23, 2004, a third notice of suspension was published in the **Federal Register**, continuing the 24-hour requirement suspension until February 12, 2007 (69 FR 3236) because during the preceding three years, the Coast Guard had to redirect the majority of its regulatory resources to issue security-related regulations as required by the Maritime Transportation Security Act of 2002. As a result, we were unable to complete our review of the comments we received in response to the May 10, 2002 NPRM. Once NPRM comment review was done, we found that numerous public comments addressed environmental issues and we agreed that these comments had merit. As a result, a new Programmatic Environmental Assessment (PEA) was drafted, solely for these salvage and marine firefighting revisions, to address these comments.

On January 3, 2006, a notice was published in the **Federal Register** (71 FR 125) requesting comment on a draft PEA.

On February 9, 2007, a fourth notice of suspension was published in the **Federal Register** (72 FR 6168) continuing the 24-hour requirement suspension until February 12, 2009, to permit the Coast Guard to complete its work on the regulatory and environmental assessments.

III. Background and Purpose

Requirements for salvage and marine firefighting resources in vessel response plans (VRPs) for vessels carrying group I-IV oils have been in place since February 5, 1993 (58 FR 7376). The existing requirements found at 33 CFR 155.1050 are general and only require that a planholder identify salvage and marine firefighting resources. Additionally, they require that these resources are capable of being deployed to the port nearest the area in which the

vessel operates within 24 hours of notification by the planholder of an oil spill. The Coast Guard did not originally develop specific requirements because salvage and marine firefighting response resource requirements were considered unique for 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 expected 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 that was seen in the early 1990s.

Early in 1997, it became apparent that the expected salvage and marine firefighting capability development was not occurring. 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 be deployed to the port nearest the vessel's operating area within 24 hours, even though the maritime industry had several years to develop these resources. Thus, this salvage and marine firefighting rulemaking was initiated.

IV. Summary of Changes From NPRM

Each change made between the NPRM and the final rule is summarized and described below. The vast majority of changes were made in response to public comment and are discussed in more detail in the "Discussion of Comments and Changes" section of this preamble.

- We revised the *incorporation by reference* section (§ 155.140) by referencing the most recently available NFPA Standard or Guide for each of the four NFPA documents listed in the NPRM. Additionally, based on public comment, we added a fifth NFPA Standard (1005) to the list of documents incorporated by reference.

- We revised the *Purpose of this subpart* section (§ 155.4010) to address public comment by adding a new paragraph (b) to clarify that the response criteria specified in the regulations are planning criteria, not performance standards, and are based on assumptions that may not exist during an actual incident, as stated in 33 CFR 155.1010.

- We revised the *Who must follow this subpart?* section (§ 155.4015) to read "You must follow this subpart if your vessel carries group I-IV oils, and

is required by § 155.1015 to have a vessel response plan.” to address public comment requests for clarity.

- We revised the *When must my plan comply with this subpart?* section (§ 155.4020) to address public comment requests to change the compliance date from 6 months to 18 months after publication of the final rule.

- We revised the *definitions* section (§ 155.4025) to address public comment by adding additional language to eight definitions: “Assessment of structural stability”; “Contract or other approved means”; “Funding agreements”; “Marine firefighting”; “On-site fire assessment”; “On-site salvage assessment”; “Remote assessment and consultation”; and “Resource provider”. Additionally, we added four new definitions for “Boundary lines”; “Captain of the Port (COTP) city”; “Marine firefighting pre-fire plan”; and “Primary resource provider”.

- We revised the *required pre-incident information and arrangements for the salvage and marine firefighting resource providers listed in response plans* section (§ 155.4035) by deleting the referenced cite § 155.1045(c) from the text in § 155.4035(a). Section 155.1045 applies to “Response plan requirements for vessels carrying oil as a secondary cargo” and does not require a salvage and marine firefighting component.

- We changed the *section titles* (§ 155.4010 to § 155.4055) from the question format to a declarative statement format.

- We revised the *Specialized Salvage Operations* response timeframe requirement (Table 155.4030(b)(1)(iii)(C)) for “heavy lift” service from 72/84 hours to a response time of “estimated.” Based on public comment, we determined that heavy lift services are not required to have definite hours for a response time. The planholder must still contract for heavy lift services, provide a description of the heavy lift response and an estimated response time when these services are required; however, none of the timeframes listed in the table in § 155.4030(b) will apply to these services.

- We corrected the *Integration into the response organization* paragraph (§ 155.4030(c)) by listing the appropriate cross reference cites §§ 155.1035(d), 155.1040(d) and 155.1045(d).

- We revised the *Coordination with other response resource providers, response organizations and OSROs* paragraph (§ 155.4030(d)) by adding text requiring that the information contained in the response plan must be consistent with applicable Area Contingency Plans

(ACPs) and the National Oil and Hazardous Substances Pollution Contingency Plan as found in § 155.1030(h).

- We revised the *Ensuring firefighting equipment is compatible with your vessel* paragraph (§ 155.4030(g)) to address public comment by adding text requiring a 20-minute minimum time criteria for the extinguishing agent.

- We added a new *Other resource provider considerations* section (§ 155.4032) to address public comment that includes language in paragraph (a) regarding the use of service providers not listed in the plan.

- We moved the *Worker health and safety* section (old § 155.4030(i)) to § 155.4032(b) and added reference cites.

- We revised the *Required pre-incident information and arrangements for the salvage and marine firefighting resource providers listed in response plans* section (§ 155.4035) to address public comment by adding text to paragraph (b)(1) indicating that if the planholder’s vessel pre-fire plan is one that meets international standards, a copy of that specific fire plan must also be given to the resource provider. Additionally, we added a new paragraph (b)(3) regarding who must receive copies of the planholder’s vessel pre-fire plan.

- We revised the *Response Time End Points* requirements (Table 155.4040(c)) to address public comment for “heavy lift” service from “resources on scene” to “estimated,” to align with the response timeframe requirement in Table 155.4030(b)(1)(iii)(C).

- We revised the *Ensuring that the salvage and marine firefighters are adequate* section (§ 155.4050) to address public comment by revising introductory language in paragraph (b) to emphasize the importance of the selection criteria, amending paragraph (b)(6) with updated NFPA Guide/Standards, revised paragraph (b)(13) to include “in arduous sea states and conditions” to ensure that all expected weather conditions are addressed when selecting a resource provider for contract, adding paragraph (b)(14) on worker health and safety, and adding paragraph (b)(15) regarding a resource provider having familiarity with the marine firefighting and salvage operations contained in the local Area Contingency Plans for each COTP area for which they are being contracted.

- We added a *Drills and exercises* section (§ 155.4052) to highlight that Salvage and Marine firefighting components are part of the existing exercise requirements for vessels holding VRPs, as found in §§ 155.1060 and 155.1065.

V. Discussion of Comments and Changes

A. Introduction

We received 104 letters commenting on the proposed rule. The majority of these letters contained multiple comments. During the comment period, we held four public meetings—

- Texas City, TX, on July 9, 2002;
- Philadelphia, PA, on July 17, 2002;
- Seattle, WA, on July 25, 2002; and
- Louisville, KY, on September 26, 2002.

The following is a summary of the comments received, both by letter and at the public meetings, and the changes made to the regulatory text since the NPRM was published. The items that address a general issue are grouped first, then by those that relate to a specific topic or provision in the regulatory text.

B. General

In support of the proposed rule, seven comments were received that generally supported the rulemaking. One commenter stated that both salvage and firefighting responses are significantly improved by timely reaction at the very early stages of an emergency. Three commenters pointed out that some ports have limited capability to conduct marine firefighting, and that the increase in capability these regulations would bring is especially important in the current port security climate due to possible acts of terrorism. One commenter stated that the current U.S. salvage structure, if not given the support of a regulatory framework, such as these regulations, will fail in the long term. One commenter stated the rule will reduce confusion by helping ship owners understand what salvage services are truly required to be listed in their vessel response plans (VRPs).

In opposition to the proposed rule, we also received several comments that disagreed generally. Twelve commenters stated that this rulemaking amounted to bad public policy. The Coast Guard disagrees and maintains that the regulation provides an appropriate level of needed salvage and marine firefighting capability to mitigate or reduce pollution in the marine environment.

One commenter asked the Coast Guard to make substantial revisions to any proposed salvage and firefighting requirements it may impose. The Coast Guard acknowledges this request, but as the comment included no specific changes the commenter would find acceptable, the Coast Guard did not make changes in response to this comment. Where changes have been

made based on other comments, they are explained throughout this preamble.

One commenter stated that there is no reason to tie vessel salvage to pollution response. The Coast Guard disagrees in part. This rulemaking is based on steps that are necessary to mitigate the release of oil into the marine environment, thus avoiding the need for pollution response. One way to reduce the need for pollution response is to ensure proper salvage procedures can be followed by ensuring (through contract) that service providers will be place in the wake of a marine casualty. In other words, this is a proactive rulemaking.

One commenter expressed the deep concern of the tank vessel industry over the direction the Coast Guard took in the NPRM, and urged the Coast Guard to give this issue special attention and ensure that the final result meets the tests of value-added, cost-effective, and common-sense rulemaking. The Coast Guard developed the NPRM and this final rule after considering numerous statutes and executive orders related to rulemaking. At the time of the NPRM, the Coast Guard did consider common-sense rulemaking practice and assessed the cost-effectiveness of the requirements using reasonable interpretation of available industry and spill data. We have also provided a similar assessment for the final rule. Assessments for the NPRM and this final rule are available in the docket as indicated under **ADDRESSES**.

Ten commenters suggest that the Coast Guard and the tank vessel industry get together and discuss the proposed rule in order to come up with livable alternatives. The Coast Guard agrees with the intent of this comment. After publication of the NPRM, the Coast Guard held four public meetings, and accepted public comments to ensure that all parties had the opportunity to comment on the NPRM. We considered all comments received, and this final rule is a result of that effort.

One commenter stated that while the Coast Guard can meet with whomever it wants, the very carefully worded description of the meeting in the proposed rule sounded very much like the meetings should have been open to the public. The commenter added that the "Purpose" section lacks any indication that the Coast Guard actively sought out the views of owners and operators, noting that additional consultation with the affected planholders prior to publication of the NPRM would have produced a sounder proposal and, most likely, a shorter regulatory process. The Coast Guard disagrees, and points to the August 5,

1997, public workshop that was held to formulate the basis for the NPRM. That workshop was structured to identify major issues concerning salvage and marine firefighting in the VRP context. To accomplish this, the 35 workshop attendees, invited from a cross section of the affected industries, were asked to list their top three issues concerning marine salvage and firefighting on an informal workshop survey form. A Coast Guard officer and a maritime law attorney, representing the Maritime Association of the Ports of New York and New Jersey, facilitated the workshop. The Coast Guard announced this workshop in the **Federal Register** on June 24, 1997, and invited all interested parties, including planholders, to participate. In addition, four public meetings were held after issuance of the NPRM, and a lengthy public comment period was used to ensure all interested parties had a chance to contribute to the process of issuing a final rule.

One commenter considered it inaccurate for the Coast Guard to describe the workshop (referenced above) as reflecting a "uniform" industry request to the Coast Guard to promulgate detailed performance, instead of planning, standards governing salvage operations. The Coast Guard disagrees that the workshop addressed performance standards; it did not. We were unable to locate the point in the NPRM where the Coast Guard made a statement such as that suggested by the comment. The response criteria specified in the regulations (e.g., quantities of response resources and their arrival times) are planning criteria, not performance standards, and are based on assumptions that may not exist during an actual incident, as stated in 33 CFR 155.1010. Failure to meet specified criteria during an actual spill response does not necessarily mean that the planning requirements of the Federal Water Pollution Control Act (FWPCA), OPA 90 and regulations were not met. The Coast Guard will exercise its enforcement discretion in light of all facts and circumstances. Nothing in this rulemaking introduces performance standards.

One commenter stated that any discussion of government action designed to create additional salvage and marine firefighting capacity in the United States must include some analysis of the factors that affect the current capabilities of salvors. The Coast Guard agrees in part. In addition to including salvage representatives in the public workshop and asking salvage industry leaders to complete workshop surveys regarding their capabilities, we

had in-depth discussions with salvage and marine firefighting industry leaders over various periods regarding the current salvage and marine firefighting capabilities and what would be the anticipated increase in salvage re-capitalization once the final rule was issued. This rule is intended to increase resource providers' capabilities to the level necessary to handle emergency incidents prior to deterioration into worst case discharge scenarios; it will also increase the response capabilities necessary to keep ports and waterways open in a worst case discharge scenario, which might include a national security incident. The current capabilities, and factors that have or have not produced those capabilities, were sufficiently studied.

One commenter strongly urged the Coast Guard to use the tools that it has created and employ its superior understanding of the maritime system to make informed, well-reasoned, and risk-based decisions in the context of this rule. We thank the commenter, and have determined that the extensive groundwork done in conceiving and drafting this regulation has led to a fair, beneficial, and effective regulation.

Two commenters suggested a "placing the right people in the right place at the right time" approach instead of a new regulation. They noted this will allow plans to develop quickly and allow ship owners to take advantage of the best available assets as quickly as possible. The Coast Guard disagrees. This type of approach has had the opportunity to develop without new regulations ever since the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380, 33 U.S.C. 2701 *et seq.*; 104 Stat. 484) was enacted. However, based upon resource providers' past performance from 1990 to 2002, it is unlikely that such an approach has been, or would be successful. Therefore, this regulation is necessary to ensure resources are available when needed. However, this regulation allows for deviations from the VRP if required and approved by the Federal On-Scene Coordinator (FOSC).

C. Twenty-Four-Hour Response Time

One commenter stated that the Coast Guard should permanently revoke the 24-hour response time currently provided for in 33 CFR 155.1050(k)(3), which has been suspended since February 12, 1998. Five commenters stated that the 24-hour response times are wholly unacceptable and inadequate for marine firefighting. The Coast Guard agrees with the commenters and we removed the 24-hour response time requirement in this final rule.

One commenter asked the Coast Guard to withdraw this proposed rule and permanently revoke the 24-hour response time currently provided for in 33 CFR 155.1050(k)(3), which is under temporary suspension. The Coast Guard disagrees; such an action would remove all planning standards for salvage and firefighting from the regulation. The planning standard timeframes included in this final rule were determined to be realistic standards for planholders and resource providers to use in developing their contractual arrangements, and the timeframes will ensure a proper response will be available to avoid a worst case discharge scenario.

One commenter stated that they understood the Coast Guard was concerned about a lack of specificity in the suspended 33 CFR 155.1050(k)(3), which requires 24-hour response times for an emergency incident. However, the commenter argued that the NPRM's identification of the expertise a planholder should be prepared to have on scene largely resolves that issue. The commenter added that, with the exception of heavy lift and sub-surface product removal, the salvage capabilities could fall within the 24-hour requirement. The Coast Guard disagrees. The required timeframes for salvage are reasonable and necessary to ensure any incident emergency resource provider is contracted for and able to arrive on scene at the earliest possible opportunity. These timeframe requirements will improve the chances that the vessel crew, planholders, and resource providers will keep an incident from deteriorating into a worst case discharge over the initial 24 hours.

D. Need for the Regulation

Six commenters stated that the existing regulations satisfy the need for salvage and firefighting resources. They stated there is no casualty evidence to indicate that the present regulations fail to satisfy the need for timely salvage and/or firefighting resources, and that these regulations are unjustified and demonstrably unfair to the entire tanker industry serving the United States. One commenter stated that they felt that the Coast Guard's regulatory assessment, as written in the NPRM, will only have a five-percent impact over current performance measures. The Coast Guard disagrees. The requirements within this regulation are reasonable and valid for ensuring the identification and availability of response capabilities for responding to incidents up to and including a worst case scenario as required by OPA 90. The amount of oil spilled in past years, while an important factor in developing these regulations,

was not the overriding reason for this rulemaking. Rather, consistent with OPA 90, the overriding reason for this rulemaking is to define the salvage and marine firefighting capability that is necessary in the VRP (Table 155.4030(b)), establish how quickly these resources must be on-scene, and determine what constitutes adequate salvage and marine firefighting resources as found in § 155.4050.

Two commenters stated that there were no obvious instances where the timeliness or lack of salvage or firefighting capabilities reduced the effectiveness or the outcome of an oil spill response, and they recommended delaying action on the rule until they have had an opportunity to assess whether tank vessel casualty history warrants a change in the current tank vessel salvage and marine firefighting requirements. The Coast Guard understands the issues raised by these commenters, but this regulation is written to ensure response capabilities are identified and available for responding to incidents up to and including a worst case discharge scenario as specifically required in OPA 90:

Section 4202 * * * (5) TANK VESSEL AND FACILITY RESPONSE PLANS., (A) The President shall issue regulations which require an owner or operator of a tank vessel or facility described in subparagraph (B) to prepare and submit to the President 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. [See 33 U.S.C. 1321(j)(5)]

In essence, while the number of incidents and amount of oil spilled into the water has decreased over the years since OPA 90 was enacted, the law still requires identifying and employing prevention methods for a worst case discharge scenario.

One commenter stated that if one takes the National Research Council's 1994 Marine Board Report, "A Reassessment of the Marine Salvage Posture of the United States" in its entirety, it provides ample evidence for not implementing this rule. The Coast Guard disagrees. The information presented in the report could be used to both support and counter arguments for this regulation. The Coast Guard considers the requirements in this regulation reasonable and valid for ensuring response capabilities are identified and available to respond to incidents up to and including a worst case discharge scenario, as required by OPA 90. While this report was taken into consideration, numerous other sources including workshops, research,

public meetings, and consultations with various representatives of industry were used to formulate this rulemaking.

One commenter stated that the Marine Board's Committee on Marine Salvage Issues (cited above), particularly its assessment of the salvage industry, appears to have been a principal motivating factor behind the NPRM. Two commenters stated that the Marine Board Report was heavily relied on by the drafters of this rule. The Coast Guard disagrees. As stated above, this report was taken into consideration, as were numerous other sources, including workshops, research, public meetings, and consultations with various representatives of industry were used to formulate this rulemaking.

Three commenters expressed concern that the Coast Guard is forging ahead without having gathered and thoroughly assessed all available relevant data. They also stated that either we missed some very crucial data, or our assumptions are seriously flawed. The Coast Guard disagrees. The data used to develop this regulation has come from extensive research, studies, a public workshop, review of published works, and numerous reference materials including National Fire Protection Association (NFPA) documents and salvage and marine firefighting case histories. In total, the Coast Guard has been studying this salvage and marine firefighting issue since 1992, long before the issuance of the NPRM. Since the NPRM was published, we have held four additional public meetings that were very well attended by members representing all sides of the issues under discussion. After the public comment period closed, we received and reviewed over 1,000 comments on the NPRM. This regulation meets the needs of the public and maritime industry.

One commenter stated that the present salvage capacities accurately reflect the need and scope of those services and a rule intended to sustain salvage capacity at a level above or different than that justified by casualty data and economics is costly and ill conceived. The Coast Guard disagrees. Section 4202(a) of OPA 90 and amended § 311(j) of the FWPCA (33 U.S.C. 1251–1376) outline the requirement to prepare and submit a written response plan for a worst case discharge scenario of oil, and this regulation was designed to satisfy those requirements. While this regulation might have the effect of sustaining or raising the level of salvage and marine firefighting resources in place, it was not written for, or intended to, have that effect beyond the statutory requirements.

One commenter noted that the Coast Guard has acknowledged that crew actions and salvage response efforts have resulted in substantial prevention of oil spillage, even in the most severe accidents. Another commenter stated that the highly prescriptive approach in the NPRM contradicts the tank vessel industry's improved incident record. The Coast Guard agrees that oil-spill volume has decreased significantly since the implementation of oil-spill regulations and innovative measures taken by the tank vessel industry to reduce spills. However, this regulation was written to fulfill OPA 90 requirements of adequate salvage and marine firefighting response capabilities for up to and including worst case discharge scenario incidents, including a discharge resulting from fire or explosion; it was not written in response to the amount of oil spilled in U.S. waters since 1990.

Two commenters stated that OPA 90 did not grant the Coast Guard authority in this area, and requested that the Coast Guard carefully review the Act and specify where the authority to promulgate the proposed revision is located. The commenters stated that the Coast Guard should not promulgate these regulations if it is lacking authority to take such action. The Coast Guard strongly disagrees that we have no authority to promulgate these regulations. The Coast Guard was delegated authority pursuant to Executive Order 11735, as outlined in the authorities section of the regulation. Executive Order 11735 states:

The Secretary of the Department in which the Coast Guard is operating is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following: * * *

(2) the authority of the President under subsection (j)(1)(C) of section 311 of the act, relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and transportation-related onshore and offshore facilities, and to contain such discharges.

