9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 151, 155, 156, and 157

[Docket No. USCG-2010-0194]

RIN 1625-AB57

MARPOL Annex I Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

SUMMARY: In this final rule the Coast Guard is updating our regulations to harmonize U.S. regulations with international conventions regarding oil pollution. We are amending the regulations covering Title 33: Navigation and Navigable Waters to align with recent amendments to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, which were adopted by the International Maritime Organization's Marine Environment Protection Committee during its 52nd, 54th, 55th, and 59th sessions. This final rule also amends sections of the Vessel Response Plan regulations to include the Safety of Life at Sea Material Safety Data Sheets as an equivalent hazardous communications standard.

DATES: This final rule is effective [**INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].** The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on [**INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

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-2010-0194 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 by going to http://www.regulations.gov, inserting USCG-2010-0194 in the "Search" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR William Nabach, Office of Operating and Environmental Standards (CG-OES-2), Coast Guard; telephone 202-372-1386, e-mail William.A.Nabach@uscg.mil. If you have questions on viewing the docket, call Ms. Cheryl Collins, Program

Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

APPS	Act to Prevent Pollution from Ships
CFR	Code of Federal Regulations
COI	Collection of Information
COTP	Captain of the Port
FR	Federal Register
GHS	Globally Harmonized System of Classification and Labeling of Chemicals
HCS	Hazard Communication Standard
IMO	International Maritime Organization
MARPOL 73/78	International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention

MSC	IMO Maritime Safety Committee
MSDS	Material Safety Data Sheets
MEPC	IMO Marine Environment Protection Committee
NPRM	Notice of Proposed Rulemaking
OCIMF	Oil Companies International Marine Forum
OCMI	Officer in Charge, Marine Inspection
OSHA	Occupation Safety and Health Administration
POAC	Person in Overall Advisory Control
PSC	Port state control
§	Section symbol
SDS	Safety Data Sheets
SOLAS 1974	International Convention for the Safety of Life at Sea 1974
STBL	Ship to be Lightered
SS	Service Ship
STS	Ship-to-Ship transfer
U.S.C.	United States Code

II. Regulatory History

On April 9, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled MARPOL Annex I Amendments in the Federal Register (77 FR 21360). The Coast Guard also published a notice on July 26, 2012 (77 FR 43741) extending the public comment period for an additional 60 days so that the public had time to review the Regulatory Assessment that was added to the docket shortly after the NPRM was published.

We received 12 comment letters with 31 discrete comments on the proposed rule. No public meeting was requested and none was held.

III. Background

Protection of the marine environment and maritime safety are two of the primary missions of the Coast Guard.

Specific Coast Guard regulations are designed to minimize the amount of pollution produced by ships at sea and to protect mariners. Many of the Coast Guard's pollution control regulations implement the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, relating to that Convention (MARPOL 73/78). Similarly, many mariner safety regulations incorporate provisions from the International Convention for the Safety of Life at Sea, as amended (SOLAS 1974), to which the U.S. is also a signatory nation.

A. MARPOL 73/78

MARPOL 73/78 is an international agreement prepared under the direction of the International Maritime Organization (IMO), a United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. It is the main international convention covering prevention of pollution of the marine environment by ships from either operational or accidental causes.

MARPOL 73/78 is a combination of two international agreements adopted in 1973 and 1978 and revised by subsequent amendments. The International Convention for the Prevention of Pollution from Ships, adopted on November 2, 1973 (1973 Convention), covered pollution by oil,

chemicals, harmful substances in packaged form, sewage, and garbage. The Protocol of 1978, which amended the 1973 Convention, was adopted in February 1978, in response to a spate of tanker accidents that occurred in 1976 and 1977. MARPOL 73/78 entered into force on October 2, 1983. Annex I of MARPOL 73/78, Regulations for the Prevention of Pollution by Oil (Annex I) contains provisions intended to minimize both operational and accidental oil pollution from vessels.

Annex I is implemented in U.S. law through the Act to Prevent Pollution from Ships (APPS) (Pub. L. 96-478, Oct. 21, 1980, 94 Stat. 2297), codified at 33 U.S.C. 1901 et seq. Under 33 U.S.C. 1902, 1903, and Department of Homeland Security Delegation No. 0170.1, the Coast Guard has the authority to draft regulations to implement the MARPOL 73/78 and the amendments thereunder, with respect to U.S. vessels and foreign vessels within U.S. navigable waters or exclusive economic zone. The Coast Guard implements MARPOL 73/78 through regulations in 33 CFR parts 151, 155, 156, and 157.

Amendments to MARPOL 73/78 are made through the resolution drafting and adoption process within the Marine Environment Protection Committee (MEPC) of IMO. The United States takes part in revising and updating MARPOL 73/78 by

sending delegates to MEPC. These delegates negotiate with delegates of other signatory nations to support the U.S. position regarding pollution from ships.

Since the last revision of Coast Guard regulations implementing Annex I in 2001, (66 FR 55571), there have been numerous amendments to the international standards. This means that the Coast Guard regulations in the CFR and the provisions of Annex I are not currently aligned. The MEPC revised Annex I in the following resolutions:

- MEPC.117(52)(October 15, 2004): This resolution revised all of Annex I and adopted new Annex I Regulations 22 and 23. Regulation 22 requires that every tanker of 5,000 deadweight tons or more, constructed on or after January 1, 2007, meet minimum standards of pump-room bottom protection, while Regulation 23 requires that every tanker delivered on or after January 1, 2010, must meet the standard for accidental oil outflow performance. MEPC.117(52) became effective January 1, 2007.
- MEPC.141(54) (March 24, 2006): This resolution adopted Annex I Regulation 12A, which contains requirements for the protected location of oil fuel tanks and performance standards for accidental oil fuel outflow for all ships delivered on or after

August 1, 2010. This resolution became effective August 1, 2007.

- MEPC.154(55) (October 13, 2006): In this resolution, the MEPC adopted the Southern South African Waters as a special area, which prohibits the discharge of bilge water and oil in the defined area. This resolution entered into force on March 4, 2008.
- MEPC.186(59)(July 17, 2009): This resolution adopted a new Chapter 8 (consisting of Regulations 40, 41, and 42) to Annex I to prevent pollution during transfer of oil cargo between oil tankers at sea. In addition, it added a requirement for a Ship-to-Ship transfer (STS) operations plan. This entered into force on January 1, 2011, and applies to STS Operations in which at least one of the involved oil tankers is of 150 gross tons or more.
- MEPC.187(59)(July 17, 2009): This resolution amended Annex I Regulations 1, 12, 13, 17, and 38 by altering definitions relating to oil residue, and by adding requirements to Regulation 12 that ships over 400 gross tons contain sludge tanks that meet certain specifications. It also amended International Oil Pollution Prevention Certificate

Forms A and B to include a section regarding the means for retention and disposal of oil residues, and added new recordkeeping requirements prescribing entries in the Oil Record Book for bunkering of fuel or bulk lubricating oil or any failure of oil filtering equipment. This resolution entered into force on January 1, 2011.

With this final rule, and as required by the APPS, the Coast Guard aligns our regulations in 33 CFR parts 151, 155, 156, and 157 with international standards in Annex I regarding oil pollution from ships. Aligning the U.S. domestic regulations with international standards decreases the risk that U.S. vessels will be subject to Port State Control (PSC) enforcement measures while engaged in international trade.

On August 27, 2007, we published a notice (72 FR 49013), announcing our policy for resolving conflicts between our regulations and the Annex I amendments. The policy remains in effect via 33 U.S.C. 1903 until our regulations are aligned with the amendments to MARPOL 73/78. Our goal in this rulemaking is to align the regulations in the CFR with those in Annex I, and thus promote consistent and homogenous enforcement of Annex I through revisions to 33 CFR parts 151, 155, 156, and 157.

B. SOLAS 1974

In addition to revisions to MARPOL 73/78, we have not yet integrated some revisions to the SOLAS 1974 agreement into 46 CFR part 197. The Coast Guard represents the United States as a signatory nation of SOLAS 1974, which specifies standards for the safe operation of ships at sea. Under 46 U.S.C. 3306, 46 U.S.C. 3703, and Department of Homeland Security Delegation No. 0170.1, the Coast Guard has authority to prescribe necessary rules and regulations to implement the provisions of SOLAS 1974. These sections include authority over the inspection of vessels and the carriage of liquid bulk dangerous cargoes. The Coast Guard implements SOLAS 1974, in part, through regulations in 46 CFR part 197.

Like MARPOL 73/78, SOLAS 1974 is amended by resolution of an IMO Committee, in this case the Maritime Safety Committee (MSC). In resolution MSC.150(77), the 77th Session of the MSC urged that beginning in June 2003, governments ensure the supply and carriage of Material Safety Data Sheets (MSDS) for Annex I cargoes and marine fuels. The 83rd session of MSC amended SOLAS 1974 by adding Regulation 5-1 to Chapter VI, stating that "Ships carrying Annex I cargoes, as defined in Appendix I to Annex I of [MARPOL 73/78], and marine fuel oils shall be provided

with a MSDS prior to the loading of such cargoes based on the recommendations developed by IMO." The 86th session of the MSC further amended the SOLAS 1974 into clear and concise language to ensure a common understanding and unambiguous implementation of SOLAS Regulation VI/5-1. SOLAS Regulation VI/5-1 entered into force internationally on July 1, 2009.

IV. Discussion of Comments and Changes

As stated previously, the Coast Guard received 12 comment letters in response to the NPRM, consisting of 31 discrete comments. Those comments provided detailed and informative perspective on the proposed rule and the associated economic analysis, and have been instrumental in developing this final rule. In this section, we discuss the comments by grouping them generally into four categories: a) The implementation of MARPOL Annex I Regulations 40-42 (STS Operations and Lightering); b) The changes to the Oil Record Book; c) The proposal to incorporate a requirement to carry MSDS on board; and d) A general category for other comments. In each section, we describe the proposal from the NPRM, the comments received, and the changes, if any, made to the final rule in light of those comments.

