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Coast Guard

33 CFR Parts 151, 155, 156 et al.

46 CFR Part 197

MARPOL Annex I Amendments; Proposed Rule

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 151, 155, 156, and 157

#### 46 CFR Part 197

[Docket No. USCG–2010–0194]

RIN 1625–AB57

#### MARPOL Annex I Amendments

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this notice of proposed rulemaking (NPRM), we are proposing to update our regulations to harmonize U.S. regulations with international conventions regarding oil pollution and safety of life at sea. The Coast Guard proposes to amend our regulations covering 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 Marine Environment Protection Committee during its 52nd, 54th, 56th, and 59th sessions. In addition, we are proposing to incorporate guidance from the Maritime Safety Committee, based on updates to the International Convention for the Safety of Life at Sea 1974, into our regulations covering shipping. Finally, we are seeking public comment on an alternative to add a requirement that some new U.S. non-oceangoing vessels be equipped with an oily bilge water storage tank.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before July 9, 2012 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 9, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG–2010–0194 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.  
 (2) *Fax:* 202–493–2251.  
 (3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

*Collection of Information Comments:* If you have comments on the collection of information discussed in section VI.D. of this NPRM, you must also send comments to the Office of Information and Regulatory Affairs, (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by email to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov) (include the docket number and “Attention: Desk Officer for Coast Guard, DHS” in the subject line of the email) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

*Viewing incorporation by reference material:* You may inspect the material proposed for incorporation by reference at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1427. Copies of the material are available as indicated in the “Incorporation by Reference” section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Patrick J. Mannion, U.S. Coast Guard Office of Operating and Environmental Standards, (CG–5222); telephone 202–372–1439, email [Patrick.J.Mannion@uscg.mil](mailto:Patrick.J.Mannion@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

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#### I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0194), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and insert "USCG-2010-0194" in the "Keyword" box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

### B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2010-0194 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

### D. Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time

and place announced by a later notice in the **Federal Register**.

## II. Abbreviations

APPS Act to Prevent Pollution from Ships  
 CFR Code of Federal Regulations  
 COC Certificate of Compliance  
 COI Collection of Information  
 COTP Captain of the Port  
 DHS Department of Homeland Security  
 FR Federal Register  
 § Section symbol  
 ICR Information Collection Renewal  
 IMO International Maritime Organization  
 IOPP International Oil Pollution Prevention  
 ISO International Standards 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 Maritime Safety Committee  
 MSDS Material Safety Data Sheets  
 MEPC Marine Environment Protection Committee  
 NLS Noxious liquid substance  
 NPRM Notice of Proposed Rulemaking  
 OCIMF Oil Companies International Marine Forum  
 OCMI Officer in Charge, Marine Inspection  
 OIRA Office of Information and Regulatory Affairs  
 OMB Office of Management and Budget  
 PSC Port state control  
 SOLAS 1974 International Convention for the Safety of Life at Sea 1974  
 STS Ship-to-Ship transfer  
 U.S.C. United States Code

## 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 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. MARPOL 73/78 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, was adopted on November 2, 1973 (1973 Convention), and 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 (Annex I), Regulations for the Prevention of Pollution by Oil, 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, who are charged with negotiating 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, meaning that the Coast Guard regulations in the CFR and the provisions of Annex I are not currently aligned. Annex I was revised by 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 involving oil tankers of 150 gross tons and 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 that ships over 400 gross tons contain sludge tanks that meet certain enumerated requirements to Regulation 12. It also amended International Oil Pollution Prevention (IOPP) 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 proposed rule, and as required by the APPS, we would align our regulations in 33 CFR parts 151, 155, 156, and 157 with international standards in Annex I regarding oil pollution from ships. By aligning the U.S. domestic regulations with international standards, compliant U.S. vessels would not 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, which remain in effect 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.

Because of these amendments, differences have developed between SOLAS 1974 and existing Coast Guard regulations. Our proposal resolves those differences in this rulemaking. Our goal is to adopt SOLAS Regulation VI/5-1 into U.S. law through 46 CFR part 197, which will allow enforcement of the provision in the U.S. as well as decrease exposure of U.S. vessels to PSC detention risk. Therefore, in this notice, we propose adding regulations to 46 CFR part 197 to conform with resolution MSC.286(86) (June 5, 2009). MSC.286 (86) adopts guidelines for the implementing SOLAS Regulation VI/5-1, specifically requiring the provision of

MSDSs for Annex I type oils as cargo in bulk and oil fuels, replacing the earlier resolution on MSDSs (MSC.150(77) (June 2, 2003)).