In addition, the requirements of § 4202(a) of OPA 90 and amended § 311(j) of FWPCA, outline the requirement to prepare and submit a written response plan for a worst case discharge of oil. *See* 33 U.S.C. 1321(j)(5). Part of such a worst case discharge scenario would include firefighting and salvage operations; therefore it is necessary, under the law, that the VRPs include these elements.

E. Applicability

One commenter stated that careful consideration should be given to bareboat-charter operators, because such owners should not have to pay for the negligence of individuals renting vessels under those types of agreements. The Coast Guard disagrees. Part 155 of 33 CFR requires that the "owner or operator" prepare and submit a VRP to the Coast Guard. The matter of who submits the VRP is a contractual agreement to be determined by the owner or operator—he or she is free to include preparation of this VRP as part of the terms of the bareboat charter. Additionally, in § 155.1020, the definition for "contract or other approved means" states, in part, that it is: "a written contractual agreement between a vessel owner or operator and an oil spill removal organization" and also defines "operator" as a:

Person who is an owner, a demise charterer, or other contractor, who conducts the operation of, or who is responsible for the operation of a vessel.

It is not the Coast Guard's intent to dictate the exact contractual arrangement to meet the intent of this regulation, only to ensure the requirement is met to enhance safety.

One commenter stated that the applicability of 33 CFR 155.1015 should remain exactly as written, because the exemptions written into the subpart were done as part of a lengthy and open period of public discussion, and that any changes would circumvent the normal public discussion process. The Coast Guard agrees and has not revised the tank vessel response plan applicability section of § 155.1015.

One commenter stated that vessels, such as shale barges and liquid-mud barges, should not be part of the current proposed rulemaking. The Coast Guard agrees as these vessels, while required to have VRPs under the applicability regulations found in 33 CFR 155.1015 and 155.1045 as vessels carrying oil as a secondary cargo, are exempted by § 155.1045 to list a salvage and marine firefighting resource provider in the VRP.

Two commenters urged the Coast Guard to coordinate with the Canadian Coast Guard on this rulemaking. The Coast Guard agrees. There are, and will be, continuing efforts of coordination and cooperation between the U.S. and Canada on maritime issues of interest to both countries, and the vessel traffic service (VTS) agreement in the Juan de Fuca region will remain in place. Any vessels, regardless of their country of origin, are subject to this rulemaking

when they fall under the applicability as found in 33 CFR 155.1015(a).

We received 65 comments criticizing the fact that this regulation was written to apply only to oil-carrying vessels. At the time this NPRM was issued, the Coast Guard did not have legislative authority to require VRPs for nontank vessels. In the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293), Congress gave us the authority to do so by stating:

The President shall also issue regulations which require an owner or operator of a nontank vessel to prepare and submit to the President 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. (Section 701 of Pub. L. 108–293).

Since then, we have issued NVIC #01–05, Change One, "Interim Guidance for the Development and Review of Response Plans for Nontank Vessels." This circular provides guidance to owners and operators of nontank vessels for preparing and submitting VRPs for responding to a discharge or threat of a discharge of oil from their vessels. A nontank vessel is defined as a self-propelled vessel of 400 gross tons or greater, other than a tank vessel, which carries oil of any kind as fuel for main propulsion and is a vessel of the United States or operates on the navigable waters of the United States. For more information, the applicable Coast Guard Navigation and Inspection Circular (NVIC) #01–05, Change One, "Interim Guidance for the Development and Review of Response Plans for Nontank Vessels" is available on the World Wide Web at <http://www.uscg.mil/hq/g-m/nvic/>.

F. Incorporation by Reference

One commenter stated that the standard found in the International Convention for the Safety of Life at Sea treaty (SOLAS), 1974, Chapter II–2, Regulation 16, should be required for § 155.4030(g). The Coast Guard disagrees. SOLAS chapter II–2, regulation 16 (2000 Amendments) addresses "Fire Safety Operational Booklets" and procedures for cargo tank purging. In the "Fire Safety Booklet," section 16.2, there is no mention of types and amounts of extinguishing agents needed on board the vessel. The SOLAS regulation doesn't include extinguishing agent requirements essential to adequate planning for marine firefighting, therefore § 155.4030(g) remains unchanged in this final rule.

Three commenters stated that application rates for foam should at least be consistent with NFPA 11 and

11A or other recognized standards. The Coast Guard disagrees. Section 155.4030(g) was written to meet the quantity of foam requirements in the existing 46 CFR 34.20–5 and Coast Guard NVIC #6–72, “Guide to Fixed Fire-Fighting Equipment Aboard Merchant Vessels”. These requirements are for the vessel’s internal firefighting systems and external resource requirements should be compatible with the existing system capacities required on the vessels.

One commenter stated that the requirement to develop the fire plan in accordance with the NFPA standard is not practical and offers little benefit. They suggested that all vessels (SOLAS as well as non-SOLAS) be required to carry a SOLAS fire plan. The Coast Guard disagrees. Another commenter stated that if a vessel meets the guidelines of NFPA 1405 for a pre-fire plan by means of another document, such as a SOLAS fire plan, a requirement to attach it to the VRP is needed. The Coast Guard agrees that the NFPA pre-fire plan standards align with the SOLAS fire plan requirements to a degree that meets the intent of these regulations. We added wording to allow SOLAS vessels to use their SOLAS fire plans in lieu of a fire plan developed under NFPA 1405 to § 155.4035(b)(1).

Three commenters stated that NFPA is currently working on a Professional Qualification Standard for Marine Firefighters that should be noted as incorporated by reference when published, as it would eliminate the need to rewrite the regulation when it is promulgated. The Coast Guard agrees that the new qualification standard, issued in July of 2007, will be beneficial under § 155.4050, and it has been incorporated by reference into this regulation.

Five commenters stated that NFPA 1405 is a guide for marine firefighting training and not a standard. The Coast Guard agrees and has amended the wording in §§ 155.4035(b)(1) and 155.4050(b)(6) to reflect this. However, incorporating NFPA 1405 into the regulation is still considered essential by the Coast Guard.

One commenter asked that the following NFPA documents be adopted in the proposed rulemaking: NFPA 1001 (Fire Fighter Professional Qualifications), NFPA 1021 (Fire Officer Professional Qualifications), NFPA 1405 (Land-Based Fire Fighters Who Respond to Marine Vessel Fires), and NFPA 1561 (Emergency Services Incident Management System). The Coast Guard agrees. Those materials, which were proposed for incorporation by reference in the NPRM, are retained in the final

rule, and the newly issued NFPA 1005 (Standard on Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters) has also been incorporated by reference in §§ 155.4035 or 155.4050.

In addition, more information on the Incident Management System may be found by going to the Coast Guard’s “Homeport” Web page, <http://homeport.uscg.mil/mycg/portal/ep/home.do>, and search for “NIMS/ICS”.

Three commenters stated that firefighting personnel protective equipment should meet NFPA 1971, 1972, 1973, 1974, 1976, 1981, or a recognized equivalent. While standards for protective equipment are important, it is beyond the scope of this regulation to require using specific equipment in response operations. Therefore, the suggested standards were not incorporated.

In addition to the changes stated above, the Coast Guard is amending § 155.140 by incorporating by reference the most recent edition of each relevant NFPA document. Since marine firefighting is a dangerous and complex activity, this revision will help ensure that the most current methods and practices are employed for planning and responding to a marine fire.

G. Compliance Dates

Three commenters stated that if the regulations are enacted, planholders will be hard-pressed to identify and qualify resource providers, negotiate with resource providers, get contracts in place, prepare the various plans, and submit the VRP to the Coast Guard. The commenters added that the Coast Guard does not have the resources to review the VRPs in a timely manner. They suggested that, if the NPRM is not withdrawn, the Coast Guard should modify the regulation so that VRP elements are submitted in stages. They further suggested that planholders be permitted to submit completed VRPs with named resource providers with a letter of commitment only, no contract, and without regard to response times. The Coast Guard agrees in part and has amended § 155.4020 to extend the deadline for submitting the VRP to 18 months after publication of this final rule. The Coast Guard does not agree with having the planholders submit VRPs in stages or without contracts with resource providers in place. We determined that 18 months is adequate to have these required contractual arrangements in place. Additionally, the Coast Guard has already begun to take the influx of VRPs into consideration for internal staffing needs.

Three commenters did not feel that requiring some plan holders to list multiple providers for their entire area of operations is unreasonable and a reason to delay these regulations. The Coast Guard agrees because planholders will have 18 months from the date of issuance of this final rule to comply, which is an adequate time period for planholders to list all of their resource providers.

H. Definitions

One commenter stated that the proposed definition of “contract or other approved means” is unnecessary, inappropriate, and extremely confusing to planholders, and that the salvage and firefighting requirements are a part of the tank VRP regulations. They feel the existing definition of “contract or other approved means” (found in 33 CFR 155.1020) has worked well and should be applied throughout the regulations. The Coast Guard disagrees. The definition found in 33 CFR 155.1020 is written specifically, and has numerous references to, oil spill removal organizations. The definition in § 155.4025, written specifically for the salvage and marine firefighting portion of part 155, is sufficient and we have not made any changes to it. As noted below, however, the definition in § 155.4025 does not substantially differ from § 155.1020.

Two commenters stated that the proposed § 155.4025 creates a definition of “contract or other approved means”, which is substantially different from the existing definition of this term in 33 CFR 155.1020. They noted that the creation of dual definitions and dual regulatory standards is bad rulemaking, particularly when the conflicting definitions are in the same set of regulations. They expressed a preference for the definition appearing in § 155.1020, stating that it has proven to be appropriate and effective. The Coast Guard agrees in part. While there are two separate definitions, the definition in § 155.4025 does not substantially differ from § 155.1020. Therefore, this definition suffices as written. We have, however, added text into the written definition to clarify that if the vessel owner or operator has personnel, equipment, and capabilities under their direct control, they need not contract for those items with a resource provider.

Ten commenters requested that we clearly define “COTP city”, as the current use in the regulation is confusing and may not be effective for determining requirements. The Coast Guard agrees and has added a definition of “COTP city” in § 155.4025.

One commenter stated that the definition of “emergency lightering” should be included in § 155.1020. The commenter also suggested greater use of cross-referencing. The commenter references a subpart that is not covered by this rulemaking. However, the Coast Guard will keep this suggestion under advisement should rewriting the applicable subparts in a future rulemaking become necessary.

One commenter stated that the definition of “emergency lightering” should not include portable barges or shore-based portable tanks. The Coast Guard disagrees. These methods of emergency lightering are two of many different techniques that may be used in an emergency lightering response. The definition includes the phrase “or other equipment that circumstances may dictate” to allow the planholder and resource provider to use the best methods for each particular incident.

Three commenters recommended rewording the definition for “external vessel firefighting systems,” while giving no suggestions on how it should be defined. The definition as written is sufficient; therefore, no revision has been made.

One commenter stated that in the definition of “external vessel firefighting system,” airplanes and helicopters should be deleted because they are not applicable to shipboard firefighting. The Coast Guard disagrees. We feel air assets can be integral to shipboard-firefighting operations in delivery of needed firefighting supplies and equipment. However, these regulations do not require them to be provided. That is a decision left to the planholder and resource provider to address. Therefore, we did not revise the definition.

One commenter stated that the definition of “funding agreement” is not necessary. The Coast Guard disagrees; the definition is necessary to ensure resources are available and dispatched in a timely manner. This agreement must be part of the contract or other approved means that ensures response resources will support the vessel’s VRP. While the funding agreement might not be part of the VRP, all such agreements that support a particular VRP must be reviewed by the USCG prior to approval.

One commenter suggested that the definition of “marine firefighting” be reworded to eliminate “actual” and “potential” from the text. The Coast Guard disagrees in part, recognizing that there might be scenarios where response to a potential fire (volatile oil spilled on deck but not yet ignited, for example) might differ from an actual fire event.

However, we have removed the word “danger” from the definition for clarity and to match the wording in § 155.4035(b)(2).

Two commenters stated that there needs to be a definition for “marine firefighting plan.” They recommended that the VRP be consistent with the National Incident Management System (NIMS)/Incident Command System (ICS) incident plan content and formats. The Coast Guard believes the commenters meant the marine firefighting pre-fire plan as required by § 155.4035(b) and agrees. We have added the definition of a marine firefighting pre-fire plan into § 155.4025. The Coast Guard does not agree, however, that the VRP needs to be consistent with the NIMS/ICS incident plan. We determined that the Unified Command has the responsibility of drafting the incident plan during the actual incident dependent on actual circumstances, not on pre-incident planning.

One commenter asked that the terms “marine firefighting team”, “marine firefighting provider”, and “marine firefighting training” be better defined. However, the commenter did not explain why or how or provide any suggestions. As a result, the Coast Guard has determined that the definitions and references in the text, as written, suffice for this rulemaking.

One commenter recommends deleting the “offshore area” definition from subpart I, § 155.4025, because it is already included in subpart D, § 155.1020. The Coast Guard disagrees because readers of subpart I will find this definition more conveniently in that subpart than in a preceding one.

One commenter stated that the definition for “on-site fire assessment” requires a marine firefighting professional to also consider the vessel stability and structural integrity, and since vessel stability and, in particular, structural integrity is a separate profession from firefighting, it is unreasonable to expect a professional firefighter to have much knowledge of these subjects. The Coast Guard agrees and has amended the text in § 155.4025 to:

Control and extinguish a marine fire in accordance with a vessel’s stability and structural integrity assessment if necessary.

One commenter stated that the definition for “other refloating methods” should be deleted or redefined, because most refloating efforts will be assisted by the tide and the specific time requirements listed in Table 155.4030(b) are not really applicable. The Coast Guard disagrees

and will retain the definition as written. The timeframe required in Table 155.4030(b) is for the salvage plan to be approved and for having the resources required for refloating on board, not a timeframe for the vessel to be refloated.

One commenter stated that § 155.4030(a) requires the identification of a “primary resource provider” for each Captain of the Port (COTP) zone in which the vessel operates, but that the term is not defined. The commenter recommended adding the word “primary” to the definition for “resource providers” or clearly defining the distinction between the “primary resource provider” and the “resource provider”. The Coast Guard agrees and has clarified this issue by adding a definition for “primary resource provider” to § 155.4025.

Three commenters stated that the definition for “remote assessment and consultation” needs to be more specific on who can be contacted, as the current definition could be construed to include administrative or support personnel that would be unable to make effective determinations on the appropriate course of action and initiation of a response plan. The Coast Guard agrees and has amended the definition in § 155.4025 to read:

The person contacted must be competent to consult on a determination of the appropriate course of action and initiation of a response plan.

One commenter pointed out that the definition of “resource providers” includes the phrase “as long as they are able and willing to provide the service needed” in the second sentence, and that it should be removed. The Coast Guard agrees in part and has amended the definition to refer to the limitations for public marine firefighters as listed in § 155.4045(d).

Seven commenters asked that the definition for “resource provider” be rewritten to include reference to the training and qualification criteria in § 155.4050. The Coast Guard agrees and has amended the definition.

One commenter considers the definition of “salvage” incorrect, because the National Academy of Science/Marine Board “Reassessment of the Marine Salvage Posture of the United States” (1994) defines salvage as:

a commercial effort [that] traditionally has focused on the saving of property ships and cargo.

The commenter suggested that perhaps the definition should be for “salvage services” instead of “salvage.” The Coast Guard disagrees. In the book “Modern Marine Salvage” by William I. Milwee (1996, Cornell Maritime Press,

Inc.), which is authoritative and widely accepted in the industry, salvage is defined as:

Saving property at risk at sea and reducing environmental damage, and that salvage is all the actions taken aboard and ashore to resolve a marine casualty and to save property at risk.

The definition as written reflects this and therefore no change has been made.

One commenter requested changing the existing definition of "salvage" in § 155.4025 to read:

To assist a vessel who has suffered damage or is in danger of suffering damage to prevent or reduce loss.

For the reasons described above, the Coast Guard disagrees and will leave the definition as written.

I. Response Times

1. General

There were four comments asking what triggers the activation of the response plan. The response plan is activated once the master of the vessel has determined that the resources and personnel available on board cannot meet the needs of an actual or potential incident. The response timeframes listed in Table 155.4030(b) start when anyone in the response organization receives notification as stated in § 155.4040(b).

One commenter stated that the generic response times in the "Table of salvage and marine firefighting services" are not always appropriate to local situations, such as those on the west coast, Alaska, and Hawaii. They recommended the Coast Guard evaluate the entire U.S. coastline, including Alaska and Hawaii, to determine whether the offshore areas, as required by this rulemaking, provide adequate coverage. The Coast Guard agrees in part. Table 155.4030(b) was developed to target COTP cities that cover the major high-traffic ports outside the continental U.S. (OCONUS). Our analysis for the proposed rule showed that it would be cost prohibitive to cover all offshore areas for the OCONUS locations. All continental U.S. (CONUS) coastlines are covered by this final rule and this rule does not impose any additional capital requirements on industry. Table 155.4030(b) shows the timeframe requirements for CONUS and OCONUS response activity both within 12 miles of a COTP city, and from 12 to 50 miles of a COTP city.

One commenter recommended different planning response times for high-volume ports and non-high-volume ports similar to the spill response planning standards. The Coast Guard

disagrees. This rulemaking was written to provide uniform response timeframes for all the shorelines and port cities of the U.S., emphasizing protection of vessels during underway transits where most salvage and/or marine firefighting incident response efforts would be needed. It differs from the abovementioned standards that were written to address the recovery of oil already released, which most often happens in or around port facilities during transfer operations at dockside in high-volume ports.

Two commenters questioned the justification for specifying whether particular equipment and expertise must be on scene in say, 12 hours, as opposed to 18 hours, given that every salvage operation is different depending on the circumstances of the casualty. The Coast Guard disagrees in part. We acknowledge that each incident will differ in circumstances, and that is why this rulemaking incorporates planning standards in lieu of performance standards. The timeframes were determined to be realistic standards for planholders and resource providers to meet when developing their contractual arrangements.

One commenter stated that the proposed regulations generally do a good job of identifying the services necessary, but there are significant sequencing and timing issues that compromise the proposed regulations to the point that compliance will be impossible. The Coast Guard disagrees because compliance with the planning standards as listed will be achievable, if not within the compliance date of this rulemaking, certainly within the waiver periods as outlined in § 155.4055(g).

One commenter stated that imposing strict response times will force a significant expansion of the resource base of dedicated professional salvors, and that as this resource base expands, it will not sit idle in warehouses or at dockside, but will enter the marketplace to compete for all available business to which it is suited. The Coast Guard neither agrees nor disagrees with this comment. We note, however, that what resource providers do with their resources when not responding to an incident is beyond the scope of this rulemaking.

2. Timeframe Too Short

Three commenters stated that the one-hour timeframe for remote assessment and consultation should be four hours. The Coast Guard disagrees. The criteria for remote assessment and consultation are that the salvor is in voice contact with the qualified individual, operator, or the master of the vessel. This

qualified individual should plan to make voice contact via cell phone or radio within the one-hour response timeframe.

One commenter stated that placing the proposed time constraint of 16 hours on the salvage team to produce a written salvage plan is not necessary and may be counterproductive. The commenter feels that this time constraint, combined with factors such as the time of day the incident occurs and travel time, could unnecessarily result in poor decisions made as a result of being rushed or having insufficient time to gather information. The Coast Guard disagrees, but also reiterates that the timeframes listed in Table 155.4030(b) are planning standards and not performance standards. We understand that the first submittal of a salvage plan to the Incident Commander might not be the final plan after all factors are considered and that, as in any incident response, circumstances will dictate the development and execution of daily incident action plans. It is entirely feasible that with proper pre-planning and consultation between all parties involved, a suitable salvage plan can be developed in the published times.

Two commenters stated that the attempt to control the on-site salvage assessment, as found in Table 155.4030(b), and succeeding portions of the salvage effort by placing set time limits on the initiation of the various stages may be counterproductive to the overall effort. The commenters also asserted that the accuracy and timeliness of the ongoing assessments of structural integrity and stability will not be aided by having a set time limit imposed. The Coast Guard disagrees. It is imperative that the planholder have contractual arrangements in place to ensure a minimum level of salvage expertise, above that of the master and crew, will be on board the stricken vessel in a minimum amount of time. We understand that after this first response by the contracted salvor, a more specialized area of expertise may be needed and, if so, the planholder can arrange for such specialized expertise. The burden of providing capable salvor expertise in the required timeframe is on both the planholder and the resource provider. It is both parties' responsibility to jointly plan for and anticipate likely scenarios in which the salvor's services would be needed.