A. STS Operations

One of the primary proposed actions in the NPRM was to incorporate the new regulations governing the STS of oil stored as cargo. The existing 33 CFR Part 156 already contained regulatory requirements for lightering operations, but the scope of what is considered 'lightering' under the current regulations in Part 156 and the scope of what is defined as 'STS Operations' in MARPOL Annex I are slightly different. For that reason, as discussed extensively in the preamble to the NPRM, we proposed to include two sets of requirements in Part 156, one that would set out the requirements for STS Operations as described by MARPOL, and one that would cover the remaining lightering operations. To that end, we included requirements for both in Part 156.

We received several comment letters discussing the proposal to separate the two requirements. These letters contained a series of discrete comments on numerous aspects of the proposed changes. The Coast Guard appreciates these comments and has incorporated them into the finalized version of the rule where warranted. The specific issues addressed in the comments are laid out below.

1. Conforming Edits to Part 156, Subparts B and C

Several commenters stated that with the separation of what had previously been called lightering operations into

two distinct categories, "lightering" and "STS Operations," the proposed regulatory changes omitted some necessary conforming edits to subparts B and C. They made several recommendations intended to ensure that certain existing requirements that should apply to STS Operations are not inadvertently omitted. In response to those suggestions, we have reexamined the proposed text of Part 156 and made changes that we believe will accurately encompass the changes described in the NPRM.

The NPRM proposed to reorganize Part 156 slightly to reflect the dichotomy between lightering and STS Operations. The existing regulatory text contains Subpart B, "Special Requirements for Lightering of Oil and Hazardous Material Cargoes," and subpart C, "Lightering Zones and Operational Requirements for the Gulf of Mexico," both of which simply apply the current definition of lightering operations. However, as the comments pointed out, with the addition of STS Operations as a separate operation, certain conforming edits to the terminology and applicability in those sections need to be made to ensure the sections apply to the appropriate operations.

Two commenters stated that the difference between lightering and STS Operations is confusing, and that the two terms had historically meant the same thing. While we

sympathize with the confusion, MARPOL Annex I applies only to transfers of oil, and only when one of the vessels at issue is 150 GT or larger. While this definition is similar to lightering, it is not identical. We have endeavored to make the regulatory differences between lightering and STS Operations clear in this rule, and the commenters have proposed some ways in which we can do this, specifically by adjusting the language throughout subparts B and C of part 156 to specifically indicate where the sections apply to lightering and STS Operations. In this final rule, we have made numerous conforming edits in these parts to better indicate which requirements apply to the various types of operations. These edits make clear that the requirements of subpart C apply to STS Operations as well continue to apply to lightering.

Two commenters recommended that § 156.225, "Designation of Lightering Zones," be modified to refer to lightering and STS Operations. This section currently reads, "[w]hen a lightering zone has been designated, lightering operations in a given geographic area may only be conducted within the designated lightering zone." However, the specific rules in effect in lightering zones and prohibited areas are not intended to be used in lightering operations only, but apply to STS Operations as

well. For that reason, we are adopting the commenters' recommendation to include a reference to STS Operations in the text of § 156.225.

Two commenters also recommended that an applicability section be added to Subpart C. Subpart C lists various geographic areas and accompanying lightering zones, as well as prohibited areas where lightering operations are forbidden due to environmental and safety concerns. In the NPRM, we inadvertently did not include an editorial change to § 156.310, "Prohibited areas," that would have included STS Operations in the list of prohibited operations. Thus, in response to the commenters, we are adding a reference to STS Operations in that section. As stated above, we have also made numerous edits throughout subpart C to make clear that the operational requirements apply to STS Operations as well as lightering operations.

2. Qualifications of the POAC - § 156.410

One comment we received suggested that we alter the wording in paragraph 156.410(f), which relates to the responsibilities of the person in overall advisory control (POAC) of an STS Operation. The proposed text, based on MARPOL Annex I Regulation 41, paragraph 4, states that the POAC shall be qualified to perform all relevant duties, taking into account the qualifications found in the best

practice guidelines from the IMO Manual on oil pollution. The commenter suggested that we add language emphasizing that the appointment of the POAC himself is equally important.

While we agree that it is important that a qualified POAC be appointed, the existing proposed regulatory text already requires this type of appointment. We do not agree that there is a reason to deviate from the existing text of the MARPOL Annex I language in this matter.

3. Notification Requirements for STS Operations - § 156.415

Two commenters raised objections to a provision in § 156.415(a) requiring a 48-hour advance notification of STS Operations. The commenters stated that this is not current practice, and that such a notice period would be impracticable and/or could lead to very high additional costs associated with under-utilization of service ships (SS). One commenter stated that scheduling oil transfer operations requires absolute flexibility, and that as a result of weather conditions, logistical delays, channel closures, terminal delays, or other issues can require changing the identified SS at the last minute. The commenter also stated that it is common practice to nominate and clear at least three vessels for each STS

Operation to ensure that a suitable vessel is available when the ship to be lightered (STBL) arrives at the designated STS Operation location. In light of these facts, the commenters recommended that the Coast Guard limit the advance notice required for the SS to 24 hours, while maintaining the 48-hour requirement for the STBL.

The requirement for a 48-hour advance notification derives specifically from the text of Regulation 42, "Notification," of Annex I. Paragraph 1 of that regulation reads:

> Each oil tanker subject to this chapter that plans STS operations within the territorial sea, or the exclusive economic zone of a Party to the present Convention shall notify that Party not less than 48 hours in advance of the scheduled STS operations. Where, in an exceptional case, all of the information specified in paragraph 2 is not available not less than 48 hours in advance, the oil tanker discharging the oil cargo shall notify the Party to the present Convention, not less than 48 hours in advance that an STS operation will occur and the information specified in paragraph 2 shall be provided to the Party at the earliest opportunity.

Given the unambiguous requirement of a 48-hour notice period in Annex I, we are maintaining that requirement.

However, we do realize that while Regulation 42 requires the 48-hour period, it does provide for an exception for instances in which some details of the transfer, including information about the SS, are not

available 48 hours in advance of the STS Operation. This exception was not reflected in the proposed regulatory text, but we are including it in the final rule as § 156.415(f). That text will permit an oil tanker to delay transmitting the required information to the Captain of the Port (COTP) until the information is available, as long as the known information about the transfer is provided at least 48 hours in advance of the STS Operation.

This change will address the commenters' concerns regarding the flexibility required to conduct STS Operations without incurring supply chain interruptions, idle time, or compromising on-time performance. Instead, the STBL must transmit only as much information required by § 156.415(a) as is known at least 48 hours before the scheduled STS Operation. The remaining information must be transmitted when the final details have been worked out in accordance with paragraph (f) of this Final Rule. While the text of Regulation 42 indicates that such subsequent notification would be used "in an exceptional case," we expect that in some areas where oil cargo is frequently transferred, the use of this supplemental notification procedure would be used commonly.

One commenter stated that, because each SS needs to be reviewed by the customer for requisite approval under their

vetting approval system before conducting an STS Operation, it is common practice to nominate at least three vessels for each STS Operation to ensure that a suitable, approved vessel will be available when the STLB arrives at the designated position for the STS Operation. In such a case, where details of multiple contingent operations need to be tentatively worked out, the Coast Guard would expect that these contingent details be transmitted to the COTP at least 48 hours prior to the STS Operation in accordance with paragraph (a). Once final details have been worked out, they must be transmitted to the COTP in accordance with paragraph (f) of this Final Rule.

The modification of the strict 48-hour advance notice requirement also causes us to re-evaluate the provision, which in the NPRM was proposed § 156.415(g), that required the master, owner, or agent of each oil tanker planning to conduct STS Operations in a designated lightering zone to provide 24 hours advance notice to the nearest COTP, rather than the 48-hour period for other U.S. waters. One commenter pointed out that only a very small percentage of STS Operations conducted in the U.S. is conducted in the designated lightering zones. Furthermore, the commenter noted that the lightering zones were intended to be used primarily by single-hulled vessels, and that most STS

Operations are performed by double-hulled tankers that are not required to make use of lightering zones. Based on this information, as well as the reduced notification requirements with the addition of the new § 156.415(f) we have re-evaluated whether the different notification standards for lightering zones and other zones within the U.S. are necessary.

Upon review, we also note that the basis for the 24-hour notification requirement in proposed paragraph (g) appears to be erroneous. In the NPRM, we stated that "[t]he proposed regulatory text [in § 156.415(g)] differs from Regulation 42 for oil tankers planning to conduct STS Operations in designated lightering areas, where a 24-hour advance notice of STS Operations to the nearest COTP specified in the existing § 156.215 would be used instead of the 48-hour notice specified in Regulation 42" (77 FR at 21364). However, on a second look, § 156.215, which governs pre-arrival notices for lightering operations, is not exclusive to lightering zones, but applies to arrival at a lightering location or zone. Nor do we see any reason to apply that lightering requirement to STS Operations in lieu of the 48-hour requirement in Annex I.

While several commenters supported the proposal to allow a 24-hour notification requirement, in lieu of a 48-

hour one, in lightering zones, they requested that the 24-hour requirement be extended to all STS Operations in the U.S. While we agree with the commenter that there should be no difference in the notice requirements based on whether the STS Operation takes place in a lightering zone, we are obligated to implement the 48-hour requirement from Annex I. However, because we are adding the ability to provide information relating to the SS in a supplemental notification, in accordance with the new § 156.415(f), we believe that this will provide even more flexibility than the proposed 24-hour notice requirement. For these reasons, we are not incorporating the proposed § 156.415(g) into the final rule.

