

# Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil, (33 Code of Federal Regulations Part 155), December 31, 2008

## Frequently Asked Questions

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# SMFF Regulation: Frequently Asked Questions

## PLAN SUBMISSION

1. When do we need to submit our Salvage & Marine Firefighting (SMFF) VRP updates?

SMFF VRP updates for existing VRPs must be submitted by the regulatory compliance date, February 22, 2011. (*33 CFR Parts 154 and 155 Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions; Final Rule, August 31, 2009*)

VRPs requiring 5-year revisions by the compliance date or afterwards, should be submitted 180 days in advance of the plan approval anniversary date and include SMFF revisions. (*33 CFR 155.4020 & 33 CFR 155.1065*)

VRPs with salvage and marine firefighting updates may be submitted to the Coast Guard beginning on September 1, 2010.

2. When do we need to submit a request for a temporary waiver from a particular planning timeframe requirement?

When you are unable to identify a resource provider who can meet the planning timeframes in a Captain of the Port (COTP) zone, you must submit a request for a temporary waiver from a specific salvage and marine firefighting response time requirement. SMFF waiver requests must be submitted through the local COTP at least 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. (*33 CFR 155.4055(h)*)

In addition to the February 22, 2011, compliance date for the SMFF Final Rule, and the timeframe for 5-year revisions (180 days), “any plan submission deadlines identified in this or any other subpart of part 155” would include the timeframes for a first time plan submission (60 days), or adding a vessel to an existing approved plan (30 days). (*33 CFR 155.1070*)

Waiver requests are submitted to the local COTP, and are routed via the District, to the Commandant, Director of Prevention Policy for final approval. Approved waiver requests must be submitted with the VRP. The VRP staff does not approve waiver requests, merely verifies that waiver requests submitted have been approved through the COTP Zone. (*Updated June 4, 2010*)

3. What will the USCG provide the vessel owner or operator to indicate that the plan revision identifying the contracted SMFF resources is approved?

The Coast Guard will issue a letter stating that the plan has been reviewed and approved to the most current applicable regulations. (*33 CFR 155.1065*)

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4. Will a new certification be required from the vessel owner or operator when amending the plans to include the SMFF information?

A new certification statement is required when amending plans to include the SMFF information. (33 CFR 155.1065(b)) The Coast Guard intends to provide an updated VRP application form for these submissions. We recommend that vessel owners/operators use the submission form CG-6083 when submitting requests for new VRP approvals, reviews, and updates. The form is available at <[www.uscg.mil/forms/CG/CG\\_6083.pdf](http://www.uscg.mil/forms/CG/CG_6083.pdf)>.

5. We understand that there is a new electronic planning capability being developed by the Coast Guard that will speed up review times; will we be able to submit our SMFF updates using this system?

When the new electronic VRP system is released, it will include the required SMFF revisions. The Coast Guard's Homeport website describes the system and provides periodic status reports on its development. You may register in advance of its release by accessing the VRP section of Homeport located on the web at <<https://homeport.uscg.mil>>. Follow this pathway once on the website: Missions>Environmental>Vessel Response Plan Program.

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### NOTIFICATIONS

1. When do we contact the Coast Guard if the salvage and marine firefighting response is not a pollution case?

While the SMFF final rule does not have a specific notification requirement, most salvage and marine firefighting responses that occur present at least a threat of pollution, thereby causing activation of the VRP.

For those salvage and firefighting responses that do not include the threat of an oil or hazardous substances spill, 33 CFR 160.215 requires immediate notification to the Coast Guard (nearest Sector) of a hazardous condition. A hazardous condition is defined as any condition that may adversely affect the safety of any vessel, bridge, structure or shore area or the environmental quality of any port, harbor, or navigable waterway of the U.S. It may, but need not, involve collision, allision, fire, explosion, grounding, leaking, damage, injury or illness of a person aboard, or manning-shortage.

Notification to the Coast Guard of a hazardous condition will not necessarily trigger the activation of the VRP. It will ensure that the nearest Coast Guard Sector is aware of any event or potential event that may require its use. (*33 CFR 153.203 & 33 CFR 160.204*)

2. What triggers activation of the response plan? The preamble states that “. . . the response plan is activated once the master of the vessel has determined that the resources and personnel available onboard cannot meet the needs of an actual or potential incident.”

The VRP must be activated for an oil spill or threat of an oil spill, but any of the following events could trigger a salvage or marine firefighting response, whether or not the VRP is required to be activated:

- a. 33 CFR 160.215 requires the master to immediately notify the nearest Coast Guard unit of a hazardous condition.
- b. 33 CFR 153.203 requires the master to immediately notify the National Response Center as soon as they have any knowledge of any discharge of oil or a hazardous substance from a vessel.
- c. 33 CFR 155.1030, 1035, 1040, 1045 and 1050 give response plan requirements as applicable to the type of vessel, including notifications of discharge or substantial threat of discharge of oil.

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### RESOURCE ACTIVATION

1. Is the QI expected to activate the salvage resources in the U.S. when an owner is absent or foreign?

Under the Vessel Response Plans for Oil set of regulations, following notification of a spill or threat of a spill, the QI is expected to activate response resources listed in the VRP whether or not the owner is absent or foreign. Oil pollution notification requirements are found in 33 CFR 155.1035(b), §155.1040(b), and §155.1045(b). When a salvage response is appropriate during a pollution incident reported to the QI, the QI is required to activate the contracted response resources based on the vessel master's report of the situation. (33 CFR 155.4030(c))

The vessel owner or operator provides each QI and alternate QI identified in the VRP with a document designating him/her as a QI, and specifying his/her full authority to activate and engage in contracting with resources identified in the plan; act as a liaison with the pre-designated FOSC; and obligate funds required to carry out response activities. The QI is not responsible for contracting or obligating funds for response resources beyond the full authority contained in their designation from the vessel owner or operator. (33 CFR 155.1026)

2. Is the QI expected to activate in-place salvage and marine firefighting contracts?

The QI activates the in-place contracts listed in the VRP following notification of a spill or threat of a spill, as appropriate for the reported spill situation. When there is an SMFF situation, the QI is expected to notify the listed primary SMFF resource provider(s). (33 CFR 155.4030 (a))

The provisions of the Chaffee Amendment<sup>1</sup>, which allow deviation from the VRP at the discretion of the Federal On-Scene Coordinator (FOSC), establish a means to deviate from the VRP based on FOSC approval. A QI may work with the FOSC to make alternate arrangements when the named resources are not available to respond or should conditions dictate, at the discretion of the FOSC.

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<sup>1</sup> The Coast Guard Act of 1996: Chaffee Amendment. Section 311(c)(3)(B) of the Federal Water Pollution Control Act (33 USC 1321(c)(3)(B)) was amended by striking "or as directed by the President" and inserting "except 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."