Two commenters stated that the proposed six-hour response timeframe (for incidents up to 12 miles from the COTP city) and the 12-hour response timeframe (for incidents up to 50 miles from the COTP city) for on-site firefighting assessment and fire-

suppression services presumably would apply in situations where local fire personnel are not available and the firefighting representatives must travel from the service provider's headquarters to the vessel. Under these circumstances, the commenters believe the proposed timeframes for this to take place are not reasonable or likely achievable. The Coast Guard disagrees. The timeframes listed for on-site fire assessment are achievable either by using local fire personnel or by contracting with resource providers that can meet the planning criteria. Should there not be a resource provider that can meet the criteria in that specific geographical area, § 155.4055 provides for a temporary waiver request to allow time to address those shortfalls.

One commenter stated that in operating areas where firefighting tugs may not be available, the ability to meet the proposed timeframe for "External firefighting systems", as found in Table 155.4030(b), will be limited by the amount of foam that can be stockpiled and the availability of nearby air cargo facilities. The Coast Guard disagrees in part. We understand that meeting the requirements will take a concerted effort by planholders and resource providers to ensure an adequate supply of foam is on hand, but it can be achieved within the timeframes listed. Resource providers and planholders will have to take a proactive stance in regards to ensuring adequate amounts of marine-firefighting extinguishing agents are available and should consult with port partners to ensure that appropriate firefighting responses will occur.

Two commenters stated that the timeframes for remote assessment and consultation, assessment of structural stability, external emergency transfer operations, and completing a salvage plan ignore numerous other demands, and that applying arbitrary time limits to inherently variable situations does not achieve the goal of the rulemaking. The Coast Guard disagrees. We have written Table 155.4040(c) specifically to allow flexibility for these services. For example, Table 155.4040(c) lists the ending for response time assessment of structural stability when the "Initial analysis is complete." We understand and have taken into consideration that these services will be progressive. The specific response times are planning standards based on a set of assumptions made during the development of this regulation. We understand that these assumptions may not exist during an actual incident, but the use of these timeframes as planning standards is valid and will remain unchanged.

Two commenters stated that emergency lightering differs from an external transfer operation in that the cargo or bunkers are transferred to another vessel or to a land-based receiver (rather than to another location on the damaged vessel). The major component of offshore lightering, assuming that the portable pumps have arrived on scene, is the receiving vessel, and the use of that equipment must be guided by the approved salvage or lightering plan. The Coast Guard agrees in part, but as this comment was not specific in its opposition to the timeframe requirement the Coast Guard cannot respond further. However, we note that the requirement for emergency lightering, having the equipment on scene and alongside the stricken vessel (§ 155.4030(f)), is written such that it follows the requirement for a salvage plan by six hours specifically so that the emergency lightering can be accomplished in accordance with the salvage plan's direction.

Two commenters asserted that the assumption that re-floating methods such as pontoons or airbags could be assembled and delivered to the casualty in the proposed timeframe as found in Table 155.4030(b) is not reasonable as such an assumption makes no allowance for the planning and engineering effort that must accompany any prudent attempt to apply external buoyancy to a damaged vessel. The commenters argued that the capability to provide these types of services should be included in an assessment of a salvage service provider, but that having it mandated within a certain timeframe takes it out of the context of the salvage plan. The Coast Guard disagrees in part. The response time ends when the salvage plan is approved by the FOSC and the needed resources are on the vessel, not when an attempt is made to refloat the vessel. This allows for the discretion the commenter calls for when actually attempting to refloat the vessel.

Two commenters stated that there is no way of knowing prior to the incident what materials might be required to meet "Making temporary repairs" as found in Table 155.4030(b) and, therefore, it is not reasonable to impose a set timeframe for having the materials available. The capability to provide this service should be included in an assessment of a salvage service provider, but having it mandated within a certain timeframe takes it out of the context of the salvage plan. The Coast Guard disagrees in part. We determined that having repair equipment ready and deployed on board a vessel in an emergency incident is important enough to merit its own timeframe for response.

We recognize that it is not possible to foresee every single material or tool that might be needed to make a temporary repair. However, we determined that a reasonableness standard can be applied to this provision, and it is absolutely possible to determine the materials and tools that are most likely to be needed for planning purposes.

Two commenters stated the response for "Diving services support" as found in Table 155.4030(b) may be a progressive operation with the initial dive team arriving with necessary initial gear augmented by truckloads of additional equipment such as underwater welding, larger compressors, and decompression chambers; therefore, some unique constraints are placed on the travel methods for the dive team. The Coast Guard agrees that dive operations can be a lengthy process. However, the response time ends when required support equipment and personnel are on scene in accordance with Table 155.4040(c)(1)(xii), and not when the diving support services operations start, so we have not amended the response time.

One commenter stated that getting the Salvage Master on-site is the key to the commencement and/or completion of many of the other services. The commenter stated it is possible to begin the on-site assessment, at the furthest extent of their operating area, if there were eight hours instead of six. The commenter recommends the requirement for this service be extended to at least eight hours. The Coast Guard agrees that getting the person conducting the salvage assessment on board is critical, hence our six- or 12-hour timeframe, depending on whether the incident occurs within 12 miles or 50 miles offshore. Due to the company-specific nature of this comment we are not expanding the planning standard in this rulemaking. We acknowledge that some geographic areas will have a harder time meeting certain timeframes than others, and that in cases where it is actually or nearly impossible to meet the timeframes, we will consider waivers as allowed in Table 155.4055(g).

3. Timeframe Too Long

Two commenters stated that it is unacceptable to leave large sections of coastline along the western coast of Washington State and the Strait of Juan de Fuca exposed, asserting that they are not covered by requirements for timed responses, and that the Federal Government has a responsibility to protect the treaty rights of Puget Sound tribes in their usual and accustomed fishing areas. The Coast Guard

disagrees. Sections 155.4030(b) and 155.4040 describe the geographical limits of vessel transits that the response activity timeframes apply to using the same geographical area descriptions as the original VRP regulation, found in 33 CFR 155.1050(k). Additionally, 46 CFR 7.5(c) reads:

Except as otherwise described in this part, Boundary Lines are lines drawn following the general trend of the seaward, highwater shorelines and lines continuing the general trend of the seaward, highwater shorelines across entrances to small bays, inlets and rivers.

Therefore, all the coastal waters of the U.S. are covered under this rulemaking. Regarding specific response activity timeframes for the Strait of Juan De Fuca, it is unnecessary to change the timeframes for one area. Again, these timeframes are maximum planning standards and as such there will be resource providers that can bring resources to bear well within the published timeframes in the Strait of Juan de Fuca.

One commenter stated that the response times allotted for the emergency lightering resources in the NPRM are very generous and believes that more stringent response times for lightering resources would definitely be achievable. The Coast Guard disagrees; we feel the timeframe is appropriate for the need because these times must include the movement of both specialized equipment and the appropriate technical personnel. Therefore, the 18- and 24-hour timeframes for the resources to arrive on scene and alongside the vessel are suitable for this service.

One commenter stated that the time requirements in Table 155.4030(b)(1)(i)(E), specifically the line item calling for 12 hours for hull and bottom survey, are discouraging for two reasons: (1) A vessel on fire will need this analysis faster than 12 hours for effective firefighting response; and (2) the commenter has been providing the damage stability analysis within two hours for groundings, allisions, collisions, explosions, fires, and other structural failures. The Coast Guard agrees in part and understands the need for critical information to be available as soon as possible. The response activity timeframes are provided as a maximum planning limit. It is in the interest of the planholder to minimize response times for the salvage and firefighting requirements, and we anticipate the prudent planholder will work to ensure that they are minimized.

4. Planning or Performance Standards

One commenter stated that the description of services that the planholder must contract for in advance is excellent, but because each incident is different the planholder should be able to respond as appropriate instead of taking a "by-the-numbers" approach. The commenter was concerned that the Coast Guard will "grade" the response not on whether it was timely and appropriate, but by whether the planholder met the arbitrary timeframes proposed. The Coast Guard agrees that the response activity timeframes required by this subchapter should be used in developing the required VRPs. The specific response times are planning standards based on a set of assumptions made during the development of this regulation. These assumptions may not exist during an incident up to and including a worst case discharge scenario as required by OPA 90. Therefore, Table 155.4030(b) will be used as a planning standard and not a performance standard to ensure that the resources are capable of arriving at the vessel in the required response times when formulating the contract between the planholder and the resource providers.

Twenty-seven commenters asked the Coast Guard to continue emphasizing that the response-time criteria in the rule are a planning standard, not a performance standard. The Coast Guard agrees and has used § 155.1010 as a guideline in developing specific planning criteria. The response activity timeframes required by Table 155.4030(b) are intended for use in developing the required VRPs. The specific response times are planning standards based on a set of assumptions made during the development of this regulation. These assumptions may not exist during an incident up to and including a worst case discharge scenario as stated in OPA 90. Therefore, Table 155.4030(b) should be used as a planning standard and not a performance standard, to ensure that the resources are capable of reaching the vessel in the required response times, when formulating the contract between the planholder and the resource providers.

One commenter stated that the salvage and marine firefighting service response times are planning times in the same manner as oil spill removal organization (OSRO) equipment response times are planning times. The Coast Guard agrees. The planning criteria in this subpart are intended for use in response plan development and the identification of resources necessary

to respond to the worst case discharge scenarios. The development of a response plan prepares the vessel owner or operator and the vessel's crew to respond to an emergency incident. The specific criteria for response resources and their arrival times are not performance standards. They are planning criteria based on a set of assumptions that may not exist during an actual incident.

J. Use of Resource Providers During Actual Incident

Twelve commenters expressed concern that the emphasis on contracts may set a precedent that would prohibit a company from using the best service available at the time instead of the contracted service. The Coast Guard disagrees in part. The purpose of requiring contracts is to ensure a timely response for an incident. Planholders may list multiple-contracted resource providers and choose which resource provider is best in a particular situation. While this regulation cannot eliminate the possibility that there may be closer, non-contracted resources, it ensures that prompt action can be taken immediately to dispatch needed resources to respond. While the preferred means of obtaining response resources is by pre-approved contracts, the Coast Guard recognizes that the planholder/FOSC/Unified Command must have flexibility under exceptional circumstances to deviate from the service provider(s) listed in the approved VRP. This deviation from the response plan must be conducted in accordance with the Jones Act (Title 46, United States Code Appendix 316(d)) unless a waiver is requested.

One commenter stated that the Coast Guard's interpretation of § 1144 of the Coast Guard Authorization Act of 1996, Public Law 104–324, is inappropriate, because the NPRM's version of FOSC authority to deviate from the VRP does not track the language of the FWPCA. The Coast Guard disagrees. Section 1144 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324), otherwise known as the "Chaffee Amendment" amended the FWPCA regarding the use of spill response plans. Specifically, it states:

That the 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.

The Coast Guard interprets this amendment as applicable to the use of contracted resources, qualified individuals, and other "significant"

deviations from the VRP. This deviation from the response plan must be conducted in accordance with the Jones Act (Title 46, United States Code Appendix 316(d)) unless a waiver is requested. The Coast Guard will give precedence to the Incident Action Plan as developed by a unified command during an actual response. Wording has been added in section § 155.4032(a) to cover this possibility.

One commenter urged the Coast Guard to encourage conformity with international practices and standards wherever possible and also encourage planholders to move quickly to engage the nearest best available assets. The Coast Guard agrees in part. Nothing in this regulation discourages planholders from conforming to international standards, and it has been a policy of the Coast Guard to encourage conformity with any international standards that are above the level of required federal regulations. As far as encouraging a planholder to engage the "nearest best" available assets, § 1144 of the Coast Guard Authorization Act of 1996 (Pub. L. 104-324; October 19, 1996; 110 STAT. 3901), otherwise known as the "Chaffee Amendment", provides the Incident Commander/COTP authorization to deviate from the VRP in instances where that would best effect a more successful response. This deviation from the response plan must be conducted in accordance with the Jones Act (Title 46, United States Code Appendix 316(d)) unless a waiver is requested.

One commenter stated that firefighting technology and resources are not in place. The Coast Guard agrees in part. We acknowledge that there are areas of the U.S. where adequate firefighting resources may not be available. This is part of the reason we are issuing this rule. In order to allow time for these resources to develop, we have included the ability to request a waiver for fire-suppression services for those planholders who are unable to contract for this service in the 18-month compliance period. However, we determined that remote firefighting assessment and consultation is easily achieved by external communications and, therefore, no waiver period is allowed for that service. We expect that this regulation will help the industry develop new firefighting resources and technologies.

One commenter stated that the Coast Guard should be realistic when they say a resource provider is capable of providing a service. A service provider is capable subject to the availability of its resources, and the Coast Guard ought to say so. The Coast Guard disagrees in

part. The resource provider, by entering into a contractual agreement to provide the services necessary to meet the requirements of this regulation, has agreed to respond under the obligations identified in that contract. Due to extenuating circumstances, where local resources might be engaged in separate emergency response activities, the FOSC may determine that a deviation from the response plan would provide for a more expeditious or effective response.

K. Required Services

1. Salvage

One commenter stated that there is no need to provide the information in § 155.1035(c):

Shipboard spill mitigation procedures for manned vessels carrying oil as a primary cargo,

or § 155.1040(c):

Shipboard spill mitigation procedures for unmanned tank barges carrying oil as a primary cargo,

in advance of an incident, because the information can always be sent via fax or e-mail and arrive well before the salvage professional arrives on scene, adding that even if it was sent in advance, the odds are the salvage professional would ask for it again to ensure they have the latest copy. The Coast Guard disagrees. This information is a valuable asset for resource providers and must be available to them at all times. We don't consider this an additional burden as this information must already be included in a VRP. Maintaining current information as required by §§ 155.1035(c) and 155.1040(c) is an issue to be resolved between the vessel owner/operator and the resource provider.

One commenter stated that the NPRM does not adequately consider the diversity of situations lumped into the term "salvage." The expertise and equipment that could be involved in a particular incident are as variable as the events themselves, therefore they feel that the rule is too prescriptive, and the placement of strict time requirements is counterproductive. The Coast Guard agrees in part. This regulation was written specifically to allow planholders and resource providers to determine those equipment and services for which they need to enter into a contract. We considered more prescriptive contractual requirements for specific salvage and marine-firefighting equipment and instead decided to allow the contractual partners flexibility to determine what was necessary to ensure effective incident response services are

available to cover up to a worst case discharge scenario.

One commenter stated that the rule attempts to address components such as equipment and capability, training of experienced personnel, contracting options, effective communication and fair compensation but it does not, however, fully address any of them. The commenter elaborated that the elements remain largely untouched, and stated the rule does not go far enough in any area. The Coast Guard disagrees. The regulation was written in a non-prescriptive manner to allow both the planholders and resource providers to work together to provide the equipment and services necessary to meet the intent of the regulation under a contractual arrangement. A great deal of flexibility was allowed specifically to address the varying availability of response equipment and expertise in different geographical locations, and the types of transport services and operating environments.

One commenter stated that the response resources, which are created by this rulemaking, are unlike pollution response resources that have little or no practical uses outside of their design parameters. These new salvage resources, acquired and subsidized with lucrative retainer fees from the tanker industry, almost certainly will be used to compete for any and all additional maritime business for which they might be suited, and that this will be to the financial detriment of the many general marine contractors who currently provide many of the services and resources utilized for salvage operation. The Coast Guard disagrees in part. We recognize that response resources will be created by this regulation that will most probably be put to other uses when not in use per these regulations. However, the owner of these resources will be under contractual arrangement to ensure these services and equipment are available to respond in the required timeframes. It is also probable that local general marine contractors will be contracted for use of their services and equipment by the primary resource provider.

One commenter asked what constitutes a salvor today, particularly if it can no longer be viewed as a specialist in many key salvage-related activities. This question was asked in the context of the 1994 Marine Board report, which states:

Even the professional salvor, once almost self contained, relies more and more on outside specialists for salvage engineering, firefighting, lightering, naval architecture and the provision of the salvage working platform itself. (Reassessment of the Marine Salvage

Posture of the United States, p. 36; Copyright 1994, available through the National Academy Press, 800-624-6242)

This final rule, while including dedicated salvors in the area of resource providers, does not limit the ability of anyone to enter into contractual agreements with the planholder. In fact, we recognize in § 155.4030(a) that multiple resource providers may be needed to meet the intent of these requirements. We recognize that it is unlikely any single salvage 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 their VRP's geographic-specific appendix for each COTP zone the vessel transits. The primary resource provider will act as the primary point of contact when multiple resource providers are listed for the same service.

One commenter disagreed with the definition of "on-site salvage." They stated that the on-scene person does not need to be someone who has the ability to assess the vessel's stability and structural integrity. He or she needs to be someone who can assess the visual condition of the vessel and report the required information (phone or radio) to the person who will determine the vessel stability and structural integrity. The Coast Guard disagrees. To accurately assess the vessel's stability and structural integrity, and even to accurately report significant facts back to the resource provider conducting the stability calculation, the person on scene must have the training and experience to meet the requirements of § 155.4050. Determining how quickly resources must arrive and the expertise needed on-scene were discussed in detail during the 1997 public workshop (referenced earlier in this discussion) and in subsequent meetings with interested parties, therefore we feel that the six- and 12-hour timeframes are adequate for the resource provider's representative to arrive on-scene.

One commenter noted that many vessels have on board internal emergency transfer equipment and therefore should not have to contract for portable emergency-transfer equipment for lightering. The Coast Guard disagrees. While some ships have this equipment on board, it may not be capable of working in an emergency. Therefore, it is prudent to also have this equipment available by contract.

One commenter stated that the definition of "diving services support"

and its position in Table 155.4030(b) is in error. They feel that it should be part of the "Assessment & Survey" section of Table 155.4030(b), and that divers should not enter the water without the support on scene. The Coast Guard disagrees regarding moving the diving services support into the "Assessment & Survey" section. We consider it unreasonable to expect diving services providers to meet the shorter timeframes as listed in the "Assessment & Survey" section of the table. We agree that divers should not enter the water without proper support, but point out that the diving services support listed in Table 155.4030(b) refers to diving services supporting the salvage operation, not support for the divers themselves. Section 155.4032(b) addresses implementing the safety support systems necessary when providing salvage and marine firefighting services.

One commenter stated that for emergency lightering of special cargoes, specialized lightering equipment may be needed and may take longer to arrive on scene than is required by this rulemaking. The Coast Guard understands that special circumstances could arise in any situation and has crafted the response timeframes as planning standards. Should circumstances arise that would delay emergency lightering equipment from arriving as planned for in the VRP, there are a number of alternatives. There is a provision in the Chaffee Amendment that allows the FOSC to deviate from the VRP if it would provide for a more expeditious or effective response to the incident or mitigation of its environmental effects. In addition, the requirements of the Jones Act:

Prohibits the engagement of a foreign vessel in salvaging operations on the Atlantic or Pacific coast of the United States, or in territorial waters of the United States on the Gulf of Mexico, except when authorized by treaty or when the Commissioner of Customs, after investigation, authorizes the use of a foreign vessel or vessels in the salvaging operations. [Title 46, United States Code Appendix 316(d)],

Therefore, the FOSC may act to obtain a waiver when suitable U.S.-flag vessels or barges cannot be located or obligated to assist and support the removal and salvage operations to mitigate pollution or the threat of pollution. Every waiver request has to go to the Commissioner of Customs for authorization. The waiver may be granted, after the U.S. Maritime Administration (MARAD) has been consulted on the availability of U.S. vessels, on a case-by-case basis, to support removal/salvage operations to mitigate pollution or the threat of pollution. This on-scene, incident

specific, FOSC request for a Jones Act waiver is a separate and different issue than the waiver discussed in § 155.4055(c). There, we explain that the emergency lightering requirements for the vessel response plan may not be waived due to a planholder being unable to contract a resource provider to be listed in the VRP.

One comment stated that the term "special salvage operations" may be misleading because every case is different, and there is currently no such entity as a "special salvage operations plan," only the "salvage plan." The Coast Guard disagrees. Salvage efforts may be divided into three areas: assessment and survey, stabilization, and special salvage operations (e.g., re-floating and post-refloating). For the purposes of this regulation, special salvage operations include heavy lift and/or subsurface product removal as detailed in Table 155.4030(b)(1)(iii).

One commenter suggested revising the "heavy lift" definition to identify a minimum-rated lift capacity, i.e., 100 short tons. The Coast Guard disagrees. Requirements for salvage capabilities let the planholder and resource providers decide, for each particular vessel, what sufficient "heavy lift" capabilities are. Again, the Coast Guard is writing these regulations to be planning based rather than prescriptive.

The same commenter also stated that heavy lift equipment is only useful for vessels of limited size, and that heavy lift is not useful for ship salvage, but could be used in the salvage of barges. The Coast Guard agrees in part. Heavy-lift capabilities are still required as stated in Table 155.4030(b). Heavy lift equipment is only useful for vessels of limited size, and not for the majority of tankers carrying oil. Because of this limited applicability and the major costs of capital construction associated with building heavy lift capabilities, it is economically and/or physically impractical to require these resources to be on scene in a given time period. Therefore, the Coast Guard revised the regulation in Table 155.4030(b) to allow the planholders to contract with existing resource providers where they are currently located, and provide an estimated time of arrival on scene for planning purposes.