4. Reporting of Oil Discharges - § 156.420

Two commenters discussed the Coast Guard's proposal, in § 156.420(b), that would require the receiving vessel to report an incident of a discharge of oil during STS Operations. The commenters suggested that the Coast Guard instead require the responsible party, that is, the party that caused the discharge, to notify the Coast Guard of the event. One commenter also made an alternative suggestion, which is that either party sighting oil discharge in the water should report the sighting to the Coast Guard,

although such a report would not constitute an assumption of responsibility for the incident.

In proposing the language for § 156.420, the Coast Guard had used the language from § 156.220 as a model. Section 156.220 requires that the "service vessel," that is, the SS in a lightering operation, report the discharge of oil or hazardous material. To maintain consistency, we proposed to require that the SS in an STS Operation be subject to the same requirement.

The objections to this proposal were based upon the concept that reporting the discharge would imply that the reporting party is responsible for the discharge, and therefore, a requirement to report the discharge is tantamount to an admission of responsibility for the incident. We note that because the responsibility for reporting was proposed to be placed on the SS at all times, it was not meant to assume that the receiving vessel would be responsible for all discharges. The purpose of the notification requirements in subparts B and D of part 156 is not to assign responsibility, but rather to ensure immediate notification to the Coast Guard of any discharges to allow us to provide a timely response. Nonetheless, we are modifying the language of this section to remove any

indication that the notification implies responsibility for a discharge incident.

We believe that the alternative recommendation proposed by one commenter offers the best regulatory structure. This recommendation was that the Person in Overall Advisory Control (POAC) of the STS Operation should be required to make the report. Such a report would not constitute an admission of responsibility for the spill by either party involved. This requirement would ensure that a timely report is made and allow the Coast Guard to mount a rapid response to the incident if necessary.

Two alternative suggestions from commenters were not adopted for various reasons. One suggestion was that the responsible party would be required to report the discharge. This was rejected because delays in assigning responsibility could delay the reporting of the incident. Another suggestion was that both parties should be required to report the incident. This was rejected because the extra report is superfluous and the requirement could result in unnecessary burden from reporting. We believe that having the POAC report the incident, without assigning responsibility, is the best approach.

5. Editorial Changes to Subpart D of Part 156

In addition to the substantive changes, we are making some editorial changes to Subpart D of part 156. One commenter noted that proposed § 156.415(a)(3) and (a)(6) are duplicative. We agree and are removing paragraph (a)(6). Additionally, we noticed that there was no paragraph (b) in § 156.415, which we have corrected. That section has been renumbered accordingly.

6. Incorporation by Reference

Two commenters suggested that industry standards incorporated by reference should be incorporated without specific reference to the date and edition. They noted that some of the standards are updated regularly, and thus would become out of date if they were updated after publication of this final rule.

We are not accepting the commenters' proposals. The Administrative Procedure Act requires that the Coast Guard provide notice and solicit comments before substantively altering its regulation, a requirement that applies to the adoption of standards incorporated by reference (See 5 U.S.C. 553). While we will endeavor to promptly update the regulations if we determine that the incorporation of new standards will be beneficial, such actions will be undertaken in accordance with the applicable legal requirements.

B. Oil Record Book

After publication of the NPRM, we included a proposed version of the Oil Record Book in the docket (USCG-2010-0194-0015) that would incorporate some of the changes to the Code of Federal Regulations proposed in this rule. One commenter provided a series of suggested changes to the proposed Oil Record Book. Additionally, since the publication of the NPRM, the Coast Guard has considered how to integrate additional IMO guidance and policy considerations. Since these deliberations are still ongoing, we are not publishing an updated version of the Oil Record Book in conjunction with this rulemaking. The Coast Guard will consider comments received on the subject when deliberating future updates.

C. SOLAS Material Safety Data Sheets

Several commenters raised a variety of issues relating to the Coast Guard's proposal to require vessels subject to the International Convention for the Safety of Life at Sea 1974 (SOLAS) carry SOLAS Material Safety Data Sheets (MSDSs), as defined under MSC.286(86). MSDSs and Safety Data Sheets (SDSs) are a widely used system for cataloging information on chemicals, chemical compounds, and chemical mixtures. The data sheets include a variety of information about the physical characteristics of the substance, such

as toxicity, flammability, and explosiveness. These documents may also include instructions for the safe use of and potential hazards associated with a particular material or product, such as specific firefighting measures to be used with the substance. Most data sheets are formatted as charts divided into sixteen sections that seek to provide the reader with quick access to information regarding the hazardous substance they might encounter. These data sheets are required by U.S. regulations and international conventions anywhere chemicals are being used or transported.

SOLAS was published in 1974 and entered into force with the United States as a party in 1980. This Convention sought to address a broad array of safety issues ranging from lifeboat requirements to safety of navigation schemes to be implemented by nations as port state control measures. Under SOLAS, amendments to the technical appendices are considered to be tacitly accepted by the parties to the convention if the amendment is adopted without sufficient objections from nations party to the convention, and the SOLAS MSDS recommendations are contained in one such appendix. The International Maritime Organization (IMO), a specialized agency of the United Nations, serves to oversee and amend SOLAS as part of the

IMO's mission to enhance the safety and security of shipping and the prevention of marine pollution by ships.

The Maritime Safety Committee, which is a sub-committee of the IMO, developed SOLAS MSDS provisions as an amendment to SOLAS. In 2009, the MSC adopted the amendments to chapter VI "Carriage of Cargoes" of SOLAS 1974 (MSC.239(83)). Those amendments included Regulation 5-1 requiring that vessels carrying oil or oil fuel, as defined in regulation 1 of MARPOL 73/78 be provided with a SOLAS MSDS. In June of 2009, the MSC adopted resolution MSC.286(86), which contains an appendix providing a model MSDS with requirements for each section entitled "Recommendations for Material Safety Data Sheets (MSDS) for MARPOL Annex I Oil Cargo and Oil Fuel." These amendments became effective on January 1, 2011.

In the NPRM, the Coast Guard proposed implementing the SOLAS MSDS requirements for Annex I cargoes and fuels for U.S. vessels and all vessels operating in the navigable waters of the U.S. to which the SOLAS requirements apply. We stated that by aligning the U.S. regulations with international standards, compliant U.S. vessels would encounter fewer difficulties when engaged in international trade. We also proposed, in Appendices A and B of 46 CFR § 197, Subpart D, a non-mandatory example of an MSDS for

marine use, taken from MSC.286(86). Because we proposed to apply a SOLAS requirement only to vessels to which SOLAS already applied, we did not believe that vessels would incur any additional costs as a result of these changes. This lack of anticipated costs was why this proposal was given brief treatment in the preliminary regulatory analysis.

Multiple commenters disputed this analysis, and suggested that we had erred in assuming that all vessels indicated would already comply with the proposed requirements. The commenters stated that the proposed requirements, including the items in the non-mandatory Appendices, differed from the standard SDSs used by many industries in the U.S. and around the world, and that compliance with the proposed Coast Guard regulations would be costly and redundant.

The commenters argued that the SOLAS MSDSs that were proposed in the NPRM are similar, but not identical to, widely-used SDSs promulgated by the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS), as well as the Hazard Communication Standard (HCS) regulations recently promulgated by the Occupational Health and Safety Administration (OSHA) of the Department of Labor under 29 CFR § 1910.1200, and that a

requirement to use SOLAS MSDSs would create an expensive, redundant requirement that offered little or no marginal safety benefit.[1] In general, petroleum industry companies prepare SDSs to meet the legal requirements of the countries in which they market and distribute materials. According to the commenters, the legal requirements of such countries are moving toward an internationally harmonized system – the GHS, because uniform content is designed to improve effective hazard communication.

Commenters also raised concerns about the proposed requirement to post MSDSs in the working language of the crew, as translation of complex and highly technical MSDSs into various languages could have significant costs. Finally, one commenter suggested that the Coast Guard had not adequately justified the proposed requirement for MSDSs.

Based on these comments, we have reconsidered the proposed requirement to label harmful chemicals in this

[1] OSHA published a final rule on hazard communications in the Federal Register (77 FR 17574, March 6, 2012), which modified its Hazard Communication Standard to align with the GHS. It did so to enhance the effectiveness of the HCS which ensures that employees are apprised of the chemical hazards to which they may be exposed, and to reduce the incidence of chemical-related occupational illnesses and injuries. In addition to OSHA, several other agencies were active during the development of a harmonized SDS format for the GHS, including the Environmental Protection Agency, the Consumer Product Safety Commission, and Department of Transportation. While the Coast Guard was not active in the GHS development process, we believe that the harmonized format still contains a highly effective means to reduce the incidence of chemical-related injuries.

rulemaking. Considering the widespread use of the OSHA HCS and the GHS-standard SDSs, and the extensive guidance available regarding those formats, we have decided not to finalize the proposed requirement for an MSDS from MSC.286(86).

However, we note that regulations requiring information on the "name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the oil cargo aboard the vessel" are part of the existing Vessel Response Plan requirements in 33 CFR 155.1035(j)(10), 33 CFR 155.1040 (k)(10), 33 CFR 155.1045(j)(6), and 33 CFR 155.5035(j)(10). Currently, we consider SDSs compliant with 29 CFR 1910.1200 (OSHA-compliant) to meet these requirements. In this final rule, we are adding language to sections 155.1035, 155.1040, 155.1045, and 155.5035 that shows we consider the SOLAS MSDS to meet the requirements found in the response plan regulations. Therefore, we are amending those documents mentioned as appropriate in meeting those regulations to include the SOLAS MSDS as defined by MSC.286(86). We note that this does not constitute a requirement to use SOLAS MSDSs, but does explicitly permit their use in providing the required information per the VRP regulations.