## SMFF Regulation: Frequently Asked Questions

### SALVAGE AND MARINE FIREFIGHTING SERVICES

1. What is the Coast Guard's expectation concerning the equipment list?

USCG expects the funding agreement submitted with the VRP will identify agreed upon rates for specific equipment and services to be made available by the resource provider under the agreement. (33 CFR 155.4025)

The Coast Guard expects that the vessel owner or operator will identify in the geographical specific appendices (GSA) of his/her VRP, the salvage and marine firefighting 'services' listed in Table 155.4030(b). The VRP GSA will list the primary resource provider(s) contracted to provide these services and a means to contact them. (Updated June 4, 2010)

What resource information must be listed in the Geographic Specific Appendices (GSAs)?

SERVICES:

The 19 SMFF services identified in Table 155.4030(b) must be listed in the GSAs, with primary resource provider and contact information:

SALVAGE:

1. Remote assessment and consultation
2. Begin assessment of structural stability
3. On-site salvage assessment
4. Assessment of structural stability
5. Hull and bottom survey
6. Emergency towing
7. Salvage plan
8. External emergency transfer operations
9. Emergency lightering
10. Other refloating methods
11. Making temporary repairs
12. Diving services support
13. Special salvage operations plan
14. Subsurface product removal
15. Heavy lift

MARINE FIREFIGHTING:

16. Remote assessment and consultation
17. On-site fire assessment
18. External firefighting teams
19. External vessel firefighting systems.

## SMFF Regulation: Frequently Asked Questions

### EQUIPMENT:

#### Defined equipment verified by the vessel owner or operator determination of adequacy:

The service definitions in 33 CFR 155.4025 provide a description of the types of equipment that are typically used to perform the service. When you list a service, the Coast Guard expects the vessel owner or operator to have ensured to his/her satisfaction that the service providers are adequate to perform the service as defined, including appropriate resources, both personnel and equipment.

Section 155.4050 provides a 15 item list of adequacy criteria. The third item says the resource provider owns or has contracts for equipment needed to perform response services. The fourth item says the resource provider has personnel with documented training certification and degree experience. The fifth says that the resource provider has 24-hour availability of personnel and equipment and history of response times compatible with the time requirements in the regulation. The vessel owner / operator must certify that these (and the other 12 criteria) were considered in selecting their resource provider. The Coast Guard expects that the vessel owner's or operator's due diligence efforts will be considered during exercises and pollution incidents.

#### Specific equipment listing requirements from 33 CFR 155.4030 (e) through (h):

Section 155.4030 has some specific listing requirements:

(e) emergency towing vessels must be identified (named) in each GSA based on the emergency towing-related characteristics in the Vessel Specific Appendices (VSA) of the vessels from the plan using that particular COTP Zone;

(f) transfer and lightering pumps must be ensured based on the capacity of the vessel's largest tank. Therefore, each VSA should list the largest tank for that vessel, and each GSA should ensure pumping resources adequate to the (listed) largest tank of all the vessels from the plan that are calling that COTP Zone ;

(g) vessel specific firefighting requirements include listing appropriate extinguishing agents and quantities calculated for each vessel, when the extinguishing agent is foam, and ensuring that appropriate quantities are available in the COTP Zones (listed in the GSAs) where the vessels trade;

(h) subsurface product removal capability must be available where the vessel transits at water depths of 40 to 150 feet.

The VRP must be consistent with the information contained in applicable Area Contingency Plans and the National Oil and Hazardous Substances Pollution Contingency Plan. These plans contain information about the salvage and marine firefighting services and equipment located in a geographic specific area. These resources should correlate with equipment listed in your funding agreement and services listed in your plan.

The responsibility for ensuring adequate resources are contracted for, as spelled out in the rule, lies with the vessel owner or operator. *(Updated June 4, 2010)*

## SMFF Regulation: Frequently Asked Questions

2. Is information referenced in Section 155.4030 (h) Ensuring the proper subsurface product removal and in Section 155.4032(b), Worker health and safety, required to be referenced in the plan or is this to be assumed based on the contractual agreement between the planholder and salvage resource?

This service “ensuring proper subsurface product removal” is to be listed in the applicable Geographic Specific Appendices along with primary resource provider information, as for all of the other services listed in Table 155.4030(b).

The vessel owner or operator must ensure that their resource providers have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing SMFF services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). Worker health and safety measures are inseparable from the provision of each of the 19 services and should be required of resource providers for all services. Adequacy criterion number 4 requires vessel owners or operators consider training and education, and number 6 requires an on-going continuous training program. The responsibility for ensuring adequate resources are contracted for, as spelled out in the rule, lies with the vessel owner or operator. *(Updated June 4, 2010)*

3. What is the expectation when listing the extinguishing agent?

SMFF changes to the vessel response plan are to ensure that the vessel owner or operator identifies and plans for the risks associated with his/her vessel. (155.4030(g) Ensuring firefighting equipment is compatible with your vessel.)

The Coast Guard’s expectation is that the extinguishing agent(s) indicated in the Vessel Specific Appendix (VSA) will fit the requirements of the vessel. Appropriate extinguishing agent(s) should be determined based on the vessel's cargo, other contents and superstructure. Additionally, the quantity of foam must be calculated for the individual vessel, if foam is the extinguishing agent. The Coast Guard expects the vessel owner or operator to plan the proper extinguishing agent(s) and quantities for each vessel and list that information in the VSA. This provides a point of information for responders in emergency situations, and is verifiable during VRP review.

The identified extinguishing agents must be made available in appropriate quantities in the COTP Zones where the corresponding vessels trade. The VRP should list the types and quantities of extinguishing agents required for each COTP Zone in the corresponding GSA. *(Updated June 4, 2010)*

4. How much extinguishing agent do we need to plan for, the regulation requires at least 0.16 gallons per minute per square foot of deck area, that’s a lot of foam, is that correct?

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The Coast Guard made a typographical error in 33 CFR 155.4030(g). A technical amendment will be published to correct the pumping rate factor from 0.16 gallons per minute per square foot (gpm/ft<sup>2</sup>) to 0.016 gpm/ft<sup>2</sup>. The Coast Guard clearly intended to use the extinguishing agent application rate of 0.016 (gpm/ft<sup>2</sup>) to calculate the amount necessary to address a contained fire involving 10% of the deck area of the vessel for 20 minutes.

5. If the extinguishing agent type and amount is listed in the pre-fire plan, is that acceptable to meet the requirement?

No. The extinguishing agent type and amount must be listed in the vessel specific appendix. It may also be included in the pre-fire plan. (*Updated June 4, 2010*)

6. What constitutes a “marine firefighting professional” or “salvage professional” for an inland tank barge?

There is no Coast Guard classification system for SMFF resource providers. For an inland tank barge, indeed any vessel, the SMFF professionals selected are those who meet the vessel owner or operator’s standards for selection pursuant to the SMFF Final Rule. The vessel owner or operator must determine the adequacy of SMFF resource providers listed in the VRP based on their assessment of SMFF resources providers’ ability to meet the 15 selection criteria found in the SMFF final rule. The selection criteria include consideration of the experience, education and training of personnel selected. The vessel owner or operator must select resource providers on the basis of their meeting these criteria to the maximum extent possible. (*33 CFR 155.4050(b)*)

7. What is the definition of “Assessment of Structural Stability” with regard to inland tank barges?

*Assessment of Structural Stability*, as defined in 33 CFR 155.4025, 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 should 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.

