

## Chamber of Shipping of America

### Analysis of

## Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil

**(Federal Register, December 31, 2008 (pages 80618 – 80654))**

**Action:** Final Rule

**Effective Date:** January 30, 2009/February 12, 2009

**Compliance Date:** June 1, 2010 (18 months post final rule publication)

**Comments:** N/A

**Public Meetings:** N/A

**Summary:** This final rule is the end product of over 10 years of discussions, proposed rulemakings, and public meetings and workshops. These requirements stem from language original found in the Oil Pollution Act of 1990 that recognized the need for vessel response plans and the necessary pre-planning activities in a number of areas including salvage and marine firefighting. General requirements for these components in vessel response plans (VRP) were created in 1993 and are contained in the current 33 CFR 155.1050(k)(1) in general terms and only require a planholder to identify salvage and marine fighting resources for areas covered by the VRP. This final rule “clarifies” the salvage and marine firefighting services that must be identified in VRPs and sets new response time requirements for critical components for each of these two pre-planning requirements that are to address response for incidents up to and including the worst cast discharge scenario. These new requirements apply to all vessels regardless of flag that carry group I-IV oils, and which are required by 33 CFR 155.1015 to have a vessel response plan.

The Federal Register document takes 25 of its 36 pages (pgs. 80620 – 80645) to respond to the many comments provided by the stakeholders during this rulemaking process. While this response text is not part of the regulation, a number of clarifying statements are provided in this section which can aid the planholder in meeting the requirements of the regulation which is found at pgs. 80648 – 80654. and the reader is urged to review the comments response section in detail before initiating VRP review and revision processes. Due to the large number of specific issues addressed in this response section, CSA believes it to be duplicative and of little value to reproduce these issues and responses in this document; however, a few general comments about this section may be helpful.

First, numerous times the CG makes the point that the response criteria in the new requirements are planning criteria (NOT performance criteria) and are based on assumptions that may not exist during an actual incident. In other words, performance in an actual incident which may not reflect in actuality the assumptions made in developing these requirements may fall short of these criteria and not necessarily constitute non-compliance with response requirements providing that the planholder can show pre-planning activities that meet these requirements. From a practical perspective, this is of little comfort to the planholder who will almost certainly be subject to scrutiny after the fact where actual response activities did not achieve the “planning” criteria in this final rule. In this case, it would be incumbent on the planholder to show why the actual incident was different from the assumptions made by the CG in finalizing these planning criteria.

Second, during the rulemaking process, CSA and a number of other shipowner based trade associations have repeatedly made the point that national coverage by private entities does not exist for a number of the salvage and firefighting planning criteria components. In a number of responses in this response section, the CG appears to admit this lack of coverage, but suggests implementation of this final rule will accelerate the development and availability of these services by the private sector. While private entity based firefighting and salvage services have increased in the over 10 years of discussions on this issue, we believe there are still gaps in this coverage, both geographically and in specific services available in the private sector. It remains to be seen if the remaining gaps are adequately covered in the 18 month implementation period. Recognizing this possibility, the final rule does make provisions for waiver requests by planholders in certain response criteria components.

Third, throughout this document, repeated references are made for the need to coordinate response planning, drills and activities, in the case of an actual incident, with federal, state, local agencies, the planholder and response providers. While easily stated, this is a most challenging goal when considering the many ports, COTP zones and coastal areas within which many ships operate. To achieve this goal will require regular interface between vessel owners, operators, charterers, ports, and COTP zones via the area contingency planning processes.

Fourth, while the use of public resources is permitted under this final rule under very explicit circumstances, there is a strong suggestion that use of private resources is the preferred method of compliance with these requirements. This preference is based on the problems inherent with relying on the use of public resources which may have competing responsibilities for land based response needs, the jurisdictional limitations of public firefighting services as well as limitations inherent in public resources relative to responding to marine casualties.

In substance, the final rule provisions are contained in relatively concise text which tends to obscure the significant effort which will be required from every planholder to meet its requirements. While nothing can replace the need to carefully review the regulatory requirements, major requirements are as follows:

**155.4010** – requires the planholder to ensure by contract or other means, the availability of response resources meeting the planning criteria in the final rule. Note in this section the text which states :”Compliance with the regulations is based upon whether a covered response plan ensures that adequate resources are available, not on whether the actual performance of those response resources after an incident meets specified arrival times or other planning criteria.”

**155.4015/4020** – applicability provisions and compliance dates; applies to all vessels carrying group I-IV oils and required to have a VRP by 33 CFR 155.1015; vessels with approved VRPs must have updated plans by June 1, 2010; new and existing vessels which meet the applicability requirements of 33 CFR 155.1015 but which do not have an approved VRP, must comply with the provisions of 33 CFR 155.1065.

**155.4025** – definitions section with important clarifying information; pay particular note to the definition of “contract or other approved means” (which includes a written contractual agreement and funding agreement between vessel owner and response provider, a self certification or other approved alternative means) and “funding agreement” (which must identify rates and services for which the response provider perform the requisite services).

**155.4030** – requires the identification of resource providers in the geographical specific appendices of the VRP that, based on the terms of the contract between the vessel owner and response provider, will perform the various salvage and marine firefighting services contained in table 155.4030(b) in the response times provided; note here that more than one resource provider may be listed for a given service, but the VRP must identify one of those on the list as the primary service provider. Additional provisions of this section address integration and coordination of service providers into response organizations listed in your VRP, identification of emergency towing vessels, ensuring proper type and amounts of cargo transfer equipment, ensuring compatibility of firefighting resources with the vessel characteristics including cargo type and quantity and ensuring proper subsurface product removal capabilities for vessels which operate in waters of 40 feet or more.

**155.4032** – permits use of resource providers not listed in the VRP ONLY upon approval of the Federal On Scene Coordinator; requires contracting with service providers which implement legally required worker health and safety programs.

**155.4035** – requires sharing of information listed in 33 CFR 155.1035(c) and 33 CFR 155.1040(c) (shipboard spill mitigation procedures for vessels and unmanned barges) to salvage and firefighting service providers; requires preparation of marine firefighting pre-fire plan and agreement with resource providers and sub-contractors that plan is acceptable and will be implemented.

**155.4040** – contains response times for various planning criteria components based on vessel location

**155.4045** – provisions and procedures for contractual agreements with resource providers

**155.4050** – adequacy criteria to be used by planholder in assessing competencies of salvage and marine firefighting resource providers; note that a given provider need not meet all the criteria must be selected on the basis of meeting the criteria “to the maximum extent possible”.

**155.4052** – drill and exercise requirements including remote assessment and consultation exercises (quarterly), emergency procedures exercises (quarterly), shore based salvage and shore based marine firefighting management table top exercises (annually), response provider equipment deployment exercises (annually), exercise of the entire response plan (once every three years) and unannounced drill (annually)

**155.4055** – temporary waiver provisions and maximum waiver periods; applications must go through COTP for 1<sup>st</sup> level approval with final approval issued by USCGHQ.

**Impacts/Closing comments:** Clearly this final rule will require significant additional efforts by vessel response planning staffs to assure integration of the new requirements into the existing vessel response planning structure for all vessels, regardless of flag, required to have an approved vessel response plan.

**Action Required:** Response planning staffs are urged to make early contact local port organizations, COTP offices and existing service providers to assess current and expected availability of required services.

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**Date:** January 11, 2009