We believe that providing this option will give maximum flexibility to industry while making the hazard information available to maritime personnel. Furthermore, we consider the use of the SOLAS 74 MSC. 286(86) format, which contains low reporting threshold quantities of benzene, hydrogen sulfide, and sulfur, to provide maritime personnel with clear, concise and accurate information on the health and environmental effects of toxic substances carried on board.

Furthermore, we are removing the proposed requirement that the MSDS must be provided in English, as well as the working language of the crew. We believe that introducing a regulatory requirement that differs, even slightly, from the widely-used Safety Data Sheets could present unneeded difficulties with little safety benefits. While we still believe that we should incorporate a requirement for safety data sheets into our regulations, we will consult with OSHA and other agencies to integrate a standard for maritime SDSs in any future rulemakings.

We also received one comment that argued that the NPRM was procedurally flawed with regard to the proposed MSDS requirement, an argument that we believe is based on several misperceptions of the proposal. Specifically, the commenter argued that the proposal to require an MSDS was

vague, unconstitutional, and would create uncertainties and liability if finalized. We disagree with the commenter's characterization of the proposal.

The vagueness argument was based on the idea that the information contained in MSC.286(86) did not provide guidance on what should be inserted into an MSDS for a topic on which no information is available. Thus, an operator might leave the space blank, insert a statement that no information is available, or perform certain research or chemical analysis. This uncertainty, according to the commenter, rendered the proposed section unconstitutionally vague, as it failed to give sufficient guidance to those subject to it and those who would enforce it. In response, we would note that while questions about the interpretation or enforcement of a proposal are appropriate to ask, the mere fact that questions exist does not constitute unconstitutional vagueness.

The commenter also argued that the proposed section is an ex post facto rule due to the July 1, 2011 date given with regard to carriage of MSDSs. We believe that the commenter has misinterpreted the proposal, and note that the proposal would not become effective until after publication of a final rule. We believe that the confusion may stem from the language in proposed § 197.820(a), which

read "Each vessel subject to SOLAS 1974 must carry a Material Safety Data Sheet (MSDS) for each Annex I cargo and ship fuel carried in bulk after January 1, 2011." While the date listed would have a delaying effect if the final rule had been made effective before January 1, 2011, it would not create a retroactive requirement.

Finally, the commenter also stated that the NPRM would unfairly expose shipping and transport interests to a significant risk of tort liability, as regulatory standards can be viewed as setting a minimum level of care, and that these uncertainties would be further exacerbated if the Coast Guard were to adopt the SDS requirements in proposed § 197.820. It is unclear specifically to what risk the commenter was referring. Regardless, we are aware of no basis to conclude that displaying a safety data sheet, whether or not it is required by regulation, negates the responsibility to exercise reasonable care.

D. Other Issues Raised in Comments

We received several additional comments to the NPRM that are discussed in this section. One commenter supported the proposed rule, stating that the harmonization of U.S. regulations and international conventions will hopefully prevent accidents such as oil spills in the Gulf of Mexico. Another commenter supported the proposed rule,

noting that increased fuel tank protection can help prevent oil spills. An additional commenter expressed support that the Oil Record Book requirements, fuel tank protection standards, STS Operations guidelines, pump room protections, and oil outflow performance requirements would all help to reduce pollution at sea. We appreciate these supportive comments and believe that the requirements implemented by this final rule will help to prevent oil pollution at sea.

In the NPRM, we included a discussion regarding the possibility of requiring non-oceangoing ships of 400 gross tons or larger to install oily bilge water holding tanks. We asked a series of questions regarding their use on vessels, costs, and alternatives to holding tanks. While we did not receive specific economic data, one commenter did include a discussion regarding the necessity of oily bilge water retention tanks and oily water separators and the effect on the maritime environment. The comment noted that in cases where bilge water is treated with an oily water separator, it can still contain other substances that are environmentally harmful if discharged overboard. These substances include volatile organic compounds, semi-volatile organics, salts, and contaminants such as soaps, detergents, and degreasers that can bypass the oily water

separator system. The commenter recommended that an emulsion breaking bilge water cleaning system can alleviate these problems, but would also require the use of a storage tank.

Given the lack of economic data regarding the bilge water holding systems, as well as the additional information regarding oily water separators, we are not including in this final rule a provision to require non-oceangoing ships to have oily bilge water holding tanks. However, we do intend to continue this research and may propose a more detailed program for handling bilge discharge depending on the information collected in the future.

V. Incorporation by Reference

The Director of the Federal Register has approved the material in §§ 155.140, 156.111, and 157.02 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in that section.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Nonetheless, we developed an analysis of the costs and benefits of this final rule to ascertain its probable impacts on industry. This regulatory assessment ("Regulatory Analysis") is available in the docket where indicated in section A of this preamble. A summary of the Regulatory Analysis follows:

The proposed rule contains provisions to codify the

2004, 2006 and 2009 Amendments to Annex I in the Code of Federal Regulations. These provisions are designed to harmonize U.S. regulations with international standards.

In the NPRM (77 FR 21360, April 9, 2012), detailed descriptions of the proposed CFR changes are described in Section V. Discussion of Comments and Changes of this preamble. A summary of the regulatory analysis is shown in Table 1 below.

Table 1 Summary of the Regulatory Analysis

Category	Summary (Harmonization)
Total Affected Population*	~4,029 current and future U.S. flag ships with 1,768 U.S. current owners or operators
Costs (7% discount rate)	$2.9 mil (annualized) $20.3 mil (10-year)
Unquantified Benefits	Compliance with internationally enforced standards where non-compliance could result in Port State Control interventions and detentions or delays.
	General reduction of the risk of oil discharges in the marine environment. 33 CFR 151.25 improves the availability of information on certain processes and equipment. 33 CFR 151.360-370 prevents the direct discharge of oily sludge residue and indirect discharge through oily bilge water. 33 CFR 151.400-420 helps to ensure STS Operations are conducted safely and that an apparatus is in place to mitigate environmental damage.

* The total affected population shown in this table refers to the sum of the affected population for each individual requirement. An individual ship may be subject to multiple requirements. If there is no overlap of requirements, the affected population would be a maximum of 4,029 new and existing ships. If there is overlap

of requirements, the total affected population could be less.

1. The Affected Population

The individual provisions of the proposed rule affect different populations of U.S. flag ships. A summary of the affected population is shown in Table 2.

Table 2 Affected Populations U.S. Flag Ships

Provision	Population Affected	Current Affected Population	New ships delivered during the 10-year period of analysis	Total Number of ships
Additional Oil Record Book entry requirements	All inspected ships bunkering fuel or lubricating oil	1,672	273	1,945
Valve separating the sludge tank drains from the bilge system	Oceangoing Ships 400 gross tons and over	1,044	225	1,269
Preparation of STS Operations Plans and STS Reporting	Tankers and Tank ships	512	303	815

Source: USCG MISLE database.

2. Costs

While some of the provisions in this final rule reflect existing industry standards that have been implemented in advance of internationally agreed upon dates, the remaining provisions will generate costs for owners and operators of affected ships.

The recurring costs represent additional operating expenses for required Oil Record Book entries and recordkeeping; for the continuing costs of plan revisions, training, and notifications associated with Ship-to-Ship (STS) oil-transfer operations plans (STS Operations Plans).

The non-recurring costs are of two types: the cost of required equipment and its installation, including various valves and drain modifications; and the cost of the initial preparation and training required to implement STS Operations Plans.

The primary cost estimate of the proposed rule is displayed in Table 3 and results in a total cost of $24.2 million (undiscounted) for the ten year period of analysis. This cost estimate was prepared assuming no ships currently comply with any of the provisions of the proposed rule. In present value terms, the total cost estimate is $19.8 million using a 3-percent discount rate and $20.3 million using a 7-percent discount rate. Annualized costs are $2.3

million per year at 3 percent and $2.9 million per year at 7 percent.

Table 3 Costs Summary by Year ($ Millions) to U.S. Flag Ships

		Discounted	
	Undiscounted	7 percent	3 percent
Year 1	$10.1	$9.6	$9.8
Year 2	$1.3	$1.2	$1.2
Year 3	$1.4	$1.2	$1.2
Year 4	$1.5	$1.2	$1.1
Year 5	$1.5	$1.2	$1.1
Year 6	$1.6	$1.2	$1.1
Year 7	$1.6	$1.2	$1.1
Year 8	$1.7	$1.2	$1.1
Year 9	$1.7	$1.2	$1.1
Year 10	$1.8	$1.2	$1.0
Total	$24.2	$20.3	$19.8
Annualized		$2.9	$2.3

Please refer to Appendices B through E in the Regulatory Analysis for the annual costs. Costs are broken out by section and by population.

Table 4 displays the unit costs per vessel and outlines the per vessel costs for the provisions.

Table 4 Unit Costs (undiscounted) for U.S. Flag Ships

Section	Description	Per Ship Costs
33 CFR 151.25	Oil Recordkeeping books	$443
33 CFR 155.360	Oceangoing Ships 400 GT to 10,000 Gross Tons- Valves	$5,400
33 CFR 155.370	Oceangoing Ships above 10,000 Gross Tons- Valves	$7,549
33 CFR 155.400-420	STS Operations Plans	$5,409
	STS Training	$2,148

	STS Notifications	$16

3. Benefits

The benefits of the proposed rule include harmonization and compliance with internationally enforced standards and the reduction of risks of oil pollution, as well as improved mariner safety.

Functional benefits of each provision of the proposed rule are shown in Table 5.