Should a planholder not be able to contract a resource provider that can provide heavy lift capability for the area in which the vessel is operating, § 155.4055(g) offers a five-year waiver period for specialized salvage operations, of which heavy lift is part. In addition, should a planholder feel that contracting for heavy-lift capabilities is not feasible based on

special circumstances of their vessel(s), 33 CFR 155.130(a)(2)(i) allows for a planholder to request the Coast Guard to grant an exemption from the regulation when compliance with a specific requirement is economically or physically impractical.

One commenter recommended listing the resources and requirements for emergency lightering and/or external emergency-transfer operations under a separate heading in the NPRM. The Coast Guard disagrees and has written Table 155.4030(b) to reflect a logical progression during an emerging salvage operation.

One commenter asked if the required salvage and marine firefighting services will be listed in a geographic-specific appendix for each COTP zone. If so, the commenter stated that the existing regulations should be updated to reflect this change, and be listed as set forth in §§ 155.1035(i)(9) and 155.1040(j)(9), which state:

The appendix must also separately list the companies identified to provide the salvage, vessel firefighting, lightering, and, if applicable, dispersant capabilities required in this subpart.

As these sections already require these specific services to be listed, §§ 155.1035(i)(9) and 155.1040(j)(9) will not be updated. Resource providers that will be contracted for services in an area must be listed in the VRP geographical-specific appendix as found in §§ 155.1035(i)(9) and 155.1040(j)(9). Additional resources may be listed, but if they are not under a contract or other approved means for response they must be clearly listed as an additional resource and not as a primary or secondary responder.

Two commenters stated that if additional equipment is needed to support operations or to transport firefighting resources to a vessel away from a pier, then these resources should be identified in the VRP. The Coast Guard agrees in part. This regulation outlines what services are required to be planned for in accordance with the response activity timeframes listed in Table 155.4030(b). If additional equipment or delivery platforms are necessary for a planholder's specific situations, then that should be a matter of contractual arrangement between the planholder and the resource provider. It is important that this regulation not be so specific as to restrict viable operational decision-making during an actual incident.

One commenter stated that the proposal to require VRPs to identify towing vessels with the proper characteristics, horsepower, and bollard

pull to tow the vessel(s), as well as vessels that are capable of operating in environments where the winds are up to 40 knots will essentially require large, stand-by towing and salvage vessels in every COTP zone in the United States. In addition, the commenter wrote that the proposal provides explicit equipment requirements for firefighting and subsurface product removal capability, and that no legitimate, verifiable rationale for these requirements is provided. The Coast Guard acknowledges that this final rule may result in the existence of sufficient towing vessels in areas where there are none now, and we feel it is beneficial to the planholders, the environment, and to the local communities that this happen. With regards to the equipment requirements found in § 155.4030(f) through (h), these are minimum requirements, written to ensure that a basic level of response capabilities is available. Determining what constitutes adequate salvage and marine firefighting resources supports the requirement in OPA 90 to ensure capabilities exist to respond to a worst case discharge scenario.

Two commenters stated that the term "structural stability," as defined in § 155.4025, includes two distinct activities. As defined, it includes assessment of both "vessel stability" and "structural integrity." In actuality, these are two distinct types of assessments that will be going on at the same time. The salvage engineer and naval architect will be looking at the remaining strength of the damaged hull ("structural integrity"); simultaneously they will be assessing the stability of the vessel as the various spaces are emptied or flooded and how the contents of various spaces will affect the remaining hull strength. The engineers will be working closely together, both on board and ashore, to provide updated information to the Salvage Master and others in the team. The assessment process will begin with the initial call to the salvage resource provider and will be continuous and on-going from that point and may not be final until the salvage is completed. The commenters stated the accuracy and timeliness of the assessments of hull strength and vessel stability will not benefit by having a set time limit imposed by regulation. The Coast Guard agrees in part and understands that the assessment and salvage survey components of the response are ongoing evolutions, being continually updated as time and environmental factors work on the vessel. Planning standard timeframes are beneficial for these actions. The

person on scene needs to be able to assess the vessel's stability and structural integrity to accurately report significant facts back to the person conducting the stability calculation. We determined that the timeframes are necessary for this action to ensure an accurate, professional evaluation of the vessel's actual state.

Another commenter stated that requiring a planholder to list a primary service provider serves no useful purpose and that the logic for doing this is not included in the rule. The commenter asked for clarification on the status of the primary service provider compared to other service providers, referencing the 19 different elements in Table 155.4030(b), and stated that the combinations when more than one service provider exists are overwhelming and impractical. The Coast Guard disagrees in part. We recognize 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 need to list each service and the resource provider who will perform it for each COTP zone the vessel transits. The primary resource provider will act as the primary point of contact when multiple resource providers are listed for the same service. For example, if a planholder lists three separate towing companies for emergency towing services, one must be listed as the primary resource provider, but all must be under a contract or other approved means as stated in § 155.4030(a). To clarify this, we have added a definition for "primary resource provider" to § 155.4025.

One commenter wrote that the execution of a valid salvage strategy, including other, more appropriate actions, could be hindered by a requirement to perform a hull and/or bottom survey within a set timeframe, and that this is best left to the judgment of the experienced salvor. The Coast Guard agrees in part. This rulemaking requires planholders to have, under contract, resource providers that have the capability to provide a hull and bottom survey within the response activity timeframes. It does not require that a hull and bottom survey actually be completed, as there might be instances when a survey would be unnecessary or inappropriate.

One commenter stated that computer models using industry standard software should be required and in the possession of contracted naval

architects/salvage engineers in the event of casualties (33 CFR 155.4030(d)). The Coast Guard agrees in part that advancements in technology should be leveraged to provide optimal execution of incident management, but this rulemaking does not require the use of any specific technologies.

One commenter stated that the Coast Guard should reduce or remove the equipment requirements concerning towing vessels and firefighting equipment listed in §§ 155.4030(e) and 155.4030(g) and move to a people-based approach similar to the firefighting approach. The Coast Guard disagrees. While recognizing the prime importance of people-based operations, we consider the equipment requirements found in § 155.4030 minimal requirements, listed to ensure an adequate level of necessary response equipment. Section 155.4030(e) requires a towing vessel capable of operating in 40-knot winds. The Marine Board's "A Reassessment of the Marine Salvage Posture of the United States" (National Academy Press, 1004; Appendix I, page 123) references the Det Norske Veritas publication Towing Operations Guidelines and Recommendations for Barge Transportation. This document is intended to provide guidance to the offshore industry on how large a tug would be required to be in order to transport major equipment offshore. These guidelines recommended using a tug capable of towing in 16.5-foot (5-meter) seas with 39-knot winds and up to a 2-knot current. This correlates with the conditions in which we would expect a 7,000-horsepower tug to be able to hold a large tanker. The commenter's reference to § 155.4030(g) is specific to the section requiring the identified resource providers to have the ability to pump 0.16 gallons per minute per square foot of deck area of the vessel. This is in line with, and based on, existing regulations, specifically 46 CFR 34–20.5, and NVIC #6–72, "Guide to Fixed Fire-Fighting Equipment Aboard Merchant Vessels." The volume of water required to extinguish a fire like the one on the T/V MEGA BORG (roughly 30,000 square feet of deck area) requires a pumping capability of roughly 4,500 GPM. For this rate, portable pumps of 2,000 GPM are effective. A sufficient supply of such pumps is available around the country, and they are efficient to transport from storage to casualty sites. (The Marine Board's "A Reassessment of the Marine Salvage Posture of the United States." National Academy Press, 1004; Chapter 3, page 41)

2. Firefighting

One commenter stated that locking particular pieces of equipment into one location is very expensive and places the greatest financial burden on owners. The Coast Guard agrees in part. While pre-staging response equipment may require additional gear, it is necessary to have this equipment available for meeting the required planning standard timeframes. This final rule has purposely avoided mandating specific equipment requirements (with a couple of exceptions for cargo pumping capacity and firefighting foam). The reason we wrote the rule in this manner was to allow planholders and resource providers an opportunity to assess response equipment needs for each geographical area and type of vessels calling in specific ports. This will be more cost effective than Federal requirements for specific equipment supplies staged in every port and waterway covered by this rule.

One commenter stated that the firefighting requirements contained in the NPRM are burdensome, and recommended folding the firefighting requirements into the salvage requirements and renaming them "Marine Casualty Responders." The commenter further suggested that the firefighting requirements be broader and left to the salvor's discretion. The Coast Guard disagrees. It is entirely feasible that the planholder could contract with resource providers for salvage response that are different than the providers for firefighting response. We consider it important to make a distinction between the two services even though a marine firefighting response could well turn into a salvage response, or one resource provider could provide all the equipment and services required for both aspects of an emergency incident.

One commenter stated that the damage and stability models of the vessel must be available to the firefighter for use during operations, in real time and, in many instances, on site. The Coast Guard agrees that the information from the damage and stability models is useful for firefighters on scene. However, we find it impractical to require this information to always be available on scene, prior to any firefighting operations being started. We do not want to restrict the vessel's crew and resource provider while they are awaiting the assessment and structural stability, understanding that structural stability and firefighting evolutions will be addressed mutually by the parties on scene.

Two commenters stated that there needs to be a requirement in the table

for a marine-firefighting plan that can be approved by the Incident Commander/Unified Command. The Coast Guard disagrees. While the regulation calls for the salvage plans to be submitted to the Incident Commander/Unified Command, marine firefighting is too time critical to wait for an approved plan before conducting firefighting operations.

One commenter noted the standard only contains the application rate for firefighting foam, and does not include a time limit for application. The commenter added that 46 CFR 34.20–5 includes a foam application time limit of 20 minutes in conjunction with a foam application rate of 0.16 gallons per minute per square foot but, without reference to this time limit in proposed § 155.4030, it is impossible to determine a recommended quantity of foam for marine-firefighting vessels to carry or shore-side resource providers to plan for. In addition, three commenters stated that the Coast Guard and SOLAS rates and duration for foam are not adequate since they are based upon an incipient-stage fire with a less than 15 minute pre-burn. One commenter asked that the Coast Guard provide guidelines for determining the amount of an agent so that all planholders are calculating the same baseline. The Coast Guard agrees with these comments and has added a 20-minute time limit to § 155.4030(g).

Three commenters stated that in addition to minimum agent application rates for extinguishment, adequate water flow for protection of exposures must be provided for. The Coast Guard agrees. The relevant text of the section reads:

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.

We determined that the requirement as written already addresses this issue and, therefore, the requirement remains unchanged. Water flow for protection of exposures is an issue that should be addressed by the vessel's and resource provider's firefighting teams. Requiring a specific amount of water flow deviates from our intent to have this regulation require services to be provided vice prescriptive details of how those services must be conducted on-scene.

One commenter stated that foam on board the vessel should not be included in the resources listed in § 155.4030(g). The Coast Guard agrees and has added text to § 155.4030(g) to clarify that the "resources" that must be identified in

the VRPs are defined as resources provided by the resource provider, and not part of the vessel's own firefighting system.

One commenter stated that certain firefighting agents, in existing inventory, contain components that are no longer made. The Coast Guard neither agrees nor disagrees with this comment. While some resource providers will use existing inventories to fulfill their contractual obligations, we anticipate an increase in the required inventories of extinguishing agents to meet the needs of this regulation.

One commenter recommended that the formula to determine the required fire-suppression resources be reduced from the proposed regulations, explaining that the fire-suppression requirement, along with the response timelines contained elsewhere in the proposed regulation, has a very real potential of impeding commerce, and significantly changing the way industry does business. The Coast Guard disagrees. Title 46 CFR 34.20–5 already includes a foam application time limit of 20 minutes in conjunction with a foam application rate of 0.16 gallons per minute per square foot. Thus, the standards we used in this requirement are in line with existing regulations.

One commenter stated that pre-fire plans are unnecessary for barges or small tankers and should not be required. The Coast Guard disagrees. Pre-fire plans are an integral part of contingency planning regardless of the size or type of vessel. Therefore, the Coast Guard feels there is great benefit in these pre-fire plans.

3. Other

One commenter stated that the Coast Guard does not include a verified accounting or assessment of general marine contractor resources currently available for vessel emergency response. This is true, but the public workshop held in 1997 and feedback from existing salvage and marine firefighting resource providers showed a lack of resource providers needed to fulfill the OPA 90 requirement that there be VRPs in place, and resource providers able to meet the needs of those planholders to avoid a worst case discharge scenario. This rulemaking does not require specific types and amounts of equipment. It was deemed to be more practical for the planholder that this rule require services and service providers, since the amount and type of equipment will vary depending on the vessel's characteristics and operating environment.

One commenter pointed out that structural assessments, surveys and

stabilizations are constant operations, and that they will be continually updated as the operation proceeds. The Coast Guard agrees. The commenter also recommended that all hull and bottom surveys be done in the presence of the applicable classification society surveyors. The Coast Guard disagrees, as the initial hull and bottom survey should not be delayed for any reason unless there are extreme circumstances.

Two commenters recommended that specific emergency-response operation details, such as tonnage to horsepower bollard pull capacity, type of firefighting foam, chemical, or inert gas usage, and a responder-provided emergency cargo pump capacity to vessel cargo tank capacity matrix be developed and included in the regulation. We disagree with this prescriptive approach and have written this rulemaking to leave the responsibility for determining the adequacy of the specific plan details to the planholder and contracted resource provider. This was done to ensure specific services are readily available while still maintaining flexibility for the amounts and type of equipment each individual vessel might need.

Twelve commenters stated that the requirements of 33 CFR 155.240 must be integrated into, and specifically referenced in, the rule. There is significant value in developing a computer model to calculate the damaged vessel's structural and stability analysis for very little expense. They also stated that 33 CFR 155.240 should be extended to inland and nontank vessels. The Coast Guard agrees in part and has amended the definition of "assessment of structural stability" in § 155.4025. The comment that 33 CFR 155.240 should be extended to inland and nontank vessels is beyond the scope of this regulation, however the Coast Guard intends to consider it in future rulemaking endeavors.

One commenter suggested that the owners and the public make use of the large number of tugs that are generally available on short notice, but not make any commitments, which result in large expenditures that do not provide any real assurances that tugs will be on scene quickly, and be in a position where they can significantly reduce the outcome of a marine emergency. The Coast Guard disagrees. Section 155.4030(e) requires towing vessels that are contractually obligated and able to meet the minimum requirements in terms of characteristics, horsepower, bollard pull, and operating in 40-knot winds. It is necessary to have specific vessels listed in the VRPs because these towing vessels are essential to any incident response.

Three commenters stated that it is not necessary to identify "towing vessels" in the VRP, and that only the contracting parties, which will provide the resources (i.e., the towing companies) should be identified. The commenters stated that the ability to maintain accurate lists of towing vessels is simply not possible, and would take extraordinary costs and efforts in keeping the numerous copies of the VRPs updated. They added that ensuring the proper emergency towing vessels are listed in VRPs is meaningless. The Coast Guard disagrees. It is imperative that the VRPs include an accurate listing of compatible towing vessels in a specific geographic area that the resource provider can bring to bear in an emergency situation. We understand the writers' concerns about predicting whether a compatible vessel will be in the area to respond, but we also determined that this contingency should be worked out between the contracting parties prior to having that resource provider contracted and listed in the VRP.

One commenter noted that there are not enough towing assets to meet the suggested requirements of § 155.4030(e) and that the requirements should be modified to be realistic. The Coast Guard agrees that currently there may be insufficient towing vessel capacity to meet the regulations; however, we feel that the towing capabilities required by this rule are prudent to ensure the safety of U.S. ports and waterways and to prevent or minimize environmental damage. As stated earlier, the final rule was not specifically written to increase towing capacities in the U.S., but we recognize any increase as an added benefit to the marine industry.

One commenter stated that ensuring the proper type and amount of transfer equipment is listed in VRPs is impossible or impracticable. The Coast Guard disagrees. The Coast Guard encourages the development and submission of "Fleet Plans" which allows a planholder to develop one VRP for all the vessels in an owner/operator's fleet.

One commenter stated that oil transfer equipment fulfilling the requirements may already be on board the ship, and in such cases it may not have to be provided by a salvage resource provider. The Coast Guard disagrees. The intent of this rulemaking is to ensure that the stricken vessel's largest cargo tank can be offloaded in 24 hours, independent of any damage that might be done to the vessel's internal systems. In light of that requirement, it is imperative that equipment can be brought on board that is totally unaffected by whatever caused

the emergency incident in the first place. Therefore, the requirement of § 155.4030(f) that the salvage resource provider be able to deliver the required on-scene pumping capability remains unchanged.

One commenter stated that § 155.4030(h) is confusing to a Western River barge operator, where navigation control depths are advertised as nine feet and very few waterway depths exceed 40 feet in isolated locations. The Coast Guard disagrees. Where a vessel does not operate in waters of 40 feet or more, the cited provision would not apply. However, should a planholder's vessel operate in any waters of 40 feet or more, they are required to ensure subsurface product capabilities are contracted for and included in the VRP for those waters.

Two commenters stated that in addition to suitable pumps and hot tap equipment, the following equipment must also be on site and ready to work: A stable, independently moored, working platform; storage tanks or lightering vessel; and the means to displace the product removed with water to avoid implosion or other damage to the hull. They elaborated that these needs, when added to the deep-water diving support or sophisticated, remotely operated vehicle needed to make the necessary connections and the extensive engineering that would be required before this type of effort could be initiated, make it highly unlikely that this type of operation could be assembled in 72 hours. They concluded that the capability to provide this service should be included in an assessment of a salvage service provider as described in the general comments. The Coast Guard disagrees. We determined that having subsurface product removal equipment ready and available for deployment on board a vessel in an emergency incident is important enough to merit its own timeframe for response. However, the specific response times are planning standards based on a set of assumptions made during the development of this regulation. We understand that these assumptions may not exist during an incident. We also realize that, at this time, the specialized equipment necessary to conduct these operations might not be located in geographical areas that would facilitate a response within 72 hours. Therefore, we have allowed a five-year maximum waiver provision as found in § 155.4055(g)(7). This request for a specialized salvage operations waiver is a separate and different issue than found in § 155.4055(c), which states the emergency lightering requirement is not

subject to a waiver due to a planholder being unable to contract a resource provider to be listed in the VRP. We also strongly recommend that these capabilities be considered in a planholder's assessment of adequacy of prospective, contracted resource providers.

L. Funding Agreements

Four commenters said that the concept of a pre-agreement, in regard to funding agreements, makes sense in order to eliminate time lost to contract negotiations. The Coast Guard agrees. In order to mount a timely response, contractual agreements must be in place prior to an incident. Hesitation in awarding a salvage contract can have extremely negative effects on the outcome of response operations. By ensuring that a funding agreement is in place, this regulation will eliminate the need for any on-scene decision making regarding which resource provider to hire for the incident response. We have added text to the definition of *Funding agreement* (§ 155.4025) to ensure the funding agreement is included in the VRP prior to the plan's approval by the Coast Guard.

One commenter suggested that the use of non-dedicated resources is a viable and commercially acceptable, cost-effective way of conducting emergency-response business, and therefore should be utilized to establish appropriate salvage and firefighting standards. The Coast Guard disagrees. This rulemaking has been designed to mirror the success that the OSROs and planholders have had with pre-arranged contracts as required in 33 CFR part 155. This will ensure that both industry and resource providers are clearly aware of who will respond on scene, and in what timeframe they are capable of arriving based on the vessel's location, prior to any incident. An example of the need for pre-arranged contracts can be found in casualty case histories. For example, a casualty involving an explosion and grounding occurred on a 20,000 barrel inland petroleum tank barge operating in the Chicago Canal system. The vessel lost its deck, but maintained some buoyancy in its intact bow tanks. The owner was the named salvor in the existing VRP. The owner had no legitimate, actual salvage operations experience. Because the vessel posed a minor pollution concern, the primary concern of the FOSC was that the vessel's location prohibited delivery/pick up of fuel from a number of facilities up river from the wreck. While trucking of fuel was an option, the cost to do this was reported to be significant. In short, the owner made multiple

attempts to re-float the barge over a three-month period before it was ultimately re-floated. If a reputable salvor had been pre-contracted as required by this rulemaking, the vessel could have been removed within a two-to-three week period.

Conversely, an example of the benefit of the VRP planholder having a pre-arranged contract with a reputable salvor can also be found in the salvage response to the T/V WHITE SEA, a 243-meter motor tanker, which ran aground near Ambrose Light, off Coney Island, New York on July 12, 2007. The tanker was outbound fully loaded with 548,000 barrels of Low Sulfur Fuel Oil (LSFO) when she had a steering malfunction and ran aground. Immediately upon notification, the COTP asked owners to follow their VRP and activate their salvor. The vessel's response providers mobilized a team of salvage experts, which arrived on site within hours of the casualty.