This question highlights the difference in treatment of tank vessels and offshore barges in 33 CFR 155.240, and inland barges in 33 CFR 155.245, with regard to the assessment of structural stability. For tank vessels and offshore barges, 33 CFR 155.240 applies, requiring the use of a salvage software program.

33 CFR 155.245 requires inland barge owners or operators to ensure that the vessel plans necessary to perform salvage stability and residual hull strength assessments are maintained at a shore based location and are accessible 24 hours a day.

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8. What is the difference between “external firefighting team” and “external vessel firefighting system”?

External firefighting team means trained firefighting personnel, aside from the crew, with the capability of boarding and combating a fire aboard a vessel, while external firefighting systems mean firefighting resources that are capable of combating a fire from a location off the vessel. External systems may include fire tugs, portable fire pumps, aviation assets, or shore side fire trucks, for example. (33 CFR 155.4025)

9. How does the equipment for the external firefighting team differ from the equipment for the external firefighting system?

Referencing the definitions provided in 33 CFR 155.4025:

The external firefighting team uses the vessel’s equipment, although they may bring their personal fire safety gear with them when they board a vessel; and

The external firefighting system includes personnel and equipment that is brought in to fight the fire, from another location than the vessel on fire.

10. Worker health and safety. Are these items required to be referenced in the plan or is this to be assumed based on the contractual agreement between the planholder and salvage resource?

'Safety is job one.' It is advisable to specify that worker safety and health provisions of 33 CFR 155.1055(c) and 29 CFR 1910.120(q) are met. (Updated June 4, 2010)

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## SMFF Regulation: Frequently Asked Questions

### PUBLIC RESOURCES

1. With regard to the use of public firefighting resources, please confirm that if a public marine firefighting resource meets the necessary criteria (training, experience, etc.) and offers its consent to be listed, it may be so listed in the VRP without the further requirement that it may only be listed if a commercial source is not available.

The regulations generally require a commercial firefighting response, but they do not preclude a public marine firefighter (public service department) being listed in the VRP when that department consents to such listing. (33 CFR 155.4045)

While OPA 90 emphasizes the use of private over public response resources, it is up to the vessel owner or operator to find an adequate resource provider who can respond on the vessel owner or operator's behalf. (33 CFR 155.4050)

To rely upon public firefighting capability, a vessel owner or operator must have a consent agreement with the public marine firefighters concerned that identifies available local resources and acknowledges the public marine firefighters' intention to provide assistance should the need arise. The consent agreement must be signed by the public marine firefighters and is required to be in writing and available. (33 CFR 155.4045)

In approving plans that rely, in whole or in part, on public marine firefighting resources, the Coast Guard will examine the geographical area covered by those resources. To the extent that a vessel transits an area beyond the jurisdiction of public resources and the public marine firefighters do not consent to respond beyond their jurisdictional limits, response planners must rely exclusively upon private resources that are identified in the VRP. (33 CFR 155.4045)

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## SMFF Regulation: Frequently Asked Questions

### EMERGENCY TOWING

1. Will the Coast Guard enforce the SMFF requirement for the provision of emergency towing vessels capable of operating in winds of up to 40 knots with the proper characteristics (horsepower and bollard pull) to tow the vessels covered by the VRP?

Vessel owners or operators must identify in their vessel response plans and contract with, or have their primary resource provider contract with, emergency towing vessels, as described in 33 CFR 155.4025 and §155.4030(e).

2. Is it necessary to list emergency towing vessels in the VRP by name?

Contracted emergency towing vessels must be identified by name in the VRP. (*33 CFR 155.4030(e) and Final Rule Discussion of Comments and Changes, Section K. Required services, Paragraph 3. Other*)

Emergency towing vessels with the proper characteristics must be identified in the Geographic Specific Appendices by name, horsepower, bollard pull, and the ability to work in up to 40-knot winds. Multiple vessels may be listed for each COTP zone, but a contract or other approved means and funding agreement must be in place for the vessels, indicating that the resource provider is capable and intends to commit to meeting the plan requirements. (*33 CFR 155.4010, 4025, and 4030(e)*)

33 CFR 155.4045 requires that the resource providers listed in your plan have been arranged by contract or other approved means, and that you have obtained their written consent to list them in your plan.

3. The SMFF final rule says that the timeframes are planning, not performance standards. What is the consequence when a towing vessel cannot respond within the planning timeframe?

The definition of contract or other approved means says that the agreement between the vessel owner or operator and the resource provider must expressly provide that “the resource provider is capable of, and intends to commit to, meeting the plan requirements.” (*33 CFR 155.4025*)

The enforcement consequence of failing, in an emergency, to provide adequate towing resources within the resource planning timeframe will depend on whether or not the resource provider is capable of and intends to commit to meeting the planning standard. (*33 USC 1228*)

4. Those towing vessels of suitable bollard pull and ability to work in conditions of up to 40 knot winds are not likely to be free to respond because they are commercially engaged most of the time. They may not be able to respond within the 12 hour nearshore and 18 hour offshore timeframe. How do we comply with this rule?

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Multiple vessels may be listed for each COTP zone to provide a range of response options, and a contract or other approved means and funding agreement must be in place for the vessels listed, indicating that the resource provider is capable and intends to commit to meeting the plan requirements. (*33 CFR 155.4010, 4025, and 4030(e)*)

There is a provision for a 3 year temporary waiver for salvage stabilization services when available resources cannot meet the planning timeframe in a COTP Zone. If you are unable to find an emergency towing vessel resource provider who is able meet the 12 and 18 hour timeframes for emergency towing vessels in a particular zone, you may apply for the 3 year temporary waiver. Among other things, your request must 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. (*33 CFR 155.4055*)

5. With regard to emergency towing, barges are not self propelled, and are always under the control of a towboat. What does emergency towing constitute for an inland barge, recognizing that there are numerous towboats normally available on short notice on the inland waterways?

While recognizing that inland barges operate in a different environment than offshore vessels, your VRP must still identify emergency towing vessels with sufficient capability to be effective in emergency situations. Inland operators may comply by contracting emergency towing vessels according to the established requirements, or submit alternate planning criteria for approval in accordance with 33 CFR 155.1065(f). (*33 CFR 155.4030(e)*)

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### SUBSURFACE PRODUCT REMOVAL

1. Do inland tank barges need to contract for subsurface product removal?

33 CFR 155.4030(h) requires contracted subsurface product removal capability if your vessel operates in waters of 40 feet or more, and you must be capable of removing cargo and fuel from your sunken vessel to the maximum depth where your vessel operates, up to 150 feet deep. You should plan for the capability to remove oil from sunken vessels in order to prevent pollution from occurring.