#### IV. Discussion of Proposed Rule

In this notice of proposed rulemaking (NPRM), we are proposing to update our regulations in Titles 33 and 46 of the CFR to harmonize U.S. regulations with international conventions regarding oil pollution and safety of life at sea. The purpose of this rule is to fulfill the obligations of the United States to implement MARPOL 73/78 and SOLAS 1974 amendments for U.S. vessels and all vessels operating on the navigable waters of the United States to which those amendments apply. The proposed updates in 33 CFR parts 151, 155, 156, and 157 are intended to implement recent amendments to MARPOL 73/78 for U.S. vessels and all vessels operating on the navigable waters of the United States to which those amendments apply. Additionally, we are proposing to add a new subpart D to 46 CFR part 197 to require MSDSs for Annex I cargoes and marine fuels to align our regulations with SOLAS 1974.

By aligning the domestic regulations with international standards, compliant U.S. vessels would not be subject to PSC enforcement measures while engaged in international trade. In addition, the updated regulations would produce benefits in terms of offshore oil pollution prevention and mariner safety.

In the sections below, we discuss the proposed changes to the CFR, the relevant Annex I amendment(s) that prompted the change, and what we believe the effect of the proposed changes would be. Following this section is a table that summarizes each change.

##### A. Definitional Changes, 33 CFR 151.05

Based on MEPC.187(59), we are proposing to make definitional changes to 33 CFR 151.05 to align with the “Definitions,” of Annex I, Regulation 1. We are proposing to add definitions for “oil residue (sludge),” “oil residue (sludge) tank,” “oily bilge water,” and “oily bilge water holding tank,” and revise the definitions of “oily mixture” (including deletion of a redundant definition) and “oil residue” (which is a separate term from “oil residue (sludge)”) in the definitions section in § 151.05. Adding the definitions from Annex I would improve the clarity of the regulations and help assure adherence to them.

*B. Southern South African Waters, 33 CFR 151.13*

Section 151.13 codifies MARPOL 73/78 “special areas” where, for recognized technical reasons associated with its oceanographic and ecological condition and the character of its traffic, special mandatory methods for the prevention of oil pollution are required. We are proposing to add “the Southern South African waters” to this section in accordance with MEPC.154(55), which added this new special area to Regulation 1.11 of Annex I.

*C. Additional Entries in the Oil Record Book, 33 CFR 151.25*

We are proposing to add three new Oil Record Book entry requirements, to record the bunkering of oil, any failures of oil filtering equipment, and failures of the oil discharge monitoring and control system. We are proposing these changes to conform to the provisions of Annex I Regulation 17 (17.2.5 and 17.5) and Regulation 36 (36.6), which require these entries in the Oil Record Book. The changes to Annex I were based on Annex III of MEPC.187(59), adopted on July 17, 2009.

Two of these changes would be in Section 151.25(d), which applies to all ships that are required to have an Oil Record Book. In 33 CFR 151.25(d)(5), we propose adding a requirement to make an entry for the bunkering of fuel or bulk lubricating oil. This additional entry would help to track the use and disposal of oil and oil residues. In 33 CFR 151.25(d)(6) we propose adding a requirement to make an entry for any failure of oil filtering equipment. The third change would be in 33 CFR 151.25(e), which applies only to oil tankers of 150 gross tons or more. We propose adding a requirement, as subparagraph (e)(11), to make an entry for any failure of the oil discharge monitoring and control system. These additional entries would capture equipment failures for all ships with an Oil Record Book.

*D. Oil Fuel Tank Protection, 33 CFR 155.250*

We are proposing to incorporate by reference Regulation 12A, “Oil fuel tank protection,” which details specific requirements for oil fuel tank protection. On March 24, 2006, MEPC adopted MEPC.141(54), which added Regulation 12A, to Annex I. Regulation 12A mandates that oil fuel tanks be protectively located, and expands performance standards for accidental oil fuel outflow in the event of a collision or grounding. In addition, Regulation 12A sets a maximum capacity limit of

2,500 cubic meters per oil fuel tank, limiting environmental damage should a tank rupture occur. Pursuant to Section 612 of the Coast Guard Authorization Act of 2010, Public Law 111–281, 121 Stat. 2905 (2010) (codified as amended at 46 U.S.C. 3306(2010)), Congress required that all new U.S. vessels meet the requirements of Regulation 12A.

To add these requirements to the CFR, we are proposing to add 33 CFR 155.250, “Oil fuel tank protection,” which would apply to each ship with an aggregate oil fuel capacity of 600 cubic meters or more, delivered on or after August 1, 2010. Proposed 33 CFR 155.250 references Regulation 12A, which would be incorporated by reference in 33 CFR 155.140.