The response providers' salvage engineers, along with the Salvage Engineering Response Team from the U.S. Coast Guard, worked through the day to develop an incident salvage plan and lightering plan. Once approval was obtained from the Coast Guard, the salvage team worked through the night to remove 120,000 barrels of product from the grounded tanker. Although there was no penetration of the cargo tanks, the vessel did suffer two breaches to the ballast tanks. Upon completion of the lightering and deballasting operations, the vessel was safely refloated during the high tide on Friday, July 13th, utilizing four local tugs.

The response provider immediately commenced an underwater inspection of the ship's hull in conjunction with local authorities and the vessel's classification society, American Bureau of Shipping (ABS). Further planning was undertaken to prepare and obtain approval from the Coast Guard for the full discharge of cargo from the casualty. Under the direct supervision of company personnel, all 548,000 barrels of cargo were transferred on to another vessel to enable the WHITE SEA to safely transit light ship to a repair facility.

One commenter stated that there are very capable salvors, marine salvage and survey engineers, and certified marine firefighters, etc. who prefer to provide independent, nonexclusive, remote, and on-site assessment and consultation services, which should minimize the increase in cost to the industry. The commenter added that this will allow the owners, as part of the unified command, to select the most suitable salvage and firefighting resources for

each individual emergency and thereby improve the response beyond that available via individual entities heavily reliant on dedicated resources. The Coast Guard agrees that there are very capable resource providers who may prefer to provide independent, nonexclusive services. However, we feel that there is a need to ensure that an incident be responded to quickly and without the need for contract negotiations during an actual emergency. In order to ensure this happens, contracts must be in place as part of the vessel's response plan. In regards to the ability of the unified command to select other than contracted resource providers, and as noted earlier in this discussion, the U.S. Coast Guard agrees that there may be a need for flexibility to use other than contracted resources, under exceptional circumstances, during an incident if it is in the best interest of the response. We have added this authorization into § 155.4032(a) of the final rule.

One commenter wants the requirement for a funding agreement between the resource provider and the planholder, specifically with reference as to who will have access to that agreement, be deleted. The Coast Guard disagrees. We require access to that agreement only to verify that it is in place, agreed to by both parties, and ensures the adequacy of the response plan itself. This agreement must be part of the contract or other approved means that ensures response resources will support the vessel's plan. While the funding agreement might not be part of your VRP, all agreements that support a particular VRP must be reviewed by the USCG prior to approval.

Two commenters stated that a letter of intent (LOI) should meet the "other approved means" definition as long as there is a provision for a funding agreement. The Coast Guard disagrees. An LOI is a letter from one company to another acknowledging a willingness and ability to do business and cannot be enforced, as it is just a document stating serious intent to carry out certain business activities. This rulemaking requires a contract, which is an enforceable written agreement between a vessel owner or operator and resource provider. This agreement must expressly provide that the resource provider is capable of, and committed to, meeting the VRP requirements.

One commenter recommended using named consultants, instead of companies, to reduce owner cost and create flexibility to bring in any firefighting assets rather than using a company named in the contract. The Coast Guard disagrees. The intent of the

regulation is to have personnel and resources under contract that are capable and contractually obligated to respond, not simply consultants. Section 155.4050(b)(3) asks planholders to consider whether the resource provider owns or has contracts for equipment needed to perform the response services as a criterion for selection of a resource provider.

One commenter asked how practical it is to expect planholders and resource providers to develop pre-negotiated pricing for services for all of the myriad circumstances and geographic locations of casualties. While the Coast Guard agrees that there will be many different variables in the level and detail of responses to an incident, it is possible for the planholders and resources providers to work out funding agreements during the contractual negotiations. One such method has been for contracting parties to use a Basic Ordering Agreement (BOA) prior to any actual response. Regardless, the Coast Guard feels that contracts between the planholder and the resource provider are best left to their discretion, and will not be specifically addressed in this regulation.

One commenter stated that it is unrealistic to include a written funding agreement as part of the "contract or other approved means." The commenter noted that the assumptions that the absence of a funding agreement will delay a response because of negotiations or that the presence of one will not delay a response may be equally specious. The Coast Guard disagrees. A funding agreement is of primary importance in ensuring there are no delays in a response due to contract negotiations.

M. Considerations for Choosing Resource Providers

1. General

One commenter asked what it means to be "capable to respond" or "capable of providing service," and if that means capable subject to availability. The definition of "capable" is "having attributes required for performance or accomplishment" (Webster's Ninth New Collegiate Dictionary, 1991). As used in the regulation this means that the planholders will only list in their VRP resource providers who have provided written consent to be included. This written consent would include a statement from the resource provider that they are capable of providing the salvage and/or marine firefighting services they contracted to provide within the response times in Table 155.4030(b), Salvage and Marine

Firefighting Services. The specific response times are planning standards based on a set of assumptions made during the development of this regulation. These assumptions may not exist during an actual incident. Therefore, Table 155.4030(b) will be used as a planning standard instead of a performance standard to ensure that under ordinary circumstances the resources are capable of arriving at the vessel in the required response times. For example: If resource provider A agrees to and/or contracts to perform a specific service, they must have the required equipment and/or personnel to complete the service in the times listed in § 155.4030(b) under ordinary circumstances. If the resource provider needs to have its resources on scene in four hours, the equipment and/or personnel should not be located 10 hours away.

One commenter would like drill and exercise requirements added as a requirement for resource providers. The Coast Guard agrees. The selection criteria under § 155.4050 lists a successful record of participation in drills and exercises as a consideration criterion. The requirement for a resource provider to participate in drills and exercises after a contract has been agreed upon is already included in 33 CFR 155.1060. This requirement covers all vessels that are required to carry VRPs. However, we have added § 155.4052 to address specific exercise requirements.

One commenter stated that all resource providers should own or have contracts for the equipment needed to perform response services. The Coast Guard disagrees. While direct ownership or contracts for resource providers are beneficial and addressed as a minimum for consideration by the planholder in choosing a resource provider in § 155.4050(b)(3), the Coast Guard does not intend to place ownership requirements upon resource providers as the resource provider may choose to subcontract certain aspects of their VRP responsibilities. As stated earlier, the intent of this regulation is to ensure proper response services are available and not to dictate the details of those services.

One commenter stated that this regulation would render obsolete the firefighting vessels supplied by the oil transport industry in some west coast ports. The Coast Guard understands the concern that this could happen. Section 155.4030(g) addresses firefighting equipment and VRP compatibility. The pumping capabilities of these private sector vessels need to be scaled to the size of the vessels for which they are

providing coverage. The existing firefighting vessels in question may not be appropriate for the largest tankship, but they could be used for smaller tankships and tank barges. If the referenced vessels meet the requirements of § 155.4030(g), the existing vessels may be listed as resource providers.

One commenter stated that the proposed rule does not recognize a ship owner's ability to assess structural stability using in-house or classification society resources. Section 155.4050 states that the planholder is responsible for determining the adequacy of the resource providers they intend to include in their VRPs, and sets forth 13 criteria, which must be considered in that selection. Nothing in this rulemaking precludes a planholder from listing either in-house resources or classification societies as long as they have addressed the criteria listed in § 155.4050, have certified in the VRP that the criteria was considered, and the potential resource providers agree to be listed in the VRPs.

One commenter stated that the rule as written would encourage the development of private and public firefighting capabilities at each port where the transfer of oil takes place, and that tank vessel owners and operators would be forced to enter into multiple contracts for firefighting services in the geographical areas served. The Coast Guard agrees in part and understands multiple contracts in a geographical area may occur. Planholders must submit their VRPs in accordance with the geographic-specific appendices as found in § 155.1035(i)(9) and § 155.1040(j)(9). In doing so, planholders must list each required resource provider that is under a contract or other approved means to respond within that specific area. This rule does not require planholders to enter into multiple firefighting contracts within a specific area. Based on industry information, national firefighting companies are currently available and offer a variety of response solutions for firefighting packages of equipment, materials, and personnel in various geographical areas. Industry also indicated that they would respond to large fires involving cargo by contacting one of these major national firefighting companies rather than rely on local resources.

One commenter asked how the Coast Guard will determine if contracted towing vessels have the adequate horsepower and/or bollard pull required by § 155.4030(e). The commenter requested that we bear in mind the requirements of 33 CFR part 168 "Escort requirements for certain tankers," which

governs operations in many ports. Section 155.4030(e) states that the planholder must ensure the proper towing vessels are listed in the VRP. It is the planholder's responsibility, when determining adequacy of the contracted resource providers, to hire resource providers that have towing vessels which meet the listed criteria, and to list those vessels in the VRP. Part 168 "Escort requirements for certain tankers," applies only to laden, single-hull tankers of 5,000 gross tons or more, transiting Prince William Sound and Puget Sound. In addition, the performance and operational requirements required by § 168.50 are more stringent than what is required in § 155.4030(e). However, if a towing vessel meets the requirements of 33 CFR 168 it would also suffice for this rulemaking. Therefore, the NPRM and the final rule contain these minimum requirements to meet the stated purpose of this regulation.

One commenter stated that involving firefighters in vessel response plan development is not a reasonable requirement because it only makes the VRP development and approval process longer and more costly. The Coast Guard disagrees. Section 155.4045(b) requires the resource provider to certify in writing that they find the VRP acceptable. It does not require them to be involved in drafting the VRP; however, if they find it unacceptable, we anticipate the planholder and resource provider will work together to formulate a VRP that all parties agree to and that meets the requirements of this regulation.

One commenter stated that § 155.4035(b)(2) requires the planholder to present a copy of the marine firefighting pre-fire plan to the resource provider. The resource provider must then certify, in writing, that they find the VRP acceptable and agree to implement the VRP. The commenter recommended that, as an alternative, this certification be included as part of the "written consent" document provided to the planholder certifying that they can meet the services listed under §§ 155.4030(a) through (g). The Coast Guard disagrees. The marine firefighting pre-fire plan is vessel specific; therefore, it is imperative that the resource provider have in their possession an exact copy, for each vessel that they have been contracted for responding to a casualty for pre-fire incident planning and training purposes.

One commenter stated that for ships traveling to multiple ports, the requirement to have marine-firefighting resources providers certify, in writing,

that they accept and agree to implement the VRP is a very difficult issue. The only alternative may be to create multiple individual "marine-firefighting pre-fire plans" for each vessel, which adds possible confusion to the response. The Coast Guard disagrees. Firefighting resource providers will need to certify in writing that they agree to be listed in the VRP as part of a contractual agreement. They can choose whether or not to do so. The Coast Guard determined that the commenter might have misunderstood the requirement for a pre-fire plan as stated in § 155.4035(b)(2). There will not have to be multiple pre-fire plans for each vessel. There is a distinct difference between the VRP and the pre-fire plan. The VRP will have a listing of multiple resource providers. However, there needs to be only one pre-fire plan per vessel as it deals with the character, construction, cargo, and safety systems of the vessel itself.

One commenter stated that the rule has no requirements related directly to the adequacy of the resource provider. The commenter asked what process is in place to assure the public that the resource providers are not committed beyond their capabilities, suggesting that there be limitations on how many times a resource provider may be listed in vessel VRPs. The commenter asked what mitigating factors will be in place should the resource provider be unable to respond within the time allotted by the proposed regulations. While there are no direct requirements stating adequacy of resource providers, there is an extensive section, § 155.4050, detailing the importance of the selection criteria for planholders to consider in selecting a resource provider. It is in the planholder's best interest to approach the selection process in a vigorous and exacting manner. Limiting the number of VRPs in which a resource provider can be listed will not be addressed as any limit on the number of a resource provider's clients would necessarily be arbitrary because of the wide variation in resource provider size and capability. The availability of services to meet a planholder's needs is a planholder's responsibility and is a factor a planholder should consider when contracting with the resource provider. In the event of a spill, the Coast Guard will expect the planholder to respond in accordance with its VRPs (unless specific circumstances warrant deviations, as already discussed), regardless of other spill events that may be occurring at the time of the response. Therefore, in its planning process, the planholder should discuss with its

service providers their capabilities to handle multiple incidents and the number of other planholders the service provider is already committed to.

Also, if a planholder's capabilities are diminished because service-provider resources are committed elsewhere for a response, that planholder is obligated to notify the COTP for the zone in which the planholder operates of: (1) The planholder's reduced capability; and, (2) the planholder's plans for overcoming the shortfall. This will enable the COTP to determine whether any operating restrictions should be imposed on the planholder until such shortfalls are overcome. The Coast Guard recently published guidance to the public addressing this issue. See Navigation, Vessel and Inspection Circular (NVIC) 01-07, "Guidance On Vessel And Facility Response Plans In Relation To Oil Spill Removal Organization (OSRO) Resource Movements During Significant Pollution Events." If the planned response resources are not available, or have traveled beyond the required response times, secondary or cascading resources may be relied upon if approved by the Coast Guard. This may mean compliance with any one of the alternatives provided within the definition of contract or other approved means (33 CFR 155.4025). The planning requirement may be met through a number of means as referenced above, and the Coast Guard will exercise discretion in implementation and enforcement of the requirements commensurate with the circumstances (as it did following Hurricanes Katrina and Rita). In addition, the FOSC has the authority to allow a deviation from the VRP if it would provide for a more expeditious or effective response to the incident in the case of a resource provider's inability to perform their required services. If a resource provider is found to be non-responsive or deficient through field verifications or the results of Preparation for Response Exercise Program (PREP) drills or Spill of National Significance (SONS) exercises, then the Coast Guard would not approve response plans that list them as a provider. Therefore, if a resource provider is found deficient on a continuing basis, the planholder would be required to change resource providers or risk not being able to operate their vessel in U.S. waters until their VRP is in compliance with the regulations.

One commenter stated that insurance may be very difficult, or cost prohibitive, for salvage and marine firefighters to obtain for the type of work proposed. Although § 155.4050(b) requires consideration of 13 items for

selection of a resource provider, and insurance is one of them, it is only required to be considered by the planholder for selection. In other words, in certain situations where state or local laws permit, it may be completely acceptable for a planholder to select an uninsured resource provider.

One commenter stated that qualifications through experience are not an adequate measure to judge a person's or organization's ability to respond in a marine firefighting incident. The Coast Guard agrees; § 155.4050 lists 13 separate selection criteria, of which qualifications through experience is only one part.

Five commenters stated that a "successful record of participation in drills and exercises" (§ 155.4050(b)(7)) and "membership in organizations" (§ 155.4050(b)(9)) are not valid criteria for selection, and that they should be deleted. The Coast Guard disagrees. This section states that:

When determining adequacy of the resource provider, you must consider as a minimum the following selection criteria.

Both of these issues are marks of professionalism and lend credibility for a planholder's selection process. The definition of "successful" in this context will have to be determined by the contracting planholder to satisfy its standards for hire.

One commenter stated that formal approval of a salvage plan (§ 155.4050(b)(8)), such as a stamp or letter, is not a verifiable practice. The experience of the resource provider or other planholder is most important. The Coast Guard agrees in part. We agree that experience is vitally important, but we consider being able to produce salvage plans that were approved and used by incident commands helps address the resource providers' experience level.

2. Coast Guard or Third-party Vetting

One commenter agreed that the regulations for salvage and lightering should require analytical systems and a contractual relationship with a salvage company. Such arrangements are the industry standard and represent a reasonable and achievable requirement. However, the commenter also stated that a process similar to the OSRO classification system should assess the capability of these service providers. The Coast Guard disagrees that a classification system for salvors is needed at this time. This rule addresses the capabilities of the resource providers with the 13 point selection criteria, found in § 155.4050, that planholders will consider in the

selection of a resource provider prior to entering into a contractual arrangement. Classification of resource providers is an issue that the Coast Guard can take under advisement, should the need arise in the future.

Three commenters recommended that the Coast Guard develop response-capability testing and proofing methodology for service providers and a marine-firefighting certification program including training standards. They suggested adding requirements to ensure that the resource provider is familiar with the local area plan pertaining to marine firefighting and salvage operations. The Coast Guard disagrees in part. We determined that the standards and guides incorporated by reference in this regulation sufficiently provide, as a basis, an adequacy determination for planholders to use in their selection process. As to the suggestion that resource providers be familiar with the local area plans, this is beneficial and has been included in § 155.4050(b)(15) as a consideration when determining the adequacy of resource providers.

One comment stated that the Coast Guard should require professional standards for marine firefighters to ensure all responders have similar training and backgrounds. The Coast Guard disagrees. We have addressed standardized training for marine firefighters by stating they be trained in accordance with § 155.4050(b)(6). While professional standards for firefighters would be beneficial for all parties concerned, it is beyond the scope of this rulemaking.

Four commenters stated that having each individual planholder attempt to interpret these criteria and apply them will be inefficient, cause confusion, and reduce consistency. They recommended that this salvage and marine firefighting vetting be administered by classification societies, through the ISO 9000/14000 programs, American Waterway Operators, or some other approved third party, based on the criteria in the table provided by the Coast Guard. The Coast Guard agrees that this is a reasonable goal. Initially the Coast Guard will rely on the established VRP review process augmented by surveys and reports by Coast Guard COTP field personnel done, if necessary, in conjunction with discussions with local port partners. After reviewing the effectiveness of this final rule, the Coast Guard will retain the option of having it administered by a third-party organization. However, this final rule relies on due diligence from both the planholders and the resource providers to ensure an

acceptable level of quality in meeting the criteria is achieved.

3. Use of Public Resources

One commenter asked if private responders can ever really be the primary responders, if public responders can be contracted, and if planholders will have the ability to evaluate public resources. Private responders can be primary responders and may need additional equipment to meet a planholder's needs in all required geographical areas. However, this final rule does not mandate additional equipment for private responders. Public responders can be contracted up to the restraints listed in § 155.4045(d). 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 COTP zone. Since OPA 90 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 VRP. Also, the public resource must agree, in writing, to be included in the VRP. Planholders will be able to evaluate public resources in much the same way as is required for private resource providers, as stated in § 155.4050. In addition, the COTP and the FOSC will have a critical review and oversight role in agreements that local municipalities may consent to for marine-firefighting support. The Coast Guard will separately publish additional guidance in this area.

One commenter stated that volume VI, chapter 8 of the "USCG Marine Safety Manual" anticipates that local fire departments will be the lead agency in case of a vessel fire. The commenter added that guidance in this chapter requires the Coast Guard to develop area contingency plans (ACPs) and include local resources for firefighting, but does not address private firefighting resources. The commenter concluded that first response to a vessel should rely on the ACPs; therefore, times in Table 155.4030(b) for at-pier firefighting response should be deleted. The Coast Guard disagrees in part. The commenter is correct in quoting the Coast Guard's stance as found in the "USCG Marine Safety Manual"; however it also states that:

[A] vessel/facility's owner and/or operator is ultimately responsible for the overall safety of vessels/facilities under their control, including ensuring adequate fire fighting

protection. ("USCG Marine Safety Manual", Vol. VI, chapter 8, section B.)

This principle is also embodied in this rulemaking and it ensures the planholder has contracted for adequate response services, regardless of whether the resource provider is a public or private entity. We agree that all parties involved will rely on ACPs to plan for emergencies, and all port partners involved in developing ACPs should take this rulemaking into account. To this end we have revised § 155.4030(d) by adding text requiring that the information contained in the response plan must be consistent with applicable ACPs and the National Oil and Hazardous Substances Pollution Contingency Plan as found in § 155.1030(h).

One commenter said that the regulations should encourage and permit utilization of local resources where practical, jurisdictional, and cooperative issues are worked out, as this will provide the lowest cost to the maritime community and encourage their participation in local cooperatives. The Coast Guard agrees and this final rule allows for such cooperatives.

Two commenters stated that the requirements for external firefighting capability require further discussion as to the appropriate role of public and private resources and the correct approach to ensuring their operation. The Coast Guard disagrees. The entities involved, both public and private, will work with the planholders to ensure a timely and effective emergency response. All parties are encouraged to use the ACP process to create workable processes and VRPs for responding to a marine-firefighting incident. Examples of ACPs are on the Internet at the Coast Guard's Homeport Web site: <http://homeport.uscg.mil>. The ACP information is under the "missions" tab in the "environmental" section. The Coast Guard plans to issue policy to Area Committees, who produce and maintain Area Contingency Plans (ACPs), on how the Salvage and Marine-Firefighting sections of the ACP can ensure planholders are supported in their planning efforts. ACPs describe the strategy for a coordinated Federal, state, and local response to a discharge of oil or a release of a hazardous substance within a Captain of the Port Zone.