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### ADEQUACY OF RESOURCE PROVIDERS

1. Who is responsible to certify that responders are qualified?

The vessel owner or operator is responsible to certify that responders are qualified to the maximum extent possible. 33 CFR 155.4050 provides 15 criteria on which to base this certification of responder adequacy.

2. Will the Coast Guard verify the adequacy of SMFF resources in the VRP?

The vessel owner or operator bears the burden of vetting the qualifications of a salvage and marine firefighting resource provider and certifies to the Coast Guard that the resource providers are adequate based on the 15 selection criteria identified in the SMFF final rule to the maximum extent possible. The Coast Guard may choose to verify the vessel owner or operator's certification statement in order to confirm that they have vetted the resources listed in the VRP. (33 CFR 155.4050)

3. Will the Coast Guard issue a Salvage and Marine Firefighting classification system like the one in place for Oil Spill Removal Organizations?

There is a fundamental difference between SMFF and OSRO resource identification requirements in that there will be no Coast Guard classification of SMFF resources. The onus is on the vessel owner or operator to certify that the SMFF resource provider meets the 15 selection criteria to the maximum extent possible, as contained in 33 CFR 155.4050.

The vessel owner or operators' certification of the adequacy of SMFF resource providers may be provided in the form of a letter on the vessel owner or operator's stationery, or electronically when using the Coast Guard electronic planning system. The vessel owner or operator may be requested by the Coast Guard to verify how they determined the adequacy of their resource providers in the event of an incident or during an inspection.

Certification statements should not be taken lightly. Within the SMFF Final Rule, the Coast Guard has gone to great lengths to convey that this regulation promulgates a planning standard, not a performance standard. Compliance with the regulations is based upon whether or not a covered response plan ensures that adequate response resources are available.

The vessel owner or operator should do the necessary due diligence to enable him or her to certify that the selection criteria were considered when they choose their resource provider, and that the resource provider is adequate to fill the planning requirement.

4. Will each resource provider be subjected to a vessel owner's or operator's due diligence inspection, each with their own unique inspection criteria?

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The vessel owner or operator must certify in the plan that the 15 factors were considered in choosing resource providers who meet these criteria to the maximum extent possible. The level of due diligence research conducted may vary from one vessel owner or operator to another. Resource providers may expect to receive many requests for information and be subject to various due diligence inspections as vessel owners or operators verify their resource provider selections. (33 CFR 155.4050)

5. Will a vessel owner or operator assume any liability if its choice of resource provider turns out not to have the proper amount of insurance?

It is the vessel owner or operator's responsibility to determine the adequacy of the responders cited in their plans. (33 CFR 155.4050)

6. How does the Coast Guard verify that a resource provider can respond in multiple zones?

The Coast Guard will verify a resource provider's capability by post-incident investigations, exercises, inspections, audits, and the waiver request approval process.

7. It is stated that the plan holder may be asked to prove vetting of salvage resources. We would like to let a certificate of coverage fulfill this requirement which will be available upon request.

The vessel owner / operator must indeed "certify in your plan" that the factors listed in 33 CFR 155.4050 were considered when they chose resource providers. Resource providers selected "must be selected on the basis of meeting the criteria to the maximum extent possible."

Are you asking that your in-plan certification be based on a certification by your selected primary resource provider(s)? How will the vessel owner / operator know that the requirements are being met to the "maximum extent possible" without looking at other possibilities? Basing the vessel owner / operator's certification on the certification of one resource provider would not meet the requirement of the rule. The vessel owner / operator has the responsibility to select the resource provider based on meeting the criteria to the maximum extent possible. (Updated June 4, 2010)

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## SMFF Regulation: Frequently Asked Questions

### VESSEL SPECIFIC APPENDIX

1. The preamble to the Final Rule says that either a pre-fire plan written according to NFPA 1405 OR a SOLAS fire plan may be used to meet the pre-fire plan requirement, while 33 CFR 155.4035(b)(1) specifies that both must be submitted where the vessel has a SOLAS fire plan. Which is correct?

The SOLAS fire plan, including the SOLAS fire control plan, may be submitted in lieu of a pre-fire plan developed according to NFPA 1405.

In the preamble to the salvage and marine firefighting final rule, the Coast Guard said, “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)” [see 73 FR 80624, first column, first full paragraph]. However, this was inadvertently not added to § 155.4035(b)(1) in the final rule. We are correcting this omission, and at the same time clarifying the term “SOLAS fire plan”, as there is no document with that name under the SOLAS regulations.

The last sentence of § 155.4035(b)(1) will be changed to read: “If the vessel owner or operator’s vessel pre-fire plan is one that meets another regulation, such as SOLAS Chapter II-2, Regulation 15, or an alternative standard that the Coast Guard deems acceptable, a copy of that specific fire control plan and supporting documents must be given to the resource provider(s) in lieu of the NFPA 1405 pre-fire plan, and be attached to the VRP.”

2. What constitutes a pre-fire plan that will be submitted to marine firefighters?

It is the intention of the Coast Guard to accept a pre-fire plan written according to the National Fire Protection Agency (NFPA) 1405 Guide, or a SOLAS fire control plan, including supporting documents, as described in SOLAS Chapter II-2, Regulation 15, or an alternative standard.

A vessel owner or operator may submit a pre-fire plan written in accordance with NFPA 1405, Chapter 7. Alternatively, a SOLAS Chapter II-2, Regulation 15 plan, or a plan written to an alternative standard that the Coast Guard deems acceptable, plus the supporting documents required by Regulation 15 must be give to the resource provider(s) in lieu of the NFPA 1405 plan.

The marine firefighting resource provider can request supporting documents from the vessel owner/operator to provide any missing information that would make the plan acceptable to them prior to providing written certification. A prudent firefighting response provider may request information on the vessel’s cargo and other pertinent information that SOLAS does not require but NFPA does. *(Updated June 4, 2010)*

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3. What sections of the SOLAS standard is a vessel owner or operator required to adhere to in submitting a pre-fire plan to a firefighting resource provider?

A SOLAS fire control plan is only one part of an acceptable pre-fire plan submission submitted to the Coast Guard. The supporting documents discussed in SOLAS Chapter II-2, Regulation 15 must also be submitted if a vessel owner / operator chooses this pre-fire plan submission option. Supporting documents include: training manual(s) which may comprise several volumes; fire alarms; operation and use of firefighting systems and appliances; the operation and use of fire doors; the operation and use of fire and smoke dampers; and the escape system and appliances. The supporting documentation also provides the crew assignments, fire parties, onboard training and drills and additional requirements for passenger vessels. *(Updated June 4, 2010)*

4. SOLAS fire control plans and their supporting documents may be written in another language. Will this be acceptable for the purposes of the SMFF regulation?

When a SOLAS fire control plan and its supporting documents are used to meet the requirements of this regulation, the documents must be made available to marine firefighting resources in the English language. *(Updated May 5, 2010)*

5. The SOLAS fire control plan provides no mechanism for advanced calculation to deal with cargo and tank fires, which we think should be included in the pre-fire plan.