Table 5 Functional Benefits

Provision	Beneficial Impact on Oil Spill Risk Reduction
33 CFR 151.25 – This provision would establish new record keeping requirements for the Oil Record Book: a requirement to make an entry for the bunkering of fuel or bulk lubricating oil; a requirement to make an entry for any failure of oil filtering equipment; and a requirement to make an entry for any failure of the oil discharge monitoring and control system.	This provision will reduce the risk of oil spills by improving the availability of information on certain processes and equipment. For example, the additional entry for the bunkering of fuel or bulk lubricating oil would help to track the use and disposal of oil and oil residues. The other two additional entries would capture equipment failures for all ships with an Oil Record Book.
33 CFR 155.360-370 This provision requires that these ships have a separate designated pump for the oil residue tank (sludge tank) and that this sludge disposal system (pump and tank) must be segregated from the bilge system except for manually operated drains with visual monitoring of settled water	This provision will reduce the risk of oil spills by ensuring segregation of oily sludge residue from the bilge system. These measures prevent the direct discharge of oily sludge residue and the indirect discharge through oily bilge water.

that lead to an oily bilge water tank or a bilge well. Any nonconformity would require a ship in this group to purchase and install appropriate equipment.	
33 CFR 156.400- 420 This provision requires that oil tankers transferring oil cargoes between ships at sea (Ship-to-Ship (STS) transfers of oil) have an STS Operations Plan meeting specific IMO standards.	This provision will reduce the risk of oil spills by requiring that oil tankers engaging in STS Operations provide the relevant MARPOL 73/78 party with 48 hours' notice of STS Operations. This includes information regarding the location, time, and duration of the STS Operations, oil type and quantity, identification of the STS Operations service provider, and confirmation that there is a compliant STS Operations Plan. Providing this information helps to ensure that STS Operations are conducted safely and that an apparatus is in place to mitigate environmental damage should a spill occur.

The purpose of the proposed rule is to harmonize Coast Guard regulations with new provisions of MARPOL 73/78 to which the United States is a signatory. Compliance with these Conventions is, in itself, a benefit to all ships on international routes because the failure to comply with these international standards for pollution prevention and safety would subject the non-compliant ship to PSCs. Coast Guard incorporation of these provisions is also a requirement of U.S. law, APPS 33 U.S.C. §§ 1901-1915

(2002), which implements and codifies the MARPOL agreements into U.S. law. Thus, this rulemaking seeks to reduce regulatory uncertainty.

Port State Controls may include detention of a ship in a foreign port until the identified deficiencies are rectified. Delays of this type can be costly to the owner/operator of a ship. For example, the Paris Memorandum on Port State Control Annual Report (Paris Memorandum) for 2009 indicated that 27 oil tankers were detained worldwide under PSCs; 17 of these tankers (63 percent) were detained for violations of Annex I. With charter rates for oil tankers averaging $31,700 per day, even short delays under PSCs can result in substantial costs. None of these deficient ships were U.S. flag vessels because of the adherence to international standards enforced by the Coast Guard. With this proposed rule the Coast Guard intends to ensure that no ambiguities exist between MARPOL 73/78 and the regulatory requirements of the CFR.

The Paris Memorandum for 2009, the latest year for which there are data, also indicated that 3,764 ships that were inspected worldwide under PSCs had deficiencies regarding Annex I requirements. Additionally, 15,800 ships were found deficient regarding safety and firefighting

standards (SOLAS requirements). As with oil tankers (noted above) none of these deficient ships were U.S. flag vessels because of the adherence to international standards enforced by the Coast Guard.

We examined the risk reduction using a break even analysis of the oil spill amount that would need to be prevented in order for the benefits to equal the total regulatory cost of this rule. From historical data[2], we determined there was an average of 5,583 barrels of oil spilled annually from U.S. flagged SOLAS ships over the 2001-2010 period. To calculate the annual monetary value of remediating damages from oil spills, we used a cost of $10,700 per barrel of oil based on an analysis of expenditures from the Oil Spill Liability Trust Fund. Consequently, the costs of oil spill damages averaged $59.7 million per year (undiscounted) over the 2001-2010 period. Please refer to the Regulatory Analysis for further details.

The 7 percent annualized cost of this rule is $2.89 million. With average annual costs of oil spill damages of $59.7 million (undiscounted), the provisions would have to reduce the volume of oil spills by 4.85 percent ($2.89 million/$59.7 million) in order to achieve a breakeven.

[2] US Coast Guard MISLE data, 2001 to 2010, oil spilled from U.S. flagged, SOLAS vessels

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.

A Final Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket by following the directions in the ADDRESSES section of this preamble. A summary of the analysis follows. There are an estimated 1,768 U.S. entities that would be affected by this proposed rule and these entities operate a maximum of 3,228 existing ships. We chose a random sample of 296 entities and evaluated these against the applicable standard for determining whether the entity was small (i.e., SBA size standards for businesses and RFA standards for governments and not-for-profits). Table 6 provides the size determinations of the sample population.

Table 6 Number of Entities Impacted by the Proposed Rule

Entities below the threshold	113
Entities above the threshold	78
Government below the threshold	1

Government above the threshold	4
N/A	100
Total	296

We analyzed revenue impacts for the implementation year as that is the highest impact on small entities. First year costs include costs for additional required Oil Record Book entries, equipment purchase and installation costs, costs associated with the STS Operations Plan preparation and crew training, and the additional notification to the Coast Guard that an STS Operation will occur.

This proposed rule has many provisions that would affect different types of vessels and therefore, businesses' revenue impacts would vary according to the number and type of vessel owned. Table 7 provides the list of per vessel cost by provision.

Table 7 Potential Vessel Cost

Section	Description	Per Ship Costs
33 CFR 151.25	Oil Recordkeeping Books	$443
33 CFR 155.360	Oceangoing Ships 400 GT to 10,000 Gross Tons- Valves	$5,400
33 CFR 155.370	Oceangoing Ships above 10,000 Gross Tons- Valves	$7,549
33 CFR 155.400-420	STS Plans	$5,409
	STS Training	$2,148
	STS Notifications	$16

To measure the impact on small entities we distinguished which provision each entities subscribed to and then attributed the per company costs based on those provisions. In other words, the per ship cost ranged from $443 (recordkeeping costs only) to $8,016 (recordkeeping and STS Operation costs) depending on which provision(s) the entity fell under. Table 8 provides the percent impacts on revenue that the provision(s) will have on entities.

Table 8 Estimated Percent of the Revenue Impact of the Final Rule

Impact Range	No. of Entities	Percent
<1%	90	80%
1% - < 3%	14	12%
3% or greater	9	8%
sum	113	100%

In the NPRM, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities and we requested public comments on this certification. We received one comment on the economic analysis of the 48-hour notification. However, because we modified the 48-hour notification to allow for more than one notification, we deemed this cost as an additional collection of information rather than a significant change in industry practice or a

significant cost burden to industry.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This final rule would not require a new Collection of Information (COI) request under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) but would increase the burden hours under three existing collections of information.

1. Information Collection Request: OMB control number 1625-0009 (Oil Record Book for Ships)

TITLE: Oil Record Book for Ships [33 CFR part 151.25].

SUMMARY OF THE INFORMATION COLLECTION REQUEST: The Coast Guard uses the information recorded in the Oil Record Book to verify sightings of actual violations of the Act to Prevent Pollution from Ships (APPS), to determine the level of compliance with MARPOL 73/78, and as a means of reinforcing the discharge provisions. The actual recording of discharge information reinforces the intent of the regulations. Unless this information is recorded, the Coast Guard would have to rely solely on actual sightings of oil discharges for enforcement. Violation of the law may go undetected resulting in continued pollution of the sea by oil. The Coast Guard would have no method of determining the level of compliance with regulations.

USE OF INFORMATION: The Coast Guard uses the information recorded in the Oil Record Book to verify sightings of actual violations of the APPS, to determine the level of compliance with MARPOL 73/78, and as a means of reinforcing the discharge provisions.

DESCRIPTION OF THE RESPONDENTS: Oil tankers and tank barges of 150 gross tons and above; ships of 400 gross tons

and above other than oil tankers (including freight barges equipped to discharge oil or oil mixtures); manned fixed or floating drilling rigs, except those that are not equipped to discharge oil or oil mixtures, or rigs that are in compliance with the National Pollutant Discharge Elimination System (NPDES) permit; and manned fixed or floating drilling platforms over 400 gross tons, primarily Mobile Offshore Drilling Units (MODUs) over 400 gross tons.

NUMBER OF RESPONDENTS: The number of respondents is 1,672.

FREQUENCY OF RESPONSE: The frequency of response is occasional reports for recordkeeping and reporting.

BURDEN OF RESPONSE: The increase in burden hours is from the current estimated 540 entries per ship per year for oil tankers and tank barges to 762 entries per year; and from 180 entries per ship per year for non-oil ships to 254 entries per year.

ESTIMATE OF TOTAL ANNUAL BURDEN: The rule will increase the total annual burden by approximately 8,314 hours to 28,535 hours. The current annual burden for this collection is 20,221 hours.

2. Information Collection Request: OMB control number 1625-0041 (MARPOL Related Documents STS Operations Plan)

TITLE: Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates [33 CFR 156. 400-420 Subpart D-Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea].

SUMMARY OF THE INFORMATION COLLECTION REQUEST: This rule will modify an existing collection of information. The Coast Guard is requiring oil tankers and tank barges of 150 gross tons and above, that engage in transfers of oil at sea, to comply with an international agreement (MARPOL Annex I) to which the U.S. is a contracting party. These requirements would add a new subsection that will reduce the possibility of an accidental oil spill/discharge during a STS oil-transfer operation.

USE OF INFORMATION: This is procedural information that each ship involved in STS operations must follow in order to be in compliance with the new Chapter 8 of the 2009 Amendments to MARPOL.

DESCRIPTION OF THE RESPONDENTS: Oil tankers of 150 gross tons and above and each other U.S. ship of 400 gross tons and above; that engages on international voyages to ports or off-shore terminals under the jurisdiction of other parties to MARPOL 73/78. This ICR will apply to oil tankers and tank barges who engage in STS operations.