Two commenters stated that it is unacceptable that some commercial marine-firefighting providers can rely on the Coast Guard or local responders to provide critical support personnel and equipment once they arrive with limited, specialized equipment and personnel. The Coast Guard disagrees.

When consenting to be a listed resource provider, that provider agrees to have all the personnel and equipment needed to provide the services for which they have contracted. If local public responders are depended upon to provide resources, they must agree in advance to be listed in the VRP. The planholder must ensure any resource provider is capable of providing the services needed, as found in § 155.4045(a).

One commenter stated that it is the legal responsibility for fire departments to respond to fires in vessels within their jurisdiction. The Coast Guard agrees in part. However, since OPA 90 emphasizes the use of private over public resources, public marine-firefighting resource providers should only be listed when the planholder has determined that no private resources (which can meet the response times) are available, and that the public resource has responsibility to respond to incidents in the area specified in the VRP. In other words, this regulation requires that planholders have under contract or other approved means, private resource providers capable of, and intending to commit to, meeting the VRP requirements whenever possible. Nothing in this regulation precludes public emergency responders from executing their duties. Consistent with the requirements of § 155.1010, we reiterate that these are planning and not performance requirements.

Three commenters stated that public marine-firefighting resources are often prohibited from responding outside their own jurisdiction, with the exception of mutual-aid agreements, and that this would preclude the direct use of these resources by commercial contract where port areas often encompass numerous jurisdictions between a vessel's initial entry into a COTP zone and its arrival at a terminal or facility unless they are part of a local marine-firefighting cooperative. The Coast Guard agrees and addresses this issue in § 155.4045(d) by stating that:

Public Firefighters may only be listed out to the maximum extent of the public resource's jurisdiction, unless other agreements are in place.

Should the public marine firefighters and the planholder come to an acceptable agreement regarding when and where the public resource can be used, then that agreement must be included in the VRP.

Three commenters stated that the regulation ignores public firefighters as responders, because the rule implies that public firefighters only be used as a last resort, and that the regulation should not state that the Coast Guard

considers it unreasonable to expect marine-firefighting resources to respond outside their jurisdictional boundaries. The commenters added that the regulation should recognize that public resources may be listed for response if it has agreed to do so where a mutual aid system has been implemented that will permit response regardless of individual agency boundaries.

Accordingly, the second clause in the last sentence of § 155.4045(d), "but the Coast Guard considers it unreasonable to expect marine-firefighting resources to do this" should be deleted. The Coast Guard disagrees. Section 155.4050(d) clearly states that public marine-firefighters may be listed as resource providers. However, public resources must agree in writing to be included in the VRP. We have added a restriction that they may only be listed to respond out to the limits of their jurisdiction, unless other agreements are in place. Other agreements could reflect the public firefighter's commitment to respond beyond their jurisdictional limits. We also do not agree that Federal law, or this rulemaking, should support or encourage public firefighting agencies to respond outside of their jurisdictions, as that would be an attempt to preempt local laws and authorities. There are cases where a local agency will be a member of a mutual-aid association, in which an agency has agreed, as a member of the association, to respond outside their jurisdictional boundaries. In this case, the public agency can agree in writing to do so as a planholder's resource provider, as allowed in § 155.4045(d).

One commenter stated that it is vital that any contract provider be required to integrate qualified public agencies into their VRPs. The Coast Guard disagrees. If the public marine-firefighting agency agrees to be listed in the planholder's VRP, then that is acceptable. However, it is beyond the scope of this rulemaking to require that public agencies be listed under contract or other approved means in the planholder's VRP.

Five commenters stated that a local firefighting entity in command of an incident would not necessarily recognize the contents, strategies, and service providers included in the VRP. This scenario would place the vessel owner in the unenviable position of diverting from the VRP since local regulations give command authority to the local firefighting entity. The Coast Guard agrees in part. Each planholder and resource provider will have to ensure these problems are addressed, and should be actively involved in the port partners program. In doing so, they would have input into their location's

ACP, which in turn would enable communications between the resource provider and the local public firefighters. That type of communication and mutual cooperation is not required by regulation; however, it is part of a professional involvement in the emergency response operations community and will be fostered by participation of all parties in the required drills and exercises.

Two commenters stated that public firefighting resources represent a significant portion of available firefighting equipment and personnel around the country, and as such, there is a need to integrate these resources into the overall response picture, and cooperation between public and private entities should be encouraged by the regulations. The Coast Guard agrees, and envisions the formation of mutual-aid agreements and coordination between marine-firefighting entities as a result of this regulation. We urge all interested parties to pursue this. In addition, we anticipate local ACPs will reflect these changes as well.

One commenter is not opposed to the use of public firefighters, but added that if they are part of a response plan there must be requirements to provide guidelines for interaction between the resource provider and the public firefighters to ensure cohesion when working together. These requirements should include, but not be limited to, drill planning and participation, training, and a clear understanding of each participant's role prior to responding to an incident. The Coast Guard agrees that there should be strong coordination and communication between the private and public firefighting resource providers. The intent of this rulemaking is to issue broad requirements regarding contractual arrangements that must be in place and listed in a planholder's VRP. We do not intend to dictate how the parties involved conduct their business after those arrangements are in place. Participation in the required drills, exercises and training, and a clear understanding of each participant's role are all vital aspects of proper planning and preparedness for emergency response, and we expect that the interests of all concerned will lead to the planholders and resource providers participating in proactive roles.

One commenter stated that, based on the proposed response times, it appears that local public fire agencies will have to be a part of any response plan. With that in mind, they added that it is vital that any contract provider be required to integrate into the ICS systems that have already been established. The Coast

Guard agrees in part. It is not mandated that public agencies will have to be a part of a response plan; however we envision that they will be included for most in-port pier locations in a VRP. Regarding the comment that any contract provider (resource provider) must integrate his or her organization into the ICS systems, this is already addressed by § 155.4030(c) and (d).

N. Integration of the VRP Into the Unified Command System/ICS

One commenter recommended that the Coast Guard mandate the use of the Unified Command System (UCS)/ICS to facilitate public and private cooperation in a structured system. The Coast Guard disagrees in part. Homeland Security Presidential Directive 5, "Management of Domestic Incidents", found online at http://www.nimsonline.com/presidential_directives/hspd_5.htm, creates a single, comprehensive National Incident Management System (NIMS) using the national NIMS/ICS for all emergency incidents. The National Response Plan, Regional Response Plans and ACPs all do the same. We anticipate that any incident, which would be managed by a unified command, would fall under this family of plans and therefore we do not consider it necessary to mandate the use of NIMS/ICS.

One commenter stated that § 155.4030(c), the "Integration into response organization" summation, should read:

The response organization must be consistent with the requirements set forth in §§ 155.1035(d) and 155.1040(d) and 155.1045(d).

The Coast Guard agrees in part. Section 155.1030(d) does not address integration into response organizations and was listed in the NPRM in error. Section 155.1035(d) addresses Shore Based Response Activities and is the correct cite. The text in § 155.4030(c) has been amended to reflect the correct reference. "Integrated into the response organization" means that the resource providers operate as part of the incident command or the unified command as organized by the FOSC. The Coast Guard disagrees with the commenter's stating § 155.1045(d) should be listed, because that particular cite is not applicable to the requirements of this regulation. Vessels that are covered by § 155.1045 are not required to list salvage and marine firefighting resource providers.

Nine commenters stated that the Coast Guard needs to provide clear guidance regarding where salvage and firefighting fit in the ICS, as the Salvage Master is

often the most knowledgeable person in the response organization. They stated that the proposed language does not adequately address coordination and response organization dynamics, adding that if the Coast Guard's intent is to utilize unified command with salvage and firefighting efforts appropriately incorporated along with existing FOSC authority then the intent and implementation specifics should be clearly articulated. The Coast Guard agrees that Salvage Masters are very knowledgeable, and that there is a need to be clear where they fit into the response organization. Historically, the salvors and marine firefighters have been placed in the Operations Branch. However, it is the prerogative of the Incident Commander/Unified Command to structure the ICS organization to best fit the incident's needs. Thus, this final rule requires only that the response plan includes provisions on how the salvage and marine firefighting resource providers will coordinate with other response resources, response organizations, and OSROs, not the specific roles the providers will fill in the ICS structure.

Four commenters stated that it is critical that marine-firefighting resource providers are integrated into any local UCS/ICS and not operating independently. The Coast Guard agrees and included this provision in both the NPRM and this final rule as found in § 155.4030(c).

Two commenters recommend deleting § 155.4030(d), "Coordination with other response resource providers, response organizations and OSROs," because it shows a lack of understanding of the ICS structure and the command structure that is required. They stated that salvage and marine firefighting resources will not normally coordinate with other response resources, response organizations, and OSROs, as it is the responsibility of the ICS structure to coordinate their activities. The Coast Guard disagrees. This section is intended to address the coordination between the differing response organizations before an incident occurs. It will entail inter-organizational outreach, participation in the ACP process, and communication between the planholders, resource providers, and other affected port partners. We consider it important to ensure that all the pre-incident coordination is in place prior to an emergency situation, and therefore have not changed the language of this section. We acknowledge, however, that the Incident Commander/Unified Command will be responsible for coordination activities after an

incident occurs and during all phases of the incident response.

One commenter asked if the Coast Guard was planning a revision to the "ICS Field Operations Guide" or the "Incident Management Handbook." In August of 2006, we revised the "U.S. Coast Guard Incident Management Handbook," COMDTPUB P3120.17A, and it is for sale from the Government Printing Office. The document is also available on the Internet at the Coast Guard's Web site: <http://homeport.uscg.mil>. It can be found by selecting the 'library' tab on the top of the page, then by selecting the 'Incident Command System (ICS)' tab on the left side, then selecting the 'Incident Management Handbook (IMH)' tab under the Job Aids section.

One commenter stated that it is critical that these regulations leverage public agencies specializing in marine firefighting and encourage specialization by those that do not. The commenter added that the regulations should support the development and enhancement of existing marine-firefighting units within an agency or region, thereby providing the opportunity for a cost-effective public/private partnership, which would make the public fire agency a first responder and lay the foundation for the private firefighting resource providers. The Coast Guard agrees that strengthening existing public firefighting agencies benefits everyone, and we anticipate that this will happen through strong port partnerships and involvement in the ACP planning and exercises. However, we consider it more important to ensure that the contracted resource provider is able to adequately provide the services that they have agreed in writing to provide at the time the VRP is submitted. If a public agency can meet this requirement and agrees to do so, then they are welcome to be listed as a resource provider in a VRP. However, it is beyond the scope of this regulation to require that it be done, or to require that the public agency meet the criteria for contracting. If they can not be listed based on their current capabilities, we require contracting with a private resource provider instead.

One commenter suggested that response plans should integrate with, and make specific reference to, salvage and marine-firefighting sections detailed in each ACP associated with vessel transits. The Coast Guard agrees. According to 33 CFR 155.1030(h), a planholder is already required to align the vessel response plan with appropriate ACPs.

One commenter stated that there is an assumption that the salvage/firefighting

resource provider will be the Incident Commander required by § 155.4035, but noted that this may not be the case in many incidents. The Coast Guard disagrees and can find no reference in § 155.4035 to the resource provider being an Incident Commander. Section 155.4030 requires integrating the resource provider into the response organization, but includes no specific requirement that they have to be the Incident Commander.

O. Worker Health and Safety

One commenter stated that § 155.4030(i), "Worker health and safety," is listed in the wrong section. The Coast Guard agrees in part. This issue is as vital to emergency response as the other services listed in this section, and must be addressed in the contractual arrangement between the planholders and resource providers prior to an incident occurring. However, we acknowledge that the exact location of this section may create confusion and have redesignated § 155.4030(i) in the NPRM to § 155.4032(b) in the final rule.

One commenter stated that worker health and safety is imposed on salvors, but not on the OSROs, even though consistency between the two requirements is important. The Coast Guard agrees that consistency is important among regulations and will take this comment under advisement should we revise the OSRO regulation in 33 CFR 155.1010. However, it is beyond the scope of this regulation.

One commenter stated that they do not feel that the Coast Guard can mandate that planholders bear any responsibility for the health and safety of independent contractors subject to Occupational Safety and Health Administration (OSHA) requirements. The commenter recommended deleting this provision. The Coast Guard disagrees as the existing § 155.1055(e) states:

Nothing in this section relieves the vessel owner or operator from the responsibility to ensure that all private shore-based response personnel are trained to meet the OSHA standards for emergency response operations in 29 CFR 1910.120.

As this is already mandatory for applicable planholders, we consider § 155.4032(b) valid and necessary. We have, however, revised the text of § 155.4032(b) to refer to the existing requirements.

One commenter stated that the health and safety requirement is already addressed by 29 CFR 1910.120, as noted in the National Contingency Plan (40 CFR 300.150). The commenter recommends this be changed to reference 29 CFR 1910.120 as the

standard. The Coast Guard agrees and has revised the text of § 155.4032(b) to reflect this.

P. Waiver Provisions

Six commenters dealt with the need for a process and mechanism for the Coast Guard COTP to address concerns that a VRP does not meet the requirements of this section for a specific COTP zone. Capabilities nationwide vary greatly, making it critical the COTP have the ability to rapidly address deficiencies that could place a vessel and port at risk. The Coast Guard agrees and, using § 155.4020(c) as authority, a COTP can stop a vessel from conducting oil transport or transfer operations unless the requirements of this regulation are met. If proper resource providers may not be available to meet the required response times by the date this regulation is in effect. Therefore, § 155.4055 allows for a temporary waiver request. The local COTP must review and comment on this waiver request before forwarding it to the Coast Guard Commandant, Director of Prevention Policy (CG-54) for final approval. The Coast Guard intends to publish guidance to field units regarding consideration of waiver requests. In addition, the COTP and local port partners will be active in reviewing the Salvage Annex of the ACP, which will describe in detail local salvage and marine-firefighting resources.

One commenter did not agree with the proposed waiver periods, which it states seem to be selective yet unsupported by logic. The Coast Guard disagrees. The waiver periods were developed after analyzing information gathered during the 1997 public workshop, and from information gathered from the salvage and marine firefighting industry for the 2002 Regulatory Assessment. We are not mandating additional equipment requirements under the final rule.

Two commenters stated that the salvage and firefighting capability should be built up over time, much like the buildup of OSRO inventories has been accomplished in five-year cap increments. We agree in part. Our analysis indicates that no new planholder capital expenditures will be necessary. Before the promulgation of this rule, industry began its capital buildup of equipment as part of its business model for the salvage and firefighting services it provides on a daily basis, not as a result of the requirements of this rule.

One commenter suggested limiting temporary waivers to a one-year maximum for planholders who are

unable to obtain a salvage and marine firefighting resource provider, because all affected entities have had ample time to prepare for this requirement. The Coast Guard disagrees. We recognize that this regulation is a major change in planholders' VRPs and that the ability to acquire these services is dependent on whether or not such required services are available. We understand that there may be a period of time where personnel, equipment, and service contracts are being acquired and/or relocated to areas to meet the planholders' needs. For this reason we feel that the proposed waiver times are reasonable, and have left them unchanged in this final rule.

Five commenters stated that any temporary waiver of these requirements by a COTP should be coordinated with state officials and harbor safety committees, and asked if the local COTP has the resources and/or expertise to evaluate and approve the waiver. The Coast Guard disagrees; this is a Federal regulation, and for that reason the waiver authority lies solely in the Coast Guard's discretion. Any waiver request is first evaluated and commented on by the local COTP, who may consider input from other entities including state agencies, the local area committee, and the harbor safety committees prior to forwarding the request to the Coast Guard Commandant, Director of Prevention Policy (CG-54), who will make the final determination. The COTPs have the resources to evaluate and recommend approval or disapproval of waiver requests in an appropriate manner.

One commenter stated that the Coast Guard should track waiver requests made pursuant to § 155.4055, and consider funding resources if many requests are from the same area. The Coast Guard disagrees with this comment, in part. While we do intend to track waiver requests to identify those areas of the country where resource providers are lacking, we do not have funds to provide to those areas.

Q. Economic Comments

One commenter stated that an appropriate retainer to cover costs can be sustained by the industry if the savings from a prompt, successful response complements them. The Coast Guard does not agree or disagree. Because this commenter suggested no changes to the NPRM, the Coast Guard did not consider any changes as a result of this comment.

One commenter stated that the money spent for this rule would be better spent through prevention, such as crew training and modernization of

equipment. The Coast Guard agrees that any money spent on training and modernization is money well spent; however that would not address the need to have planned for, and already contractually obligated, appropriate salvage and marine-firefighting equipment for responding to a worst-case-scenario incident.

One commenter stated that there are upcoming opportunities offered by pending port security legislation, which would allow the cost of these services to be spread among the entire port community. The writer is referring to the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108-293), which was signed into law after the comment period on the NPRM closed. The Coast Guard recognizes that that law authorizes the Coast Guard to reach beyond tank vessels with its VRP regulations. We considered withdrawing this regulation until regulations pulling nontank vessels into the VRP regime were promulgated. We decided that such a delay would not be acceptable because it would postpone the time savings and efficiency benefit of listing resource providers for current planholders.

One commenter stated that marine firefighting is one of the poorer or least publicly funded services, thus amounting to an unfunded mandate. Section 155.4045(a) states that planholders may only list resource providers that have been arranged by contract or other approved means. This means that a public marine-firefighting department would have to agree, in advance, to be listed in the VRP. This regulation imposes no new requirements on public marine firefighters, and therefore is not an unfunded mandate.

One commenter wanted to make it known that the tank barge industry is different than the tank vessel industry, and responders and service providers will take into consideration all aspects of costs, adequacy and fairness of the proposed rules. The Coast Guard anticipates that differences in circumstances will be discussed prior to any contractual arrangement.

One commenter explicitly stated that shippers (particularly those who operate in smaller or remote ports) will be forced to consider other, more cost-effective modes of transportation, and that the net effect will be a loss of liquid tonnage traveling on the inland waterway system as this traffic moves to other transportation modes. The Coast Guard disagrees. Our economic analysis for the final rule shows that VRP holders would not incur additional capital costs as a result of the final rule,

but would still incur paperwork costs of about \$1.2 million annually. As to the net loss of liquid tonnage traveling on the inland waterways, the absence of significant additional costs should result in little or no net loss due to this regulation.

One commenter questioned why five percent of the planholder's revenue will be applied to fund this proposition instead of using that money to eliminate single-hulled barges. The Coast Guard assumes this comment stems from the analysis found on page 55 of the 2002 Regulatory Assessment, which discusses the 5% impact on only a few small businesses.

The intent of this final rule is certainly not to divert monies needed to fund the change over to double-hulled barges; rather, it is to ensure that adequate resources are in place to avoid a costly response to an oil spill if possible. From our final small business analysis, we found that the final rule will not impose additional capital or infrastructure costs on small businesses. We estimate businesses will still incur paperwork costs of about \$1.2 million annually or about \$1,500 per business.

Eight commenters stated that the NPRM cited the M/V NEW CARISSA as an example of the need for the enhanced salvage capacity it proposes, even though the M/V NEW CARISSA was a freighter that would not be covered by the rulemaking. The commenters are referring to the mention of the M/V NEW CARISSA in the May 2002 regulatory assessment, "Salvage and Marine-Firefighting Requirements for Vessel Response Plans" (USCG-1998-3417). In this regulatory assessment, the Coast Guard referenced the M/V NEW CARISSA as background information in the context of a recommendation the Marine Board made in its 1992 report that:

All commercial vessels, not just tank vessels, demonstrate planning for salvage response.

The regulatory assessment goes on to note that the:

Discussion of salvage planning by non-oil carriers has only recently started, since the M/V NEW CARISSA accident and salvage in 1999 and other general cargo salvage incidents.

However, the Coast Guard did not cite the M/V NEW CARISSA incident specifically as an example for the need for this rulemaking.

R. Environment Comments

In Section VII, entitled Rulemaking Analysis and Notices, Subsection M there is a discussion of the environmental comments.

S. Tribal Consultation

In regards to protecting the rights of the Puget Sound tribes, the Coast Guard has entered into the required consultation and coordination with affected Indian tribal governments, and all State, local, and tribal governments have had an opportunity to comment on the NPRM during the public comment period, and have those comments addressed prior to issuance of a final rule. We have summarized our consultation with Indian tribal governments in Section VII, entitled Rulemaking Analysis and Notices, Subsection J of this final rule.

T. Miscellaneous

Two commenters stated that firefighting and salvage do not work on the same operational principles, and that they should be addressed differently in the rulemaking. The Coast Guard understands this position, but does not feel it is necessary to change the regulation. While there are differences in these two types of emergency responses, we recognize that in some instances both firefighting and salvage services will be provided by one resource provider. Also, marine firefighting and salvage are closely linked as a response progression, therefore we feel that a single regulation serves best to inform the industry and resource providers of the planning requirements. However, as there are different aspects of each response, separate response timetables are provided for salvage versus firefighting planning purposes.