VRP updates required by 33 CFR 155.4030 require that a tank vessel owner / operator contract for assessment and survey services that include salvage and damage stability calculations needed as a result of any firefighting activities that may take place on the vessel. *(Updated June 4, 2010)*

6. The NFPA 1405 guidelines for a pre-fire plan are oriented toward ocean-going, self-propelled vessels. What are the requirements of a barge pre-fire plan written to NFPA 1405 specifications?

A barge pre-fire plan written to NFPA 1405 specifications may include only those sections of NFPA 1405, Chapter 9 (Planning), that are applicable to barges.

The Coast Guard may accept a pre-fire plan that meets another regulation or an alternative standard for barges that includes a specific fire control plan and supporting documents in lieu of the NFPA 1405 pre-fire plan.

7. What is intended in 33 CFR 155.4030(b)(1) by the phrase “or a plan written to an alternative standard that the Coast Guard deems acceptable”?

The Coast Guard will review alternative planning standards submitted to meet the pre-fire plan requirement. For example, the brown-water fleet does not have existing pre-fire plans written to SOLAS standards. If brown-water vessels wish to adapt the SOLAS standards, or

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some other equivalent standard, to meet the requirements of this rule, the Coast Guard will review the resulting alternative standard for acceptability. *(Updated June 4, 2010)*

SOLAS is an international requirement not applicable to vessels trading solely in the US, such as tank barges. The NFPA 1405 standard is written for application to blue water vessels, not barges. Will the Coast Guard accept a pre-fire plan that is written for barges, but not to NFPA 1405 or SOLAS standards?

The Coast Guard may accept a pre-fire plan that meets another regulation or an alternative standard that includes a specific fire control plan and supporting documents in lieu of the SOLAS or NFPA 1405 pre-fire plan. *(Updated May 5, 2010)*

8. Will a single marine firefighting pre-plan suffice for a fleet?

If fleet vessels are all sister vessels and substantially the same, a single marine firefighting pre-plan should be sufficient. If the vessels are not sister vessels, or are sister vessels with substantial differences such as type or location of fire suppression systems, distinct marine firefighting pre-fire plans must be created for each vessel. *(33 CFR 155.4035)*

9. What geographic specific information must be provided in a marine firefighting pre-fire plan?

None. This is a vessel specific pre-fire plan. *(33 CFR 155.4035)*

10. Is it permissible to incorporate marine firefighting pre-fire plans into the VRP by reference, or does each VRP need to contain that vessel's firefighting plan within it?

The vessel owner or operator must attach vessel pre-fire plans to the VRP in accordance with 33 CFR 4035(b). If the VRP is submitted electronically through the Coast Guard's electronic plan submission system (currently under development), pre-fire plans may be uploaded electronically into the corresponding vessel specific appendices. This will allow access by plan reviewers to conduct pre-fire plan verifications. When the VRP is submitted in paper format, pre-fire plans may be included in the vessel specific appendices in paper format or attached to the plan in the form of a DVD submitted with the plan.

11. Can we provide marine firefighting pre-fire plans to our marine firefighting resources electronically?

It is permissible to transmit marine firefighting pre-fire plans electronically to marine firefighting resource providers.

12. With regard to the certification of pre-fire plans are required in 33 CFR 155.4030(b)(2), what is acceptable for a marine firefighter to certify?

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The marine firefighting resource provider must certify in writing to the vessel owner / operator that they find the plan acceptable and agree to implement it to mitigate a potential or actual fire.

The purpose of the pre-fire plan acceptance by the marine firefighter is to ensure a coordinated and safe response in the event of a fire incident, not a verification of compliance with the SOLAS standards or any other standard.

When the pre-fire plan does not provide a sufficient level of confidence for the marine firefighting resource provider, it should not be accepted and the marine firefighting resource provider should request any additional information from the vessel owner /operator to make the plan acceptable to them. Only when the marine firefighting resource provider feels that sufficient information is obtained to make the plan acceptable should he or she certify it as acceptable. *(Updated June 4, 2010)*

13. Commercial firefighting companies may have different standards for certifying pre-fire plans. What is the Coast Guard's stance on that issue?

The purpose of the pre-fire plan acceptance by the marine firefighter is to ensure a coordinated and safe response in the event of a fire incident. The bottom line is that the firefighting resource providers review the pre-fire plan for acceptability, and seriously consider using the plan well before any incident occurs. The SMFF Final Rule makes certain that plans are given to the firefighting resource providers, and that they review them is evidenced by their written certification statements. *(Updated June 4, 2010)*

14. Can we maintain the marine firefighting resource providers' certification statements regarding the pre-fire plan electronically as long as we provide them to the USCG upon request?

Yes, you can maintain the firefighting resource providers' certification statements electronically, as long as you provide them to the USCG upon request. The certification must state that the marine firefighting resource provider finds the pre-fire plan acceptable and that they agree to implement it to mitigate a potential or actual fire. *(33 CFR 155.4035(b)(2))*

15. Each subcontracted marine firefighting organization must also receive a copy of the pre-fire plan according to 155.4035(b)(3). Are marine firefighting subcontractors required to certify that they find the plan acceptable and agree to implement it to mitigate a potential or actual fire just like the primary marine firefighting resource providers are required to do??

Subcontracted marine firefighting organizations are not required to submit certification statements regarding acceptability and implementation of pre-fire plans. The primary contractor provides certifications and manages subcontractors' activities including implementing the pre-fire plan to mitigate a potential or actual fire.

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### TIMEFRAMES - CONUS & OCONUS OPERATING ENVIRONMENTS

1. What are the operating environment boundaries to use when planning for SMFF resources capable of responding within planning timeframes?

Operating environments are listed in Table 155.4030(b).

- The ‘Pier’ operating environment, applicable to marine firefighting services only, refers to the pier where the vessel is located.
  - The CONUS salvage and marine firefighting ‘nearshore’ operating environment boundaries are described in the table using the definitions of ‘nearshore area’, ‘inland area’, and ‘Great Lakes’ as they appear in 33 CFR 155.4025. *(Updated May 5, 2010)*
  - The CONUS salvage and marine firefighting ‘offshore’ operating environment boundaries are described in the table using the definition of ‘offshore area’ as it appears in 33 CFR 155.4025. *(Updated May 5, 2010)*
  - There is no SMFF operating environment that is equivalent to the ‘open ocean’ area defined in 33 CFR 155.1020. While there is no prescribed timeframe for locations in the open ocean operating environment, the plan must indicate the expected timeframe for response elements to reach the locations where the vessels trade or transit from the place(s) where the response resources are normally located.
  - The OCONUS ‘inner’ operating environment boundary extends to a 12 mile radius from a point in the harbor of the COTP City, unless this operating area is further refined in the applicable Area Contingency Plan. For example, a meandering river or shipping lane within the 12 mile radius may be measured by distance traveled on water rather than by a simple radius from a point in the harbor if it is so specified in the Area Contingency Plan.
  - The OCONUS ‘outer’ operating environment boundary extends from the 12 mile to the 50 mile radius from a point in the harbor of the COTP City, unless this operating area is further refined in the applicable Area Contingency Plan.
2. Does the regulatory provision for COTP City operating environments, with its 12 and 50 mile limits, apply to both CONUS and OCONUS, or to just OCONUS COTP Zones?