NUMBER OF RESPONDENTS: The total number of respondents in this COI is 1,556, of which this rule will affect a subset of 512 ships.

FREQUENCY OF RESPONSE: The frequency of response is a non-recurring burden for the initial preparation of an STS Operations Plan and the recurring annual burden for updates to the plan and familiarization (training) of responsible persons.

BURDEN OF RESPONSE: The rule will increase the total annual burden by a non-recurring requirement of approximately 69,120 hours for preparation of the STS Operations Plan and a recurring burden of approximately 2,048 hours. The current annual burden for this collection is 2,738 hours.

3. Information Collection Request: OMB control number 1625-0042 (Ship-to-Ship Operations, 48-hour Advanced Notification).

TITLE: Requirements for Lightering of Oil and Hazardous Material Cargoes

SUMMARY OF THE INFORMATION COLLECTION REQUEST: This rule would modify an existing collection of information, found in Title 33 CFR 156.200-330. These provisions will add a new section 156.400 which requires oil tankers and tank barges of 150 gross tons and above, that engage in

transfers of oil at sea, to comply with an international agreement (MARPOL Annex I) to which the U.S. is a contracting party and in order to reduce the possibility of an accidental oil spill/discharge during a STS oil-transfer operation.

USE OF INFORMATION: The purpose of this collection is to inform the local Coast Guard Captain of the Port of the time and place of an STS Operation.

DESCRIPTION OF THE RESPONDENTS: This ICR will apply to oil tankers and tank barges who engage in lightering or transfers of dangerous cargoes at sea. This ICR will add tank barges of 150 gross tons and above, that engage in STS operations.

NUMBER OF RESPONDENTS: The number of respondents affected by this rule will be 512 ships, a subset of the current 779 respondents.

FREQUENCY OF RESPONSE: The frequency of response is a recurring annual burden for notifications regarding transfers of oil.

BURDEN OF RESPONSE: The rule will increase the total annual burden by a recurring burden of approximately 133 hours. The current annual burden for this collection is 217 hours.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this final rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis is explained below.

The U.S. Supreme Court has long recognized the field preemptive impact of the Federal regulatory regime for inspected vessels. See, e.g., Kelly v. Washington ex rel Foss Co., 302 U.S. 1 (1937) and the consolidated cases of United States v. Locke and Intertanko v. Locke, 529 U.S. 89, 113-116 (2000). Therefore, Coast Guard regulations issued under the authority of 33 U.S.C. 1903 and 46 U.S.C. 3306 in the areas of design, construction, alteration, operation, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, piping, and material safety labeling have preemptive effect over State regulation in these fields, regardless of whether the Coast Guard has issued regulations on the subject or not, and regardless of the existence of conflict between the State

and Coast Guard regulation. For this reason, we do not believe that this rule has Federalism implications.

In the NPRM, we invited affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments on the proposed rule. We also noted we would document the extent of our consultation with State and local officials that submit comments, summarize the nature of concerns raised by State or local governments and our response, and state the extent to which the concerns of State and local officials have been met. We did not receive any comments from State or local governments.

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 (adjusted for inflation) 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.

G. Taking of Private Property

This rule will not cause 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

This rule does not have tribal implications under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," because it does not 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.

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 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 voluntary consensus standards:

1. Ship to Ship Transfer Guide, Petroleum;

2. Manual on Oil Pollution, Section I: Pollution; and

3. Guide to Helicopter/Ship Operations.

The sections that reference these standards and the locations where these standards are available are listed in 33 CFR 155.140, 33 CFR 156.111, and 33 CFR 157.02.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.lD, 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 that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(a) of the Instruction and under section 6 (a)and (b) of the "Appendix to National Environmental

Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48244, July 23, 2002). This rule involves regulations which are editorial or procedural; Regulations concerning vessel operation safety standards; and congressionally mandated regulations. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under the ADDRESSES section of this preamble.

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 155

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

33 CFR Part 156

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

33 CFR Part 157

Cargo vessels, Incorporation by reference, Oil

pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 151, 155, 156, and 157 as follows:

PART 151 - VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104-227 (110 Stat. 3034); E.O. 12777, 3 CFR, 1991 Comp. p. 351; Department of Homeland Security Delegation No. 170.1.

2. Amend § 151.05 as follows:

a. Designate in alphabetical order the definitions for "Oil-like NLS" and "Oil tanker";

b. Revise the definition for "Oil residue"; and

c. Add definitions in alphabetical order for "Oil residue (sludge)", "Oil residue (sludge) tank", "Oily bilge water", and "Oily bilge water holding tank".

The revision and additions read as follows:

§ 151.05 Definitions.

* * * * *

Oil residue means oil cargo residue.

Oil residue (sludge) means the residual waste oil products generated during the normal operation of a ship

such as those resulting from the purification of fuel or lubricating oil for main or auxiliary machinery, separated waste oil from oil filtering equipment, waste oil collected in drip trays, and waste hydraulic and lubricating oils.

Oil residue (sludge) tank means a tank which holds oil residue (sludge) from which sludge may be disposed directly through the standard discharge connection or any other approved means of disposal.

* * * * *

Oily bilge water means water which may be contaminated by oil resulting from things such as leakage or maintenance work in machinery spaces. Any liquid entering the bilge system including bilge wells, bilge piping, tank top or bilge holding tanks is considered oily bilge water.

Oily bilge water holding tank means a tank collecting oily bilge water prior to its discharge, transfer or disposal.

* * * * *

3. In § 151.13, revise paragraph (a) to read as follows:

§ 151.13 Special areas for Annex I of MARPOL 73/78.

(a) For the purposes of §§ 151.09 through 151.25 of this subpart, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea

area, the Gulfs area, the Gulf of Aden, the Antarctic area, the North West European waters, the Oman area of the Arabian Sea, and the Southern South African Waters, which are described in § 151.06 of this subpart. The discharge restrictions are effective in the Mediterranean Sea, Baltic Sea, Black Sea, and the Antarctic area.

* * * * *

4. In § 151.25, revise paragraphs (d)(3) and (4), add paragraphs (d)(5) and (6), revise paragraphs (e)(9) and (10), and add paragraph (e)(11) to read as follows

§ 151.25 Oil Record Book.

* * * * *

(d) * * *

(3) Disposal of oil residue;

(4) Discharge overboard or disposal otherwise of bilge water that has accumulated in machinery spaces;

(5) Bunkering of fuel or bulk lubricating oil; and

(6) Any failure, and the reasons for, of the oil filtering equipment.

(e) * * *

(9) Closing of valves necessary for isolation of dedicated clean ballast tanks from cargo and stripping lines after slop tank discharge operations;

(10) Disposal of oil residue; and

(11) Any failure of, and the reasons for, the oil discharge monitoring and control system.

* * * * *

PART 155 – OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

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

Authority: 33 U.S.C. 1231, 1321(j), 1903; 46 U.S.C. 3703; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. 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). Section 155.490 also issued under section 4110(b) of Pub. L. 101–380. Sections 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

6. In § 155.140, add paragraph (d)(6) to read as follows:

§ 155.140 Incorporation by reference.

* * * * *

(d) * * *

(6) MARPOL Consolidated Edition 2011, Annex I, Regulations for the prevention of pollution by oil, Chapter 3 – Requirements for machinery spaces of all ships, Part A-Construction, Regulation 12A, "Oil fuel tank protection", incorporation by reference approved for § 155.250 (Annex I, Regulation 12A).

* * * * *

7. Add § 155.250 to read as follows:

§ 155.250 Oil fuel tank protection.

Each ship with an aggregate oil fuel capacity of 600 cubic meters or more that is delivered on or after August 1, 2010, must meet the minimum standard of oil fuel tank protection required by Annex I, Regulation 12A (incorporated by reference, see § 155.140).

8. In § 155.360, revise paragraph (a)(1), add paragraph (a)(3), revise paragraph (b) introductory text, and add paragraph (b)(3) to read as follows:

§ 155.360 Oily mixture (bilge slops) discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks.

(a)(1) Except as provided in paragraph (a)(3) of this section, no person may operate an oceangoing ship of 400 gross tons and above but less than 10,000 gross tons, excluding a ship that carries ballast water in its fuel oil tanks, unless it is fitted with approved 15 parts per million (ppm) oily-water separating equipment for the processing of oily mixtures from bilges or fuel oil tank ballast.

* * * * *

(3) Any ship certified under the International Code of Safety for High-Speed Craft engaged on a scheduled service with a turn-around time not exceeding 24 hours and covering also non-passenger/cargo-carrying relocation voyages for these ships need not be provided with oil filtering equipment. These ships must be fitted with an oily bilge water holding tank having a volume adequate for the total retention onboard of the oily bilge water. All oily bilge water must be retained onboard for subsequent discharge to reception facilities.

(b) No person may operate a ship under this section unless it is fitted with an oil residue (sludge) tank or tanks of adequate capacity to receive the oil residue that cannot be dealt with otherwise.

* * * * *

(3) Ships subject to this section must--

(i) Be provided with a designated pump for disposal that is capable of taking suction from the oil residue (sludge) tank(s); and

(ii) Have no discharge connections to the bilge system, oily bilge water holding tank(s), tank top or oily water separators except that the tank(s) may be fitted with drains, with manually operated self-closing valves and arrangements for subsequent visual monitoring of the

settled water, that lead to an oily bilge water holding tank or bilge well, or an alternative arrangement, provided such arrangement does not connect directly to the bilge piping system.

* * * * *

9. In § 155.370, revise paragraph (a) introductory text, add paragraph (a)(5), revise paragraph (b) introductory text, and add paragraph (b)(3) to read as follows:

§ 155.370 Oily mixture (bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks.