One commenter stated that the NPRM was not very well written, adding that it essentially proposed amending existing VRP regulations, yet included them in a separate section. The Coast Guard disagrees and has determined that these regulations are necessary and fit appropriately into the current VRP regulations provided in 33 CFR part 155.

One commenter stated that the State of California should not dictate U.S. salvage and marine-firefighting response planning requirements. The commenter noted that the Coast Guard has no business imposing the same unreasonable requirements on those who elected to avoid them by not conducting business in California. The Coast Guard disagrees that these regulations, which implement requirements contained in OPA 90, are unreasonable. Further, the Coast Guard has not, at any time during this rulemaking project, set out to impose unreasonable requirements, either on our own or at the behest of one of the

States. As found in the public docket, document number USCG-1998-3417-0008, the Coast Guard had requested an extension of the implementation date of California's Salvage Equipment and Service requirements (found in section 8 18.02(m) of California's Oil Spill Contingency Plan regulations (Title 14, Division 1, Subdivision 4, Chapter 3, Subchapter 3, Sections 81 5-819)) beyond September 30, 2000. We felt that such an extension would give us time to share and discuss our own proposed requirements with them. The Coast Guard is not approving California's requirements; however we are required under Executive Order 13132 to consult with the States prior to proposing regulations that might affect them. We consulted with California on an agreement on the best approach for ensuring a salvage and firefighting capability that both serves the interests of that State and the United States, and also to lessen the burden of meeting two separate regulatory requirements on industry. States have an inherent right to set vessel response planning requirements for their own waters, as long as they do not preclude compliance with Federal requirements. Since this comment came into the docket, California issued Salvage Equipment and Service requirements as part of their Oil Spill Contingency Plan regulations on October 12, 2007. For a detailed discussion of this topic, see the "Federalism" section below.

One comment recommended that the Coast Guard should establish Basic Ordering Agreement (BOA) or contracts with salvors and marine firefighters, and other resource providers in the same fashion it has done with spill cleanup contractors. They suggested that the Coast Guard apply the same criteria when evaluating contract services that are being required of the tank vessel industry, and that the Coast Guard perform the evaluation and contracting within the same time periods given the tank vessel industry in the proposed revision. The Coast Guard disagrees. In 1982 Congress directed the Coast Guard Commandant to:

Review Coast Guard policies and procedures for towing and salvage of disabled vessels in order to further minimize the possibility of Coast Guard competition or interference with commercial enterprise. (Pub. L. 97-322, title I, Sec. 113, Oct. 15, 1982, 96 Stat. 1585, as amended by Pub. L. 100-448, Sec. 30(b), Sept. 28, 1988, 102 Stat. 1850)

Congress mandated the review because of concern that the Coast Guard was unnecessarily using its resources to provide non-emergency assistance for disabled vessels, which could be

adequately performed by the private sector. In addition, a key aspect of OPA 90 emphasizes the use of private over public emergency response resources. Therefore, this regulation was written to ensure that private industry have the first chance at the available contracts if possible.

One commenter stated that since Congress removed Federal agencies as firefighting resources with the Federal Fire Prevention and Control Act of 1974, the burden has fallen squarely on the shoulders of local fire departments. The Coast Guard agrees in part and hopes this regulation will relieve that burden by helping to bolster firefighting resources with private resource providers that establish new partnerships between the public and private sectors.

One commenter stated that these regulations will impose upon the industry the same burdens that were imposed for oil-spill response in regards to cost, multiple contracts, and enhanced port capabilities, and that the Coast Guard should ensure that these issues are clearly addressed in these regulations and that the Coast Guard has the tools and capability to adequately ensure that resources listed in a VRP are adequate for local ports. VRP approval is done according to certain criteria used by the Coast Guard in reviewing the submitted VRPs. Should the review process uncover deficiencies, or if a historical pattern of deficiencies are found in the resources listed in VRPs, the Coast Guard will take administrative action in accordance with §§ 155.1025(d)(1) and 155.1070(e). However, the responsibility of ensuring the adequacy of the response provider is on the planholder, based on the selection criteria found in § 155.4050.

One commenter stated that the comments found in the FOSC's report on the M/V NEW CARISSA, "Crisis on the Coast," proves that a response must be centrally coordinated to be effective. The commenter added that such coordination could not be achieved within the context of the proposals contained in the NPRM. The Coast Guard disagrees. Section 155.4030(c) addresses integration into the response organization prior to an incident happening. It is the responsibility of the planholder and resource provider to ensure this is done by working with local port partners and contributing to, and exercising under, the ACP. Table 155.4040(c) references VRP submittal to the Incident Commander/Unified Command. Both of these items show there is a clear intent for central coordination and pre-planning of the response.

Six commenters stated the rule presents an incomplete and minimal approach to providing effective salvage and firefighting capability for ships in U.S. waters, that the U.S. needs a port system of maritime-firefighting capacity for the general good, and that such a national system should be developed under Federal oversight using general treasury funding. One commenter stated that the Coast Guard continues to reject a dedicated salvage fleet as a viable option to address this pressing need. The creation of a dedicated salvage fleet using Federal resources would have to come from Congress and be funded in the Federal budget. The Coast Guard has not actively rejected or endorsed a dedicated salvage fleet.

One commenter stated that the absence in the NPRM of a proposal to create a nationally coordinated system fails to recognize the jurisdictional issues inherent in a casualty on a major waterway of the United States. The Coast Guard disagrees, and points to the importance of pre-planning using cooperation of the local and surrounding port partners and creating adequate ACPs to anticipate situations where an incident might cross jurisdictional lines.

One commenter recommended that the Coast Guard eliminate the last sentence in § 155.4010, which reads:

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

as it is propaganda, and because the first sentence accurately describes the purpose of the new subpart. The Coast Guard disagrees. We consider the sentence in question to be factually correct and an accurate statement of the basis and intent of this regulation.

Three commenters stated there is a definite need for regulations giving the COTP direct oversight of VRPs. The Coast Guard disagrees. The volume of review and oversight for the VRPs will be time and labor intensive, and would create too much of an administrative burden on local COTP offices. The review and oversight will be maintained at the Commandant level in Coast Guard Headquarters, as is the existing VRP program. This will allow for a more consistent review process and application of the regulation.

One commenter suggested not listing the requirements contained in the rules separately, but rather integrating them with the existing VRP rules found elsewhere in 33 CFR part 155. In cases where this is not possible, then both the existing rules and the new rules should cross reference each other. The Coast

Guard disagrees and will keep the new salvage and marine firefighting requirements in separate regulations. We cross referenced the existing regulations in Part 155 where necessary.

One commenter stated that the technical expertise to effectively deploy assets in the earliest stages of a shipboard fire is missing from the rulemaking, and that the best improvements in OPA 90 response effectiveness can be made by ensuring that capable and trusted marine-firefighting experts merge into the joint command as quickly as possible. The Coast Guard agrees in part. There may well be instances where the resource providers contracted for assessment and planning are also the resource providers for the firefighting teams and equipment, and the Coast Guard encourages both planholders and resource providers to ensure this is done when possible. Regarding the integration into the joint commands, prudence dictates that both planholders and resource providers participate in the Federal, state, and local area contingency planning prior to an incident.

One commenter stated that the new fire-detection systems, rules, and training are paying off and should be given a chance to work before the proposed firefighting rules are enacted. The Coast Guard disagrees in part. It is true that there have been some positive developments in the past regarding on board marine firefighting regulations and standards, most notably the 1995 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). However, this rulemaking addresses a worst case discharge scenario situation, which could easily overwhelm the vessel crew's firefighting capabilities and require external response resources. For these reasons, the firefighting rules are necessary.

One commenter was unsure regarding compliance with the requirement in § 155.4040(d)(2) to "list the pier location by facility name and city." They asked if that meant listing all potential locations that their entire fleet might someday visit, over the 13 COTP zones that the company operates in, in order to determine if the resource provider can reach the location in the designated timeframe. They stated that this provision would be extremely difficult to accomplish. The Coast Guard agrees reporting this level of detail will be difficult, but necessary nevertheless to verify that resources will be available. VRPs and the accompanying geographic-specific annexes are already

required to list specific information as found in § 155.1035(i). We are requiring that these annexes be updated to show the pier or city locations, and which firefighting resource providers will be contracted for responding to incidents at those locations. Section 155.1070(c)(5) has provisions for updating VRPs when necessary.

One commenter stated that unlike most areas of our nation, the lower Columbia River, which is approximately 110 miles, is protected by Mutual Aid Agreements in which all 10 of the Maritime Fire and Safety Association (MFSA) public fire agencies participate. The commenter stated that there are a number of organizations similar to MFSA throughout the country, and that the hard work and dedication these organizations have put forth must not be overlooked in the finalizing stage of these regulations. The Coast Guard agrees, and is very appreciative of the various mutual aid organizations that exist throughout the United States. We anticipate that many of these organizations will enter contractual agreements with planholders, and that more of them will be formed in additional locations to address the requirements of this regulation.

One commenter stated that there must be a mechanism in place to ensure that the VRP, and all copies of the VRP, are kept up-to-date as changes are made. The Coast Guard agrees and directs the commenter's attention to the existing requirements for any revisions to be submitted to the Coast Guard 30 days in advance of a vessel's operation in 33 CFR 155.1070(d). More information regarding this issue can be found on the Internet at the following Web site: http://www.uscg.mil/vrp/news/submission_reminder.shtml.

One commenter stated that if a marine-firefighting resource provider subcontracts to other qualified organizations, each subcontracted organization should also receive a copy of the VRP. The Coast Guard agrees and has added text in § 155.4035(b)(3) to reflect this change.

One commenter stated that the rules require drill participation by all of the salvage and firefighting contractors in the vessel oil contingency plans. The Coast Guard agrees, and the existing exercise requirements are found in § 155.1060. This requirement covers all vessels that are required to carry VRPs. We have also added § 155.4052 to address specific exercise requirements.

Three commenters stated that the Coast Guard will have to enforce the regulations vigorously if resource providers are to believe their investments will produce a return. They

also asked how the Coast Guard will gain the confidence of resource providers, and if there will be any directive to the COTPs to insure that those who invest will get the work and those who do not will fall outside the definition of resource provider. The Coast Guard agrees and is developing guidance to the field units detailing the application and enforcement of this regulation.

U. Beyond the Scope

Two commenters addressed the fact that the NPRM failed to discuss the issue of liability for salvors, and suggested including immunity language, which states salvage and marine firefighting resources will, for the purpose of 33 U.S.C. 1321(c)(4)(a), be considered as rendering such service consistent with the National Contingency Plan. While we appreciate the points raised concerning potential liability, the issue of liability is beyond the scope of this final rule. No provision of this final rule addresses liability, either to expressly limit liability or to address immunity from liability. Among other things, determinations of liability require a fact-laden inquiry on a case-by-case basis. If an incident response is covered by the National Contingency Plan, then any liability coverages previously authorized by 33 U.S.C. 1312, and subsequent exemptions, would remain in effect.

We received many other comments concerning issues that are outside the scope of the NPRM, and as such require little or no response.

One commenter stated that much of the existing dedicated pollution response equipment is suited only for spill response and is not used except for drills and actual spills. One commenter asserted that a national system with regional/local planning requirements would resolve jurisdictional issues through the use of the existing incident command structure, where one Federal authority (presumably the Coast Guard COTP) could coordinate the local and regional response organizations under one unified command system. One commenter stated that the Coast Guard should treat identified resource shortfalls as local issues and resolve them with local resources, as the state of Washington has done. They referenced the Strait of Juan de Fuca rescue tug, which is in operation at Neah Bay, with funding for its operations provided by the Washington State legislature. One commenter stated that if a direct funding mechanism, such as user fees, were established by local and state authorities to meet the intent of these regulations, the cost and impact

would be significantly greater than that proposed in these regulations, as has been documented in some of the maritime regulations of some western States. One commenter stated that §§ 155.1035(e)(6)(ii), "Response plan requirements for manned vessels carrying oil as a primary cargo", and § 155.1040(e)(5)(ii), "Response plan requirements for unmanned tank barges carrying oil as a primary cargo", need to be updated. While this comment is outside the scope of this regulatory project, we have passed it on to the appropriate office within the Coast Guard to consider as part of a separate regulatory project. One commenter stated that the conditions in 33 CFR 155 are often not met and the local, public fire departments are unaware of their role in the facility response plan.

One commenter stated that the Coast Guard should focus on ensuring adequate participation in the casualty response by the financial stakeholders, which are often the insurers of the responsible parties. The FOSC should require that all marine insurers, including hull, protection and indemnity (P&I), and pollution insurers, have an individual available to discuss coverage with the FOSC on an as needed basis. Another commenter stated that the FOSC should require that some representative of the resource provider's various marine insurers, such as a surveyor, be on scene to participate in the financial decisions made in the context of the ICS. These comments are beyond the scope of this rulemaking, as they would introduce a new aspect to the overarching incident command structure.

One commenter recommended that the Coast Guard take the lead to ensure that the firefighting sections of each ACP have been developed and tested so that initial at-pier response by public resources is assured. We will take this comment into consideration as we conduct regular reviews of ACPs.

One commenter stated that the U.S. Coast Guard's Crisis Management School should increase the time spent training the attendees in the distinctions among a resource provider's various insurance carriers because casualties usually involve multiple insurer interests. One commenter stated that they support the concept of improving and enhancing indigenous resources in each port, where possible, rather than creating a new industry. The commenter added that enhancing local firefighting capabilities will create a reasonable low-cost alternative to developing a new industry. One commenter wrote that for a number of years, tank vessels and tank barges transiting the west coast of North

America have been voluntarily participating in a traffic separation scheme whereby tank vessels transit at least 50 miles offshore, while tank barges transit 25 miles offshore. The commenter noted that if tank barges could avoid the regulatory reach of these proposed standards by transiting beyond the 50-mile limit of a certain COTP zone, they would place themselves directly in the path of the faster moving tank vessels, negating the benefits and safety features of the traffic separation scheme. One commenter stated it is essential that the Coast Guard address the status of efforts to obtain reciprocity with Canada, particularly for areas where we jointly share waterways. One commenter submitted a comment designed to correct language in a report that was neither referenced in nor relied upon for the NPRM. One commenter stated that the Coast Guard should address and develop a process to resolve possible jurisdictional conflicts between firefighters and Federal, State, and planholder responders. At the public meeting in Seattle on the NPRM, it was suggested firefighting and salvage contractors should be certified by an International Association of Classification Societies member.

These comments were found to be beyond the scope of the proposed rulemaking; therefore, we have not responded to them.

VI. Incorporation by Reference

The Director of the Federal Register has approved the material in §§ 155.4035 and 155.4050 for incorporation by reference under 5 U.S.C. 552 and 1 CFR 51. Copies of the material are available from the sources listed in those sections.

VII. Regulatory Analyses

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

A. Regulatory Planning and Review (E.O. 12866)

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has not reviewed it under that Order.

A regulatory analysis is available in the docket where indicated under the **ADDRESSES**. A summary of the analysis follows:

The Coast Guard is amending the vessel response plan salvage and marine firefighting requirements for tank

vessels carrying oil or groups I through IV petroleum oil as cargo. These revisions add clarifying language to the salvage and marine firefighting services that must be identified in vessel response plans. These revisions also set new response time planning requirements for each of the required salvage and marine firefighting services. The final rule also removes the time requirement for "heavy lift" services and the 24-hour requirement. The changes above ensure that the appropriate salvage and marine firefighting resources are identified and available for responding to incidents up to and including the worst-case discharge scenario. Readers should refer to the "Summary of Changes from NPRM" section of this preamble for more information.

Since 2002, several factors have led us to reconsider the cost impacts of the rule. First, the rule requirements themselves have changed, eliminating the need for the costly staging of heavy lift equipment. In addition, the marine salvage and firefighting business practices have changed in response to market forces external to the rule. Even in the absence of the Coast Guard regulatory requirements, industry has made considerable capital investments in the equipment needed to fulfill other business opportunities and provide services through the normal course of daily business operations. As a result, salvage companies have already acquired the equipment that we had projected would need to be required to meet the revised plan requirements.

As a combined result of these changes, we now estimate that the rule will not trigger an intensive investment in capital equipment by industry. Therefore, we do not anticipate salvage and firefighting companies will incur the capital costs and associated annual costs that we previously envisioned in the proposed rule based on comments received from industry and on the state of the business environment during the past six years. Companies purchased equipment as a part of their business model in order to carry out the services they provide clients in addition to the contract work that we estimated for the proposed rule. As a result, compliance with the final rule will not require additional capital or resources to increase salvage and marine firefighting capability.

For the final rule, we added clarifying language to existing requirements of the NPRM. The most significant change in the final rule is the removal of the "heavy lift" response time requirement (Heavy lift means the use of a salvage crane, A-frames, hydraulic jacks,

winches, or other equipment for lifting, righting, or stabilizing a vessel). This should greatly reduce the burden on industry by allowing industry to list "estimated" response times of heavy lift equipment rather than having to pre-stage the equipment in geographical locations to meet firm planning response times. Only an additional paperwork burden exists in the form of annual plan updates, renewals, and deficiency letters.

Initially, we believed that capital costs and other costs such as employee training and drills, employee compensation, acquisition of equipment, record creation and recordkeeping, and contract negotiations with planholders (initial and annual) incurred by the salvage and firefighting companies would be passed onto vessel planholders in the form of retainer fees or increased costs for services provided. However, based on information from industry representatives, the levying of retainer fees is not a common industry practice and is virtually nonexistent within the marine salvage and firefighting industry. Marine salvage and firefighting companies recover most, if not all, of their costs for equipment and other capital expenditures through marine related contracted work and services.

For about 797 planholders that this rule will impact, there are additional paperwork burden and costs, which require an adjustment to an existing collection of information. We estimate the total annual burden hours to increase by 19,925 hours with an associated cost of approximately \$1.2 million (non-discounted). For more detail, see the "Collection of Information" section of this rule.

This rule provides an efficiency benefit that will result in reduced response times. Current planholders will be able to make arrangements and contract with resource providers before future events occur, therefore, reducing future response times. The rule ensures that the appropriate salvage and marine firefighting resources are identified and available for responding to incidents up to and including worst case discharges. This rule will assist in restoring maritime transportation related commerce after a navigation or security event. The rule also provides clarification to the existing requirements found at 33 CFR 155.1050 which are general and only require that a planholder identify salvage and marine firefighting resources.

Ultimately, reduced response time may result in barrels of oil not spilled after an event occurs. The Coast Guard examined spill incidents from casualty

cases for tank ships and tank barges for the period 2002–2006. This period appeared relevant for evaluation since the Coast Guard published the original VRP rule in January 1996 and since several years had elapsed since OPA 90, thus allowing time for OPA 90 related rules to have an effect on the amount of oil that was being spilled into the water from tanker incidents. We found that spill volume had decreased during this period in contrast to the years just following OPA 90. However, the Coast Guard considers this rule will assist in mitigating the impacts of future low-risk, high-consequence worst case discharges.

We consider the efficiency gains discussed above to be the primary benefit of the rule. We also present additional analysis of potential scenario-based benefits in the regulatory analysis available in the docket. We considered large spill scenarios and effectiveness factors to forecast a range of quantified benefits.

B. Small Entities

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

The Coast Guard has reviewed this final rule for its potential economic impact on small entities. Out of the estimated 797 planholders, we identified 191 entities as being small businesses. From our analysis, we believe that small businesses will not incur additional capital costs to comply with the final rule. They will incur small paperwork costs of about \$1,500 annually per small business. For this reason, the Coast Guard certifies under 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If you think that this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning these provisions or options

for compliance, please consult with the Coast Guard personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

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). 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.

D. Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, and a description of those who must collect the information 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 final rule modifies one existing OMB-approved collection 1625–0066 (formerly 2115–0595). A summary of the revised collection follows.

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

OMB Control Number: 1625–0066.

Summary of the Collection of Information: Vessel response planholders will need to collect additional information to comply with the rule for the salvage and marine firefighting requirements. This information includes:

- Name and contact information for resource providers for each vessel with appropriate equipment and resources located in each zone of operation;
- Marine firefighting pre-fire plans; and
- Certification that the responders are qualified and have given permission to be included in the VRP.

Need for Information: The information is necessary to show evidence that planholders have properly planned to mitigate oil outflow and to

provide that information to the Coast Guard for its use in emergency response.

Use of Information: The Coast Guard will use this information to determine whether a vessel meets the salvage and marine firefighting requirements.

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

Number of Respondents: The number of respondents is 797 VRP planholders.

Frequency of Response: Each respondent will update and amend their respective plan accordingly and typically on an annual basis.