The regulatory provision for COTP City operating environments applies just to OCONUS COTP zones. Response planning within the OCONUS ‘inner’ and ‘outer’ operating environments is subject to time requirements imposed by the rule. *(33 CFR 155.4030(b))*

There is no prescribed timeframe for OCONUS locations outside of the defined OCONUS inner and outer operating environments, but the plan must indicate the expected timeframe

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for response elements to reach the locations where the vessels trade or transit from the place(s) where the response resources are normally held. (33 CFR 155.4040(d)(6))

3. There is no mention of salvage timeframes in 155.4040(d)(2). This paragraph only requires that the marine firefighting resource can reach the location in the timeframe required. Does this also apply to a salvage resource provider, or was the salvage provider deliberately left off?

As the language of the regulation states, the ‘Pier’ operating environment response time requirement for assessment and fire suppression services applies only to firefighting services. ‘Pier’ timeframe requirements do not apply to salvage services.

4. Table 155.4040(c) provides specific timeframe endpoints that may be impacted by safety or other practical considerations, as for example on-site salvage assessment, which ends “when the salvor is on board the vessel”, or emergency lightering, which ends when the “equipment is on scene and alongside”. We need further clarification of the timeframe ending requirement.

Timeframes are to be used for planning purposes in order to be sure that the contracted resources are capable of a timely response. The Coast Guard recognizes that there are many factors which may delay resource arrival within the timeframe endpoint during response. Be reminded that timeframe endpoints are planning standards and that compliance with these 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 criteria. (Updated June 4, 2010)

5. Is it correct that “nearshore” and “offshore” mean 12 and 50 miles from any point along the CONUS coasts, respectively? For a good length of each coast, this would define a long transit “as the crow flies” from the nearest port, making the timeframe unrealistic. We realize that the timeframes are planning criteria not performance measures, but a clarification might be helpful to the consideration of the need to request a waiver.

Yes, you are correct that “nearshore” and “offshore” mean 12 and 50 miles from any point along the CONUS coasts, respectively. As you recognize, these are planning criteria, not performance standards. Requesting waivers where these timeframes are not attainable will help manage FOSC expectations as to what is realistically available, when. (Updated June 4, 2010)

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### GEOGRAPHIC SPECIFIC APPENDICES

1. Plan writers hope to cite SMFF services geographically by reference. Will there be a Coast Guard or other publicly accessible library site where resource providers can state or certify to their capabilities regarding Table 155.4030(b) -- Salvage and Marine Firefighting Services, in various specific port areas?

Area Contingency Plans list salvage resources, and Marine Firefighting Plans list MFF resources. The Coast Guard intends to improve resource lists in these plans to reflect the requirements of the final SMFF regulations. SMFF resource providers are encouraged to provide their information for services and equipment to Area Committees for use in these plans, and include an internet link to a site where equipment and selection criteria information may be provided to customers and potential customers for the resource provider's services.

The Response Resource Inventory (RRI) (currently under development) is a voluntary database where SMFF resource providers may list equipment. The Coast Guard encourages its use by SMFF resource providers. Use of this inventory will expedite the plan review process and the temporary waiver approval process. For more information on the RRI please visit the following website:

<http://www.uscg.mil/hq/nsfweb/nsfcc/ops/ResponseSupport/RRIB/rri.asp>

2. Which salvage and marine firefighting equipment requirements are related to vessel specifications?

Emergency towing vessels, cargo transfer equipment, type and quantity of fire extinguishing agent, and external pumps for extinguishing agent(s) are all resources that must be selected to accommodate vessel specifications. The type of equipment required to remove oil from a submerged vessel is related to the operating area of a vessel. (33 CFR 155.4030)

3. Is it the Coast Guard's intent that the first named resource provider in a VRP is the primary resource provider, or that any one of the named resource providers, no matter the order listed, may be designated as the primary resource provider?

Resource providers do not have to be listed in any particular order, but the primary resource provider must be identified as such. (33 CFR 155.4030(a)) One Geographic Specific Appendix (GSA) may name a single primary resource provider for all SMFF services in that GSA, or different primary service providers for select services, some of which providers may be private firefighting entities and not salvors at all. (33 CFR 155.4030(a)) The vessel owner or operator will select adequate resource providers based on meeting the selection criteria to the maximum extent possible. (33 CFR 155.4050)

4. Is the intent that the primary resource provider be the primary provider for each specific service listed in Table 155.4030(b)? Could the intent be that the primary resource provider be

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the primary provider for a variety of specific services, or perhaps all of the specific services in the table?

Either alternative works. A VRP may list primary resource providers who are responsible for all, or a subset of, the services that are listed in Table 155.4030(b). The identification of the primary resource provider for every salvage and marine firefighting service must be clearly indicated in each geographic specific appendix. (33 *CFR* 155.4030(a))

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### CONTRACTS AND FUNDING AGREEMENTS

1. What are CG expectations of the “contract or other approved means” requirement contained in 33 CFR 155.4025?

The contract or agreement must expressly provide that the resource provider is capable of, and intends to commit to, meeting the plan requirements. (33 CFR 155.4010) While the vessel response plan regulations are considered planning standards, the “contract or other approved means” between a vessel owner or operator and a resource provider is the primary mechanism needed to establish the capability necessary to meet the planning criteria. In addition, the funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. The “contract or other approved means” and funding agreement are necessary to ensure that resources are available and dispatched in a timely manner.

It is important to remember, as stated in the Final Rule Preamble, that 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. (33 CFR 155.4010)

2. What is the consequence if a vessel owner does not have a contract or other approved means with a resource provider?

The Coast Guard, under the authority afforded by section 155.4020(c) and 33 USC 1228, may stop a vessel from conducting oil transport or transfer operations unless the requirements of this regulation are met.

3. Specifically, what needs to be shown in an acceptable funding agreement?

The definition says that rates for specific equipment and services are agreed upon:

“A 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 it must be submitted for review along with the VRP.” (33CFR155.4025)

In addition, the definition provided for “contract or other approved means” states that, “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

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public resource provider must be included in the planholder's Vessel Response Plan (VRP).”  
(33CFR155.4025)

### 4. Can we use a Lloyd's Open Form in lieu of a funding agreement?

A Lloyd's Standard Form of Salvage Agreement (LOF) alone does not meet the funding agreement definition because it does not contain agreed upon rates for specific equipment and services. The regulatory intent is to prevent any delay in response due to price or other contractual negotiations. The Coast Guard is willing to consider the LOF in lieu of a funding agreement under the following conditions:

- 1) The LOF is submitted with and identified in the entire agreement between the primary resource provider and the vessel owner or operator; and
- 2) The LOF is signed by both the primary resource provider and the vessel owner or operator at the time it is submitted with the contract or other approved means to the Coast Guard.
- 3) If the LOF is submitted as outlined above, the Coast Guard believes that the regulatory intent of preventing any delay in response due to contractual negotiations will be met and we should consider the submission as an acceptable alternative under the contract or other approved means definition contained in 33 CFR 155.4025.