(a) Except as provided in paragraph (a)(5) of this section, no person may operate an oceangoing ship of 10,000 gross tons and above, or any oceangoing ship of 400 gross tons and above, that carries ballast water in its fuel oil tanks, unless it has-

* * * * *

(5) Any ship certified under the International Code of Safety for High-Speed Craft engaged on a scheduled service with a turn-around time not exceeding 24 hours and covering also non-passenger/cargo-carrying relocation voyages for these ships need not be provided with oil

filtering equipment. These ships must be fitted with an oily bilge water holding tank having a volume adequate for the total retention onboard of the oily bilge water. All oily bilge water must be retained onboard for subsequent discharge to reception facilities.

* * * * *

(b) No person may operate a ship under this section unless it is fitted with an oil residue (sludge) tank or tanks of adequate capacity to receive the oil residue that cannot be dealt with otherwise.

* * * * *

(3) Ships subject to this section must--

(i) Be provided with a designated pump for disposal that is capable of taking suction from the oil residue (sludge) tank(s); and

(ii) Have no discharge connections to the bilge system, oily bilge water holding tank(s), tank top or oily water separators except that the tank(s) may be fitted with drains, with manually operated self-closing valves and arrangements for subsequent visual monitoring of the settled water, that lead to an oily bilge water holding tank or bilge well, or an alternative arrangement, provided such arrangement does not connect directly to the bilge piping system.

* * * * *

§ 155.1035 [Amended]

10. In paragraph (j)(10), after the text "29 CFR 1910.1200," add the text "SOLAS 74 regulation VI/5-1,".

§ 155.1040 [Amended]

11. In paragraph (k)(10), after the text "29 CFR 1910.1200," add the text "SOLAS 74 regulation VI/5-1,".

§ 155.1045 [Amended]

12. In paragraph (j)(6), after the text "29 CFR 1910.1200," add the text "SOLAS 74 regulation VI/5-1,".

§ 155.5035 [Amended]

13. In paragraph (j)(10), after the text "29 CFR 1910.1200," add the text "SOLAS 74 regulation VI/5-1,".

PART 156 - OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

14. The authority citation for part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715, 6101; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) is also issued under 46 U.S.C. 3703.

15. Revise § 156.111 to read as follows:

§ 156.111 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 U.S. Coast Guard, Office of Vessel Activities (CG-CVC), 2703 Martin Luther King Jr. Avenue, SE., Washington, DC 20593, telephone 202-372-1251, and is available from the sources listed below. It is also 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.

(b) International Chamber of Shipping, 12 Carthusian Street, London EC1M 6EB, England, telephone +44 20 7417 8844, http://www.marisec.org/.

(1) Guide to Helicopter/Ship Operations, Fourth Edition, 2008, incorporation by reference approved for § 156.330(c).

(2) [Reserved]

(c) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, United Kingdom, telephone +44(0)20 7735 7611, http://www.imo.org/.

(1) Manual on Oil Pollution, Section I: Prevention, Second Edition, 2011, incorporation by reference approved for § 156.410(c) and (f).

(2) [Reserved]

(d) Oil Companies International Marine Forum (OCIMF), 15th Floor, 96 Victoria Street, London SW1E 5JW, England, telephone +44(0)20 7654 1200, http://www.ocimf.com/.

(1) Ship to Ship Transfer Guide, (Petroleum), Fourth Edition, 2005, incorporation by reference approved for § 156.330(b), § 156.410(c) and 156.410(f).

(2) [Reserved]

§ 156.200 [Amended]

16. In § 156.200 after the words "when conducting response activities" add the words ", or to tank vessels of 150 gross tons or more engaged in the transfer of oil cargo between tank vessels at sea on or after April 1, 2012.".

17. In § 156.205 revise the definition of "Lightering or Lightering operation" to read as follows:

§ 156.205 Definitions.

* * * * *

Lightering or Lightering operation means the transfer of a cargo of oil in bulk from one oil tanker less than 150 gross tons to another oil tanker less than 150 gross tons, or a cargo of hazardous material in bulk from one vessel to another, including all phases of the operation from the beginning of the mooring operation to the departure of the service vessel from the vessel to be lightered, except when that cargo is intended only for use as fuel or lubricant aboard the receiving vessel.

* * * * *

18. Revise § 156.225 to read as follows:

§ 156.225 Designation of lightering zones

The District Commander is delegated the authority to designate lightering zones and their operating requirements, where they are necessary for safety or environmental protection. When a lightering zone has been designated, lightering and STS Operations in a given geographic area may only be conducted within the designated lightering zone.

§ 156.310 [Amended]

19. In § 156.310, in the introductory text, after the words “Lightering operations” add the words “and STS Operations”.

20. Revise § 156.330 to read as follows:

§ 156.330 Operations.

(a) Unless otherwise specified in this subpart, or when otherwise authorized by the cognizant Captain of the Port (COTP) or District Commander, the master of a vessel lightering or conducting STS Operations in a zone designated in this subpart must ensure that all officers and appropriate members of the crew are familiar with the guidelines in paragraphs (b) and (c) of this section and that the requirements of paragraphs (d) through (l) of this section are complied with.

(b) Lightering and STS operations must be conducted in accordance with the Oil Ship to Ship Transfer Guide, (Petroleum) (incorporated by reference, see § 156.111) to the maximum extent practicable.

(c) Helicopter operations must be conducted in accordance with the Guide to Helicopter/Ship Operations (incorporated by reference, see § 156.111) to the maximum extent practicable.

(d) The vessel to be lightered, or the discharging vessel engaged in an STS Operation, must make a voice warning prior to the commencement of lightering activities or STS Operations via channel 13 CHF and 2182 Khz. The voice warning shall include--

(1) The names of the vessels involved;

(2) The vessels' geographical positions and general headings;

(3) A description of the operations;

(4) The expected time of commencement and duration of the operation; and

(5) Request for wide berth.

(e) In the event of a communications failure between the lightering vessels, or vessels engaged in STS Operations, or the respective persons-in-charge of the transfer, or an equipment failure affecting the vessel’s cargo handling capability or ship’s maneuverability, the affected vessel must suspend lightering activities, or STS Operations, and must sound at least five short, rapid blasts on the vessel’s whistle. Lightering activities, or STS Operations, must remain suspended until corrective action has been completed.

(f) No vessel involved in a lightering operation, or STS Operation, may open its cargo system until the servicing vessel is securely moored alongside the vessel to

be lightered (or the vessel transferring oil in an STS Operation).

(g) If any vessel not involved in the lightering operation, STS Operation, or support activities approaches within 100 meters of vessels engaged in lightering or STS Operation, the vessel engaged in lightering or STS Operation shall warn the approaching vessel by sounding a loud hailer, ship's whistle, or any other appropriate means.

(h) Only a lightering tender, a supply boat, or a crew boat, equipped with a spark arrestor on its exhaust, or a tank vessel providing bunkers, may moor alongside a vessel engaged in lightering operations or STS Operations.

(i) Lightering operations and STS Operations must not be conducted within 1 nautical mile of offshore structures or mobile offshore drilling units.

(j) No vessel engaged in lightering activities or STS Operations may anchor over charted pipelines, artificial reefs, or historical resources.

(k) All vessels engaged in lightering activities or STS Operations must be able to immediately maneuver at all times while inside a designated lightering zone. The main propulsion system must not be disabled at any time.

(l) In preparing to moor alongside the vessel to be lightered or vessel transferring oil in an STS Operation, a service vessel shall not approach the vessel closer than 1000 meters unless the service vessel is positioned broad on the quarter of the vessel transferring oil. The service vessel must transition to a nearly parallel heading prior to closing to within 50 meters of the vessel transferring oil.

21. Add subpart D, consisting of §§ 156.400 through 156.420, to read as follows:

Subpart D--Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea

Sec.

§ 156.400 Applicability.

(a) This subpart applies to oil tankers engaged in the ship-to-ship transfer of oil cargo between oil tankers (STS Operations), and to their STS Operations conducted on or after April 1, 2012, when at least one of the oil tankers is of 150 gross tonnage and above. These rules are in addition to the rules of subpart A of this part, as well

as the rules in the applicable sections of parts 151, 153, 155, 156, and 157 of this chapter.

(b) This subpart does not apply to STS Operations--

(1) If the oil cargo is intended only for use as a fuel or lubricant aboard the receiving vessel (bunker operations);

(2) When at least one of the ships involved in the oil transfer operation is a warship or a naval auxiliary or other ship owned or operated by a nation and used, at the time of the transfer, in government noncommercial service only; or

(3) When the STS Operations are necessary for the purpose of securing the safety of a ship or saving life at sea, or for combating specific pollution incidents in order to minimize the damage from pollution; except that such vessels are subject to the requirements of §§ 156.415(g) and 156.420.

§ 156.405 Definitions.

In addition to the definitions specifically stated in this section, the definitions in § 154.105 of this chapter apply to this subpart except definitions for Tank Barge, Tank Ship and Tank Vessel. Definitions specific to this part--

Authorized Classification Society means a recognized classification society that has been delegated the authority to conduct certain functions and certifications on behalf of the Coast Guard.

Flag State means the authority under which a country exercises regulatory control over the commercial vessel which is registered under its flag. This involves the inspection, certification, and issuance of safety and pollution prevention documents.

Marine environment means—

(1) The navigable waters of the United States;

(2) The waters of an area over which the United States asserts exclusive fishery management authority; and

(3) The waters superjacent to the Outer Continental Shelf of the United States.

Oil tanker means a vessel that is constructed or adapted primarily to carry crude oil or products in bulk as cargo. This includes a tank barge, a tankship, and a combination carrier, as well as a vessel that is constructed or adapted primarily to carry noxious liquid substances in bulk as cargo and which also carries crude oil or products in bulk as cargo.