Burden of Response: For this final rule, the VRP planholder hour burden is 25 hours each year. For this rule, the total hour burden is 19,925 hours each year. We also estimate that planholders will incur ongoing paperwork costs of about \$1.2 million annually.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 220,559 hours. This rule will increase that number by 19,925 hours. The estimated total annual burden is 240,484 hours.

In addition to this rulemaking, COI 1625–0066 is being revised by 2 other Coast Guard rules. These rules are—(1) Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions [Docket No. USCG–2001–8661; RIN 1625–AA26]; and (2) Nontank Vessel Response Plans and Other Vessel Response Plan Requirements [Docket No. USCG–2008–1070; RIN 1625–AB27]. Once these rules are finalized, the hour burden for 1625–0066 will differ from the figures noted above. See the COI preamble section of each rule 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 rule to OMB for its review of the collection of information.

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 notice in the **Federal Register** of OMB’s decision to approve, modify, or disapprove the collection.

E. Federalism (E.O. 13132)

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in

categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, or 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).)

This 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 of the NPRM published on May 10, 2002 (67 FR 31868), the Coast Guard consulted with State agencies such as the California Office of Spill Prevention and Response to ensure these regulations will not interfere with or preempt State regulations on the same subject. While several State agencies submitted comments on the NPRM, we have not consulted with these States since the publication of the NPRM. After reviewing these comments, we have determined that these regulations will not interfere with or preempt existing State regulations on the same subject.

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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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

This rule will not result in expenditures by State, local, or tribal governments because public vessels are exempt from the requirements of this rulemaking. The Assessment section above provides an overview of this rulemaking and its costs and benefits. A more detailed discussion of costs and

benefits can be found in the Regulatory Assessment for this rule, which is available in the docket where indicated under **ADDRESSES**. The Regulatory Assessment also describes alternatives to this rule, which are contained in the Final Regulatory Flexibility Act Analysis.

G. Taking of Private Property

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

I. Protection of Children

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

J. Indian Tribal Governments

We have reviewed this rule under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Rulemakings that are determined to have “tribal implications” under that Order (i.e., 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) require the preparation of a tribal summary impact statement. As discussed below, the Coast Guard finds that this rule would not have implications of the kind envisioned under the Order, because it would not impose substantial direct compliance costs on tribal governments, preempt tribal law, or substantially affect lands or rights held exclusively by, or on behalf of, those governments.

Following the publication of the NPRM in May of 2002 and a subsequent notice of availability of the draft Programmatic Environmental Assessment in January 2006, we received two comment letters from the Makah Tribal Council of Neah Bay, WA. To address their concerns, we met with representatives of the Tribal Council in June and November of 2006. The meetings were intended to more fully

explain the purpose of the rulemaking and to discuss what implications it would have on their Tribal concerns. Meeting summaries can be found in the public docket as indicated under **ADDRESSES**. The Coast Guard does not foresee that this rule would compel the tribes to significantly alter their current fishery. Furthermore, it would provide some benefits by increasing the amount of salvage and marine firefighting resources in the vicinity of their traditional tribal grounds. We do not anticipate any additional economic cost to the tribe. For these reasons, we have determined that this rule would not have “tribal implications” under the Executive Order, and does not require a tribal summary impact statement.

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through 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 rule uses the following National Fire Protection Association (NFPA) voluntary consensus standards:

- NFPA 1001, Standard for Fire Fighter Professional Qualifications, 2008 Edition
- NFPA 1005, Standard for Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters, 2007 Edition

- NFPA 1021, Standard for Fire Officer Professional Qualifications, 2003 Edition

- NFPA 1405, Guide for Land-Based Fire Fighters Who Respond to Marine Vessel Fires, 2006 Edition

- NFPA 1561, Standard on Emergency Services Incident Management System, 2008 Edition

The sections that reference these standards and the locations where these standards are available are listed in 33 CFR 155.140.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that preparation of an Environmental Impact Statement is not necessary. A final Programmatic Environmental Assessment (PEA) and a final “Finding of No Significant Impact” (FONSI) are available in the docket where indicated under **ADDRESSES**. An overview of the NEPA steps taken for this rule follows.

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, resulting in a FONSI [see Vessel Response Plans rulemaking; CGD 91–034; 58 FR 7376; February 3, 1993]. For this rulemaking, we initially relied on that 1992 EA as the salvage and marine firefighting requirements are two of many required vessel response plan elements. Following publication of the NPRM we received comments on the age of the original analysis, as well as the need to address the use of different types of fire fighting foam. A PEA was drafted, solely for these salvage and marine firefighting revisions, to address these comments. A Notice of Availability for the draft PEA was published in the **Federal Register** on January 3, 2006 [71 FR 125] and the public comments received in response to it are addressed in the final PEA. The PEA only updates a small portion of the scope of the 1992 EA; specifically, the salvage and marine firefighting identification and response time requirements in VRPs for commercial tank vessels carrying groups I through IV petroleum oil as a primary cargo. The 1992 EA and FONSI, the updated draft PEA and the final 2008 PEA and FONSI are available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects for 33 CFR Part 155

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

■ For the reasons discussed in the preamble, the Coast Guard amends 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(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.

■ 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. Revise § 155.140 to read as follows:

§ 155.140 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, it is available for inspection at the Coast Guard, Office of Vessel Activities, 2100 Second Street, SW., Washington, DC 20593–0001. Approved material is available from the sources indicated in this section.

(b) *American National Standards Institute, Inc. (ANSI)*, 25 West 43rd Street, New York, NY 10036, 212–642–4980, <http://www.ansi.org/>:

(1) ANSI A10.14, Requirements for Safety Belts, Harnesses, Lanyards and Lifelines for Construction and Demolition Use, 1991 (“ANSI A10.14”), incorporation by reference approved for § 155.230.

(2) [Reserved]

(c) *American Society for Testing and Materials (ASTM)*, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, 610–832–9585, <http://www.astm.org/>:

(1) ASTM F 631–93, Standard Guide for Collecting Skimmer Performance Data in Controlled Environments (“ASTM F 631–93”), incorporation by reference approved for Appendix B.

(2) ASTM F 715–95, Standard Test Methods for Coated Fabrics Used for Oil Spill Control and Storage (“ASTM F 715–95”), incorporation by reference approved for in Appendix B.

(3) ASTM F 722–82 (1993), Standard Specification for Welded Joints for Shipboard Piping Systems (“ASTM F 722–82”), incorporation by reference approved for Appendix A and Appendix B.

(d) *International Maritime Organization (IMO)*, 4 Albert Embankment, London SE1 7SR, United Kingdom, <http://www.imo.org/>:

(1) Resolution A.535(13), Recommendations on Emergency Towing Requirements for Tankers, November 17, 1983 (“Resolution A.535(13)”), incorporation by reference approved for § 155.235.

(2) Resolution MSC.35(63), Adoption of Guidelines for Emergency Towing Arrangement on Tankers, May 20, 1994 (“Resolution MSC.35(63)”), incorporation by reference approved for § 155.235.

(e) *National Fire Protection Association (NFPA)*, 1 Batterymarch Park, Quincy, MA 02269–7471, 617–770–3000, <http://www.nfpa.org/>:

(1) NFPA 1001, Standard for Fire Fighter Professional Qualifications, 2008 Edition (“NFPA 1001”), incorporation by reference approved for § 155.4050.

(2) NFPA 1005, Standard for Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters, 2007 Edition (“NFPA 1005”), incorporation by reference approved for § 155.4050.

(3) NFPA 1021, Standard for Fire Officer Professional Qualifications, 2003 Edition (“NFPA 1021”), incorporation by reference approved for § 155.4050.

(4) NFPA 1405, Guide for Land-Based Fire Fighters Who Respond to Marine Vessel Fires, 2006 Edition (“NFPA 1405”), incorporation by reference approved for §§ 155.4035 and 155.4050.

(5) NFPA 1561, Standard on Emergency Services Incident Management System, 2008 Edition ("NFPA 1561"), incorporation by reference approved for § 155.4050.

(f) *Oil Companies International Marine Forum (OCIMF)*, 29 Queen Anne's Gate, London, SW1H 9BU England, <http://www.ocimf.com/>:

(1) Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988, incorporation by reference approved for § 155.1035.

(2) Reserved.

■ 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:

■ (a) Revising paragraph (k); and

■ (b) Removing and reserving existing paragraph (l):

§ 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.

(l) [Reserved]

* * * * *

■ 6. Reserve subpart H and add subpart I, consisting of § 155.4010 through § 155.4055, to read as follows:

Subpart I—Salvage and Marine Firefighting
Sec.

155.4010 Purpose of this subpart.

155.4015 Vessel owners and operators covered by this subpart.

155.4020 Complying with this subpart.

155.4025 Definitions.

155.4030 Required salvage and marine firefighting services to list in response plans.

155.4032 Other resource provider considerations.

155.4035 Required pre-incident information and arrangements for the salvage and marine firefighting resource providers listed in response plans.

155.4040 Response times for each salvage and marine firefighting service.

155.4045 Required agreements or contracts with the salvage and marine firefighting resource providers.

155.4050 Ensuring that the salvors and marine firefighters are adequate.

155.4052 Drills and exercises.

155.4055 Temporary waivers from meeting one or more of the specified response times.

Subpart I—Salvage and Marine Firefighting

§ 155.4010 Purpose of this subpart.

(a) The purpose of this subpart is to establish vessel response plan *salvage* and *marine firefighting* requirements for vessels, that are carrying group I–IV oils, and that are required by § 155.1015 to have a vessel response plan. *Salvage* and *marine firefighting* actions can save lives, property, and prevent the escalation of potential oil spills to worst case discharge scenarios.

(b) A planholder must ensure by *contract or other approved means* that response resources are available to respond. However, the response criteria specified in the regulations (e.g., quantities of response resources and their arrival times) are planning criteria, not performance standards, and are based on assumptions that may not exist during an actual incident, as stated in 33 CFR 155.1010. Compliance with the regulations is based upon whether a covered response plan ensures that adequate response resources are available, not on whether the actual performance of those response resources after an incident meets specified arrival times or other planning criteria. Failure to meet specified criteria during an actual spill response does not necessarily mean that the planning requirements of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1251–1376) and regulations were not met. The Coast Guard will exercise its enforcement discretion in light of all facts and circumstances.

§ 155.4015 Vessel owners and operators who must follow this subpart.

You must follow this subpart if your vessel carries group I–IV oils, and is required by § 155.1015 to have a vessel response plan.

§ 155.4020 Complying with this subpart.

(a) If you have an existing approved vessel response plan, you must have your vessel response plan updated and submitted to the Coast Guard by June 1, 2010.

(b) All new or existing vessels operating on the navigable waters of the United States or transferring oil in a port or place subject to the jurisdiction of the 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 transport or transfer operations if—

(1) You have not submitted a plan to the Coast Guard in accordance with § 155.1065 prior to June 1, 2010;

(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.

For the purposes of this subpart, the following definitions apply:

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. In addition, the assessment must be consistent with the conditions set forth in 33 CFR 155.240 and 155.245, as applicable.

Boundary lines are lines drawn following the general trend of the seaward, highwater shorelines and lines continuing the general trend of the seaward, highwater shorelines across entrances to small bays, inlets and rivers as defined in 46 CFR 7.5(c).

Captain of the Port (COTP) city means the city which is the geographical location of the COTP office. COTP city locations are listed in 33 CFR part 3.

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

(ii) A written certification that the personnel, equipment, and capabilities required by this subpart are available and under the vessel owner or operator's direct control. If the planholder has personnel, equipment and capabilities under their direct control, they need not contract those items with a resource provider.

(iii) An alternative approved by the Coast Guard (Commandant, Director of Prevention Policy (CG–54)) and submitted in accordance with 33 CFR 155.1065(f).

(2) 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 provided to the Coast Guard for VRP approval. In addition any written agreement with a public resource provider must be included in the planholder's Vessel Response Plan (VRP).

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 assisted.

External emergency transfer operations means the use of external pumping equipment placed on board 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 on board 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 and must be submitted for review along with the VRP.

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 with a potential or actual fire, to prevent loss of life, damage or destruction of the vessel, or damage to the marine environment.

Marine firefighting pre-fire plan means a plan that outlines the responsibilities and actions during a marine fire incident. The principle purpose is to explain the resource provider's role, and the support which can be provided, during marine firefighting incidents. Policies, responsibilities and procedures for coordination of on-scene forces are provided in the plan. It should be designed for use in conjunction with other state, regional and local contingency and resource mobilization plans.

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, who can determine the steps needed to control and extinguish a marine fire in accordance with a vessel's stability and structural integrity assessment if necessary.

On-site salvage assessment means that a salvage professional is on scene, at a safe distance from the vessel or on the vessel, who 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.

Primary resource provider means a resource provider listed in the vessel response plan as the principal entity contracted for providing specific salvage and/or marine firefighting services and resources, when multiple resource providers are listed for that service, for each of the COTP zones in which a vessel operates. The primary resource provider will be the point of contact for the planholder, the Federal On Scene Coordinator (FOSC) and the Unified Command, in matters related to specific resources and services, as required in § 155.4030(a).

Remote assessment and consultation means contacting the salvage and/or marine firefighting resource providers, by phone or other means of communications to discuss and assess the situation. The person contacted must be competent to consult on a determination of the appropriate course of action and initiation of a response plan.

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, and has been arranged by contract or other approved means. The resource provider must be selected in accordance with § 155.4050. For marine firefighting services, resource providers can include public firefighting resources as long as they are able, in accordance with the requirements of § 155.4045(d), 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 Required salvage and marine firefighting services to list in response plans.

(a) You must identify, in the geographical-specific appendices of your VRP, the *salvage and marine firefighting* services listed in Table 155.4030(b)—Salvage and Marine Firefighting Services and Response

Timeframes. 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, in the geographical-specific appendices of your VRP, adjacent to the name of the *resource provider*.

(b) Table 155.4030(b) lists the required *salvage and marine firefighting* services and response timeframes.

TABLE 155.4030(b)—SALVAGE AND MARINE FIREFIGHTING SERVICES AND RESPONSE TIMEFRAMES

Service		Location of incident response activity timeframe	
(1) Salvage		CONUS: nearshore 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 & 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) Subsurface product removal		72	84
(C) Heavy lift ¹		Estimated	Estimated
(2) Marine firefighting	At pier (hours)	CONUS: Nearshore area; inland waters; Great Lakes; and OCONUS: < or = 12 miles from COTP city (hours)	*COM041*CONUS: Offshore area; and OCONUS: < or = 50 miles from COTP city (hours)
(i) <i>Assessment & Planning</i> :			
(A) Remote assessment and consultation		1	1
(B) On-site fire assessment		2	12
(ii) <i>Fire Suppression</i> :			
(A) External firefighting teams		4	12
(B) External vessel firefighting systems		4	18

¹ Heavy lift services are not required to have definite hours for a response time. The planholder must still contract for heavy lift services, provide a description of the heavy lift response and an estimated response time when these services are required, however, none of the timeframes listed in the table in § 155.4030(b) will apply to these services.

(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 §§ 155.1035(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. The information contained in the response plan must be consistent with applicable Area Contingency Plans (ACPs) and the National Oil and Hazardous Substances Pollution Contingency Plan as found in § 155.1030(h).

(e) *Ensuring the proper emergency towing vessels are listed in your VRP.* Your VRP 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 VRP.* 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, for a minimum of 20 minutes, at least 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. These resources described are to be supplied by the resource provider, external to the vessel's own firefighting system.

(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.

§ 155.4032 Other resource provider considerations.

(a) *Use of resource providers not listed in the VRP.* If another resource provider, not listed in the approved plan for the specific service required, is to be contracted for a specific response, justification for the selection of that resource provider needs to be provided to, and approved by, the FOSC. Only under exceptional circumstances will the FOSC authorize deviation from the resource provider listed in the approved vessel response plan in instances where that would best affect a more successful response.

(b) *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, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q).

§ 155.4035 Required pre-incident information and arrangements for the salvage and marine firefighting resource providers listed in response plans.

(a) You must provide the information listed in §§ 155.1035(c) and 155.1040(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 NFPA 1405, Guide for Land-Based Firefighters Who Respond to Marine Vessel Fires, Chapter 9 (Incorporation by reference, see § 155.140). If the planholder's vessel pre-fire plan is one that meets another regulation or international standard such as International Convention for the Safety of Life At Sea (SOLAS), a copy of that specific fire plan must also be given to the resource provider(s) and be attached to the VRP.

(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.

(3) If a marine firefighting resource provider subcontracts to other organizations, each subcontracted organization must also receive a copy of the vessel pre-fire plan.

§ 155.4040 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 timeframes.

(1) If your vessel is at the pier or transiting a COTP zone within the continental United States (CONUS), the timeframes 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 (OCONUS), the timeframes in Table 155.4030(b) apply as follows:

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

(ii) Offshore area timeframes 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 timeframe 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.

(c) 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.

TABLE 155.4040(c)—RESPONSE TIMEFRAME END POINTS

Service	Response timeframe ends when
(1) Salvage:	
(i) Remote assessment and consultation	Salvor is in voice contact with Qualified Individual (QI)/Master/Operator.
(ii) Begin assessment of structural stability	A structural assessment of the vessel has been initiated.
(iii) On-site salvage assessment	Salvor on board 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.

TABLE 155.4040(c)—RESPONSE TIMEFRAME END POINTS—Continued

Service	Response timeframe ends when
(viii) External emergency transfer operations.	External pumps on board 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 on board 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) Subsurface product removal	Resources on scene.
(xv) Heavy lift ¹	Estimated.
(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.

¹ Heavy lift services are not required to have definite hours for a response time. The planholder must still contract for heavy lift services, provide a description of the heavy lift response and an estimated response time when these services are required, however, none of the timeframes listed in the table in § 155.4030(b) will apply to these services.

(d) *How to apply the timeframes to your particular situation.* To apply the timeframes 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 marine firefighting resource provider can reach the locations within the specified response times in Table 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 Table 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 Table 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 Table 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 Table 155.4030(b) will apply to these services.

§ 155.4045 Required agreements or contracts 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(h), and that these services are capable of arriving within the response times listed in Table 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 qualified individual 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 Ensuring 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 select a resource provider that meets the following selection criteria to the maximum extent possible:

(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 meet the training guidelines in NFPA 1001, 1005, 1021, 1405, and 1561 (Incorporation by reference, see § 155.140), show equivalent training, or demonstrate 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 provide.

(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, sea state and temperature extremes).

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

(14) *Resource provider* has the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard the health and safety of their workers when providing salvage and marine firefighting services.

(15) *Resource provider* has familiarity with the salvage and marine firefighting protocol contained in the local ACPs for each COTP area for which they are contracted.

(c) A *resource provider* need not meet all of the selection criteria in order for you to choose them as a provider. They must, however, be selected on the basis of meeting the criteria to the maximum extent possible.

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

§ 155.4052 Drills and exercises.

(a) A vessel owner or operator required by §§ 155.1035 and 155.1040 to have a response plan shall conduct exercises as necessary to ensure that the plan will function in an emergency. Both announced and unannounced exercises must be included.

(b) The following are the minimum exercise requirements for vessels covered by this subpart:

(1) Remote assessment and consultation exercises, which must be conducted quarterly;

(2) Emergency procedures exercises, which must be conducted quarterly;

(3) Shore-based salvage and shore-based marine firefighting management team tabletop exercises, which must be conducted annually;

(4) Response provider equipment deployment exercises, which must be conducted annually;

(5) An exercise of the entire response plan, which must be conducted every

three years. The vessel owner or operator shall design the exercise program so that all components of the response plan are exercised at least once every three years. All of the components do not have to be exercised at one time; they may be exercised over the 3-year period through the required exercises or through an area exercise; and

(6) Annually, at least one of the exercises listed in § 155.4052(b)(2) and (4) must be unannounced. An unannounced exercise is one in which the personnel participating in the exercise have not been advised in advance of the exact date, time, or scenario of the exercise.

(7) Compliance with the National Preparedness for Response Exercise Program (PREP) Guidelines will satisfy the vessel response plan exercise requirements. These guidelines are available on the Internet at <https://Homeport.uscg.mil/exercises>. Once on that Web site, select the link for "Preparedness for Response Exercise Program (PREP)" and then select "Preparedness for Response Exercise Program (PREP) Guidelines". Compliance with an alternate program that meets the requirements of 33 CFR 155.1060(a), and has been approved under 33 CFR 155.1065 will also satisfy the vessel response plan exercise requirements.

§ 155.4055 Temporary waivers from meeting 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, Director of Prevention Policy (CG-54), 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 to the Commandant (CG-54) 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) Commandant, Director of Prevention Policy (CG-54), 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 Table 155.4055(g).

(g) Table 155.4055(g) lists the service waiver time periods.

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 transport or transfer operations.

Dated: December 17, 2008.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Stewardship.

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