### 5. What about using other standard salvage contracting forms?

The Coast Guard may consider other types of standard salvage contracting forms as an acceptable alternative under the contract or other approved means definition in lieu of a funding agreement if such forms are submitted in a manner similar to that which is described above for the LOF.

### 6. With regard to evidence of funding (for example, a salvor that has a diving company as its subcontractor), will the Coast Guard require the funding agreement between the salvor and diving company to be submitted, or will it suffice to simply certify in the funding agreement between salvor and vessel owner that the salvor has a funding agreement with the diving company?

One funding agreement between primary resource provider and vessel owner or operator is acceptable. (33 CFR 155.4025)

The requirement to include every agreement in the chain would be an unnecessary burden for both the Coast Guard and industry. The Coast Guard reserves the right to verify that the agreements between the primary resource providers and subcontractors are in place. The records should be readily accessible if requested by a Coast Guard official.

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7. Do the contracts between the primary resource provider and all its subcontractors have to be included as part of the VRP submission for approval, or will it suffice to just include the contract between the primary resource provider and the vessel owner or operator?

As with funding agreements, to include every subcontract for review creates an unnecessary burden for both the Coast Guard and industry. Only the contract or other approved means and funding agreement with the primary resource provider is required to be submitted to the Coast Guard. The Coast Guard reserves the right to verify that the subcontracts are in place. The records should be readily accessible when requested by a Coast Guard official. (33 CFR 155.4025)

8. It is not clear whether or not a public sector fire responder will be required to enter into a contract with a planholder, including a funding agreement and consent to be listed, or if just the consent will be sufficient to meet the regulation.

The written consent should be sufficient when a public sector marine firefighter agrees to be listed.

9. The resource provider is responsible for complying with OSHA regulations for emergency response. What responsibility does the vessel owner or operator have to ensure that resource providers comply with OSHA requirements before and during a response?

A vessel owner or operator can make OSHA compliance a part of the due diligence investigation of potential resource providers. (33 CFR 155.4035(b))

10. Local fire departments indicate that they will respond, but that they do not want to execute an agreement. As a result, private firefighters must be contracted. How does the transition from public to private firefighting resources take place during a response?

The VRP, Area Contingency Plans, Area Maritime Security Plans, Regional Plans, and the National Oil and Hazardous Substances Pollution Contingency Plan all address coordination of the private sector and public agencies during response. (33 CFR 155.4030(d))

Participation in exercises and training in the localities where private firefighting access and assumption of response duties is an issue, will allow response transition concerns to be resolved in a non-threatening situation. (33 CFR 155.4052)

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### AREA CONTINGENCY PLANS

1. How do Salvage and Marine Firefighting regulations tie in with the Area Maritime Security (AMSP) Salvage Response Plan (SRP) (46 USC 70101 Safe Port Act) and Marine Fire Fighting Contingency Plans (MFFCP) developed in each COTP zone or CG Sector? These plans are said to contain Security Sensitive Information (SSI) so the salvage industry has not seen their contents.

The information in the VRP should align with information in the Area Contingency Plan (ACP) in order to support the National Response Organization. While the AMSP is not a publically available document, some information in it may be of assistance in supporting the National Response Organization. The COTP can make the AMSP SRP and the MFFCP information available through the ACP. The plan preparer can request that these plans be made available to enable compliance with the requirement that the VRP be consistent with area plans. (40 CFR 300 and 33 CFR 155.4030(d))

2. What is the mechanism to get private firefighting resources into a response that has already started with public firefighters? Will the Coast Guard facilitate the movement of private marine firefighting resources into the response organization?

SMFF resource providers must be integrated into the response organization described in the shore-based response activities section of the VRP. The VRP describes how SMFF resource providers will coordinate with other response resources, organizations, and OSROs, and how SMFF resource providers will coordinate with public organizations, including public firefighters. (33 CFR 155.1035(d), 1040(d), 1045(d), and 4030(c))

The integration of SMFF resource providers into the response organization must be consistent with the information contained in the following: ACPs, Regional Response Plans, and the National Oil and Hazardous Substances Pollution Contingency Plan. (40 CFR 300 & 33 CFR 155.1030(h)(1))

Participation in area planning committees and response exercises will also help facilitate integrating the response process before an actual event. (33 CFR 155.4052)

3. Does the resource provider have to report to the QI during a response? Can he report directly to the Responsible Party (RP) or Incident Commander (IC)?

The VRP section, *Shorebased Response Activities*, defines the response structure, authorities, and roles for elements of the vessel owner or operator's response team. The SMFF resource provider is part of this response team. The VRP integrates the responsible party's response organization with the structures and roles identified in the ACPs, and National Oil and Hazardous Substances Pollution Contingency Plan. (33 CFR 155.1035(d), 1040(d), 1045(d), and 4030(c))

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All elements of the responsible party's response organization are included under the umbrella of the incident command structure and subject to the direction of the unified command, including salvage and marine firefighting response activities.

The Qualified Individual (QI) is not a position in the incident command system. The QI initiates a response on behalf of the vessel owner or operator. (*33 CFR 155.1026*) As the representative for the vessel owner or operator, the QI has the authority to proceed to activate and engage in contracting with resources identified in the VRP. The QI may be appointed to a position in the response organization.

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### WAIVERS

1. What if a vessel owner or operator cannot find adequate emergency towing vessels in a particular area?

The SMFF temporary waiver provision allows for a 3 year suspension of the time requirement for salvage stabilization services. Emergency towing vessels are categorized as a part of salvage stabilization services in Table 155.4030(b). After the 3 year temporary waiver expires, vessels will not be authorized to trade in U.S. waters without meeting the requirement to have rescue towing resources able to meet the timeframe under contract. (33 CFR 155.4055(g)).

2. What is included in a waiver request?

The regulation has a provision that the vessel owner or operator may request a temporary waiver of one or more specified response time requirements. The waiver request must be specific. It must include the reason why the time requirement cannot be met, how the vessel owner or operator intends to correct the shortfall, the time it will take to do so, and what arrangements have been made to provide the required response resources in the interim, and their estimated response times. (33 CFR 155.4055).

3. What happens when the waiver period expires and resources are still not available or willing to enter into contracts for emergency towing?

Using 33 CFR 155.4020(c) or 33 USC 1228 as authority, a COTP can prohibit a vessel from conducting oil transport or transfer operations unless the requirements of this regulation are met. There is no provision for consideration of additional waivers, although alternative planning criteria measures can be proposed in accordance with 33 CFR 155.1065.

NOTE: See PLAN SUBMISSION, Question 2.