STS Operations means the transfer of oil cargo carried in bulk from one oil tanker to another at sea, when at

least one of the oil tankers is of 150 gross tonnage and above.

§ 156.410 General.

(a) Oil tankers subject to this subpart, and each U.S. oil tanker, wherever located, subject to this subpart, must carry onboard an STS Operations Plan that prescribes how that vessel will conduct STS Operations.

(b) Any oil tanker subject to this subpart must carry onboard an STS Operations Plan, prescribing how to conduct STS Operations, no later than the date of the first annual, intermediate, or renewal survey of the oil tanker, which must be carried out on or after the effective date of this final rule.

(c) The STS Operations Plan must be--

(1) Written in the working language of the oil tanker's crew;

(2) Developed using the information contained in the best practice guidelines for STS Operations identified in the Manual on Oil Pollution and in the Ship to Ship Transfer Guide (Petroleum) (both documents are incorporated by reference, see § 156.111); and

(3) Approved by the vessel's Flag State for oil tankers operated under the authority of a country other than the United States. For U.S. oil tankers, the STS

Operations Plan must be approved by the Commandant (CG-CVC-1) or an Authorized Classification Society.

(d) When chapter IX of the International Convention for the Safety of Life at Sea, 1974, as amended is applicable to the vessel, the STS Operations Plan may be incorporated into an existing required Safety Management System.

(e) Any oil tanker subject to this subpart must comply with the vessel's approved STS Operations Plan while engaging in STS Operations.

(f) The person in overall advisory control of STS Operations must be qualified to perform all relevant duties, taking into account the qualifications found in the best practice guidelines for STS Operations identified in the Manual on Oil Pollution and in the Ship to Ship Transfer Guide (Petroleum) (both documents are incorporated by reference, see § 156.111).

(g) In addition to any records required by the vessel's approved STS Operations Plan, each STS operation must be recorded in the oil tanker's Oil Record Book, required by § 151.25 of this chapter.

(h) All records of STS Operations shall be retained onboard for 3 years and be readily available for inspection.

(i) No oil tanker may transfer oil in a port or place subject to the jurisdiction of the United States, if the oil cargo has been transferred by an STS Operation in the marine environment beyond the baseline, unless:

(1) Both oil tankers engaged in the STS Operation have, onboard, at the time of transfer all certificates required by this chapter for transfer of oil cargos, including a valid Certificate of Inspection or Certificate of Compliance, as applicable to any transfer of oil taking place in a port or place subject to the jurisdiction of the United States;

(2) Both oil tankers engaged in the STS operation have onboard at the time of transfer, evidence that each vessel is operating in compliance with the National Response System as described in section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)). Additionally, the vessels must comply with the Declaration of Inspection requirements delineated in § 156.150 and a vessel response plan if required under part 155 of this chapter; and

(3) Both oil tankers engaged in STS Operations have onboard, at the time of transfer, an International Oil Pollution Prevention (IOPP) Certificate or equivalent documentation of compliance with Annex I, as would be

required by part 151 of this chapter for vessels in navigable waters of the United States. The IOPP Certificate or documentation of compliance shall be that prescribed by §§ 151.19 and 151.21 of this chapter, and shall be effective under the same timetable as specified in § 151.19.

(j) In an emergency, the Captain of the Port (COTP), upon request, may authorize a deviation from any requirement in this part if the COTP determines that its application will endanger persons, property, or the environment.

§ 156.415 Notification.

(a) Except as provided for in paragraphs (f) and (g) of this section, the master, owner or agent of each oil tanker subject to this subpart planning to conduct STS Operations in the territorial sea or exclusive economic zone of the United States must give at least 48 hours advance notice to the COTP nearest the geographic position chosen to conduct these operations. This advance notice must include:

(1) The oil tanker's name, call sign or official number, and registry;

(2) The cargo type and approximate amount onboard;

(3) The number of transfers expected, the amount of cargo expected to be transferred during each transfer, and whether such transfer will be conducted at anchor or underway;

(4) The date, estimated time of arrival, and geographical location at the commencement of the planned STS Operations;

(5) The estimated duration of STS Operations;

(6) The name and destination of receiving oil tanker(s);

(7) Identification of STS Operations service provider or person in overall advisory control and contact information; and

(8) Confirmation that the oil tanker has onboard an approved STS Operations Plan.

(b) If the estimated arrival time of an oil tanker to the reported geographic location for the commencement of STS operation changes by more than 6 hours, the master, owner, or agent of that oil tanker must provide a revised estimated time of arrival to the COTP.

(c) Where STS Operations are conducted as a result of collision, grounding, tank rupture or any similar

emergency, the master, owner, or agent of a vessel must give immediate notice to the Coast Guard office.

(d) In addition to the other requirements in this section, the master, owner, or agent of a vessel that requires a Certificate of Compliance (COC) or other special Coast Guard inspection in order to conduct STS Operations must request the COC or other inspection from the cognizant Officer in Charge, Marine Inspection (OCMI) at least 72 hours prior to commencement of STS Operations.

(e) The STS Operation advanced notice is in addition to the Notification of Arrival requirements in 33 CFR Part 160.

(f) If all of the information specified in paragraph (a) is not available 48 hours in advance of a planned STS Operation, the oil tanker discharging the oil cargo must notify the COTP at least 48 hours in advance that an STS Operation will occur. In such a circumstances, the information specified in paragraph (a) must be provided to the COTP at the earliest opportunity.

(g) If STS operations are conducted under exigent circumstances to secure the safety of a ship, to save life at sea, or combat specific incidents in order to minimize the damage from pollution within the territorial sea or exclusive economic zone of the United States, the master,

owner, or agent of each oil tanker subject this subpart shall provide notice with adequate explanation, as soon as practicable, to the COTP nearest the geographic position where the exigent STS operation took place.

§ 156.420 Reporting of incidents.

(a) Any vessel affected by fire, explosion, collision, grounding, or any similar emergency that poses a threat to the vessel(s) engaged in STS Operations must report the incident to the nearest Coast Guard office.

(b) The POAC of an STS operation must report, in accordance with the procedures specified in § 151.15 of this chapter, any incident of discharge of oil into the water.

(c) Immediately after the addressing of resultant safety concerns, all marine casualties must be reported to the nearest COTP, Sector Office, Marine Inspection Office, or OCMI in accordance with 46 CFR part 4.

PART 157 — RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

22. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); Department of Homeland Security Delegation No. 0170.1. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

23. In § 157.02, add paragraphs (b)(9) and (10) to read as follows:

§ 157.02 Incorporation by reference: Where can I get a copy of the publications mentioned in this part?

* * * * *

(b) * * *

(9) MARPOL Consolidated Edition 2011, Annex I, Regulations for the prevention of pollution by oil, Chapter 4 – Requirements for the cargo area of oil tankers, Part A – Construction, Regulation 22, "Pump-room bottom protection," (Annex I, Regulation 22) incorporation by reference approved for § 157.14.

(10) MARPOL Consolidated Edition 2011, Annex I, Regulations for the prevention of pollution by oil, Chapter 4 – Requirements for the cargo area of oil tankers, Part A – Construction, Regulation 23, "Accidental oil outflow performance," (Annex I, Regulation 23) incorporation by reference approved for § 157.20.

* * * * *

24. In § 157.08, add paragraph (o) to read as follows:

§ 157.08 Applicability of subpart B.

* * * * *

(o) Section 157.11(h) applies to every oil tanker delivered on or after January 1, 2010, meaning an oil tanker--

(1) For which the building contract is placed on or after January 1, 2007;

(2) In the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after July 1, 2007;

(3) The delivery of which is on or after January 1, 2010; or

(4) That has undergone a major conversion--

(i) For which the contract is placed on or after January 1, 2007;

(ii) In the absence of a contract, the construction work of which is begun on or after July 1, 2007; or

(iii) That is completed on or after January 1, 2010.

25. In § 157.11, add paragraph (h) to read as follows:

§ 157.11 Pumping, piping and discharge arrangements.

* * * * *

(h) Every oil tanker of 150 gross tons or more delivered on or after January 1, 2010, as defined in § 157.08(o), that has installed a sea chest that is permanently connected to the cargo pipeline system, must be

equipped with both a sea chest valve and an inboard isolation valve. The sea chest must be able to be isolated from the cargo piping system by use of a positive means while the tanker is loading, transporting, or discharging cargo. This positive means must be is installed in the pipeline in such a way as to prevent, under all circumstances, the section of pipe between the sea chest valve and the inboard valve from being filled with cargo.

26. Add § 157.14 to read as follows:

§ 157.14 Pump-room bottom protection.

Each oil tanker of 5,000 tons deadweight or more constructed on or after January 1, 2007, must meet the minimum standard of pump room bottom protection required by Annex I, Regulation 22 (incorporated by reference, see § 157.02).

27. Amend § 157.19 as follows:

a. Revise paragraph (a) introductory;

b. Redesignate paragraphs (b) through (e) as paragraphs (c) through (f), respectively; and

c. Add new paragraph (b).

The revision and addition read as follows:

§ 157.19 Cargo tank arrangement and size.

(a) With the exception of those vessels listed in paragraph (b) of this section, this section applies to:

* * * * *

(b) This section does not apply to U.S. or foreign oil tankers delivered on or after January 1, 2010.

* * * * *

28. Add § 157.20 to read as follows:

§ 157.20 Accidental oil outflow performance.

Each oil tanker which is delivered on or after January 1, 2010 must meet the minimum standard of accidental oil outflow performance required by Annex I, Regulation 23 (incorporated by reference, see § 157.02).

Dated: January 16, 2015

J. G. LANTZ
Director of Commercial Regulations and Standards
U.S. Coast Guard

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