When do we need to submit a request for a temporary waiver from a particular timeframe requirement? (Updated June 4, 2010)

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### DRILLS AND EXERCISES

1. 33 CFR 155.4052(b)(7) states that compliance with the National Preparedness for Response Exercise Program (PREP) Guidelines that expand on drills and exercises for OSROs will satisfy VRP exercise requirements. The PREP Guidelines indicate that the primary purpose of an equipment deployment is to test providers' ability to operate equipment as well as the suitability of equipment. The PREP Guidelines go on to note that, while planholders should validate plans in the geographic area where the drill is conducted, this is not mandatory. Will it suffice that planholders and providers conduct equipment deployment exercises in a convenient location and by inviting planholders to witness the exercise for credit?

We expect that the PREP Guidelines will be updated to include the provisions of 33 CFR 155.4052. It is not necessary for vessel owners or operators to be present for the equipment to be exercised, although they may attend. Following the OSRO/PREP exercise model, exercise credit can also be claimed for a response if the objectives are met, the response is evaluated, and a proper record is generated. (33 CFR 155.4052(b)(7)) Like OSROs, SMFF resource providers may provide planholders with an annual letter documenting their equipment deployment exercises throughout the year, for which the planholder may claim credit. Records should be retained for 3 years. (33 CFR 155.1060(f)) (33 CFR 155.4052(b)(7)) (PREP Guidelines, August 2002.)

2. 33 CFR 155.4052 requires that one of the quarterly emergency procedures drills and one of the equipment deployment exercises be unannounced. Since equipment deployment is an annual requirement, we assume this means that the annual equipment deployment must be unannounced.

There must be one unannounced exercise each year, and that exercise may be either one of the quarterly emergency procedures exercises or the annual equipment deployment exercise. If there is a response during the year that requires equipment deployment, the unannounced exercise obligation may be credited if the objectives are met, the exercise is evaluated, and a proper record is generated. (33 CFR 155.4052(b)(7))

3. May an exercise be held in the same COTP zone every year? Do subcontractors have to be exercised?

You may choose to hold an exercise in a COTP zone every year; however you are required to exercise the entire vessel response plan in a three year period. This would include the COTP zones covered by the plan and the subcontractors included in the plan.

According to PREP guidelines, documentation of incidents can take the place of exercises when the objectives are met, the event is evaluated, and a proper record is generated. Listed resource providers may document their exercise and response activities, and extend credit for

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those exercises where the objectives were met to their client vessel owners or operators by means of an annual letter. (33 CFR 155.4052(b)(7)) (*PREP Guidelines, August 2002.*)

### 4. Can exercises be piggy-backed on those exercises already conducted?

Vessel owners or operators may take credit for exercises conducted in conjunction with other exercises if the objectives are met, the exercise is evaluated, and a proper record is generated. Credit should be taken for an actual spill response when the objectives are met, the response is evaluated, and a proper record generated. (33 CFR 155.4052(b)(7)) (*PREP Guidelines, August 2002.*)

### 5. What constitutes a “remote assessment and consultation exercise”?

The remote assessment and consultation exercise can be a phone call or some other communication to discuss and assess a situation to determine an appropriate course of action. (33 CFR 155.4025, Table 155.4040(c), 33 CFR 155.4052(b)(1)) The exercise may be credited if the objectives are met, the exercise is evaluated, and a proper record is generated. (33 CFR 155.4052(b)(7))

### 6. What constitutes an “emergency procedures exercise”?

An emergency procedures exercise is the exercise of shipboard emergency procedures for the vessel crew as described in the *PREP Guidelines, August 2002*, pp 3-8 to 3-9. For unmanned barges, this is an exercise of the barge custodians’ emergency procedures described on pages 3-10 to 3-11. The exercise may be credited if the objectives are met, the exercise is evaluated, and a proper record is generated. (33 CFR 155.4052(b)(7))

### 7. What constitutes an “exercise of the entire response plan”?

To satisfy the requirement of the triennial exercise of the entire response plan, it is not necessary to exercise the entire plan all at one time. The plan may be exercised in segments over a period of 3 years, as long as each component of the plan is exercised at least once within the 3-year period. The required exercises should be developed to ensure that each component is addressed in the triennial cycle. (*PREP Guidelines, August 2002*) (33 CFR 155.4052)

### 8. Is it the Coast Guard’s intent to see the salvor exercised in drills and exercises as much as the OSRO currently is? Or is the one salvage objective in NPREP the extent of what is expected?

Compliance with the National PREP Guidelines will satisfy the VRP exercise requirements. Updates to the PREP Guidelines will reflect the content of 33 CFR 155.4052. Documentation of incidents according to PREP guidelines can take the place of exercise requirements if the objectives are met, the event is evaluated, and a proper record is generated. Listed resource providers may document their exercise and response activities,

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and extend credit for those exercises where the objectives were met to their client vessel owners or operators by means of an annual letter. (*33 CFR 155.4052*) (*PREP Guidelines, August 2002.*)

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### DEVIATION FROM THE PLAN DURING RESPONSE

1. What is the “exceptional circumstance” definition to be used by the FOSC as relates to these regulations?

The Federal On-Scene Coordinator (FOSC) determines what exceptional circumstance will lead to deviation from the response plan in order to provide for a more expeditious or effective response to the spill or mitigation of its environmental effects. It is up to the individual FOSC to make this determination from his understanding of the facts of the situation. (*33 USC 1321(c)(3)(B)*), (*33 CFR 153.103(n)*) and (*33 CFR 155.4032*)

2. When a major piece of equipment is out of service, is the identification of an alternate resource the Coast Guard’s expectation? Salvage equipment is largely dual-purposed, and there is a high probability that this scenario would arise.

It is up to the vessel owner or operator to ensure that the resources listed in their plan are available to respond. (*33 CFR 155.4010*)

Vessel owners or operators may list more than one resource provider for the required SMFF services in order to plan adequate resources for responding to the risks associated with a vessel, but the primary resource provider must be designated in the GSA. (*33 CFR 155.4030*) Contracts and funding agreements are required to be in place for all resource providers listed in the plan, both primary and secondary. (*33 CFR 155.4045(a)*)

When an alternate solution is presented during a response, it is to the discretion of the individual FOSC to determine whether or not to approve the requested deviation based on the FOSC’s understanding of the facts of the situation. (*33 CFR 155.4032*)

3. With regard to stabilization of vessels and emergency towing, sometimes alternate stabilization strategies are called for during an emergency situation.

The provisions of the Chaffee Amendment<sup>1</sup> offer a means to respond using alternate stabilization strategies based on FOSC approval of a salvage plan developed by the attending salvage master. (*33 USC 1321(c)(3)(B)*)

4. With regard to other resource providers not listed in the VRP, what services would require FOSC approval for using an unlisted resource, and what would require only notification?

Deviation from the use of planned SMFF resources requires FOSC approval under the terms of the Chaffee Amendment<sup>1</sup>. (*33 CFR 155.4032*) There is no provision for different treatment of select SMFF resources. Vessel owners or operators may list more than one resource provider for the required SMFF services in order to plan adequate resources for

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responding to the risks associated with a vessel, but the primary resource provider must be designated in the GSA. (*33 CFR 155.4030*)

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