*E. Requirements for Oil Sludge Tanks and Oil Filtering Equipment and Exemption for High-Speed Craft, 33 CFR 155.360 and 370*

The Coast Guard is proposing two changes that would modify Subpart B of part 155, “Vessel Equipment.” These proposed changes would incorporate changes made to Annex I, Chapter 3, Regulations 12 “Tanks for oil residues (sludge),” and 14 “Requirements for Machinery Spaces of All Ships.” Regulation 12 governs tanks for oil residues (sludge), and Regulation 14 governs oil filtering equipment.

We are proposing changes to the regulations in 33 CFR 155.360 and 155.370 designed to prevent the discharge of oil sludge into the marine environment, as well as to incorporate an exemption for high-speed craft contained in Annex I.

The first part of our proposed changes concerns oil sludge. Oil sludge, defined in 33 CFR 151.05, consists of residual waste products that can accumulate in the course of using or delivering oil. Currently, under 33 CFR 155.360 and 155.370, oceangoing vessels 400 gross tons or more are required to have oily water separating equipment and sludge tanks capable of retaining all oil residues (sludge) onboard. Additionally, they are not permitted to store oily water in their bilges.

To prevent discharge of this sludge into ocean waters, Regulation 12 (paragraph 1) of Annex I requires that all ships of 400 gross tons or more be fitted with a tank or tanks of adequate capacity to receive oil residues that cannot be dealt with otherwise in accordance with oil pollution regulations. Such tanks store the sludge until it can be disposed of safely.

To adopt the changes to Regulation 12, we are proposing revisions to both 33 CFR 155.360 and 155.370, which regulate oily mixture discharges on

oceangoing vessels. In 33 CFR 155.360, the regulations apply to ships of 400 gross tons and above but less than 10,000 gross tons, excluding those that carry ballast water in their fuel tanks. In 33 CFR 155.370, the regulations apply to ships 10,000 gross tons or more, as well as to all ships over 400 gross tons that carry ballast water in their fuel tanks. Adding the requirement regarding sludge tanks to both sections matches the applicability in Regulation 12, as it applies to “every ship of 400 gross tons and above.”

The proposed rule prohibits persons from operating a ship unless it is fitted with sludge tanks capable of storing the oil residues that cannot be dealt with through filtering. To provide specifications for sludge tanks we are proposing to adopt verbatim the language in Regulation 12, paragraph 2, and add it to 33 CFR 155.360 and 155.370, as paragraph (b)(3) of each section. These requirements would mandate that the sludge tanks be provided with a designated disposal pump and that they have no discharge connections to the bilge system, bilge water holding tanks, tank top, or oily water separators, although there is an exception for certain safeguarded drains.

In addition to the changes regarding oil sludge, we are also proposing to include an exemption for high-speed craft, which is contained in Regulation 14 of Annex I, as paragraph (a)(1) in sections 155.360 and 155.370. This exemption in the Annex I regulations, contained in Regulation 14.5.2 (as modified by Regulation 14.5.3), permits high-speed craft over 400 gross tons to operate without oil filtering equipment if they are fitted with a holding tank to store oily bilge water onboard and discharge it to reception facilities. We believe that the only vessels affected by this exemption are ferries. Therefore, we believe that the proposed changes to sections 155.360 and 155.370 of the CFR accurately reflect the Annex I regulations.

*F. Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea, 33 CFR 156.400–156.420*

We are proposing to add a new subpart D to 33 CFR part 156 to cover Ship to Ship (STS) transfer Operations between oil tankers at sea. This type of transfer is common in instances where a large tanker transfers oil to a smaller tanker that is able to offload to a port. Proposed subpart D, containing new §§ 156.400–156.420, aligns with Annex I Regulations 40, 41, and 42 (collectively, chapter 8), added by

MEPC resolution 186(59), which apply to oil tankers of 150 gross tons or more engaged in STS Operations conducted on or after April 1, 2012.

Regulations 41 and 42 impose two substantive requirements (Regulation 40 pertains to the applicability of the chapter). Regulation 41, "General Rules on Safety and Environmental Protection," requires that oil tankers involved in STS Operations carry and follow an "STS Operations Plan," based on the International Maritime Organization (IMO) Manual on Oil Pollution, Section 1: Prevention. Regulation 41 also requires that the person in charge of STS Operations be qualified to perform all relevant duties, and that records of STS Operations be retained on board for 3 years. Regulation 42, "Notification," requires each tanker to provide 48-hour advance notification to the Flag State when planning STS Operations in the Flag State's territorial sea or exclusive economic zone. It also specifies required elements of that notification.

Because some STS Operations also could be classified as lightering operations, which are regulated under subpart B of 33 CFR 156, we are proposing to modify the applicability section (§ 156.200) and definition of Lightering or Lightering Operations (§ 156.205) of that subpart to explicitly exclude STS Operations. While STS Operations and lightering operations are similar, they are not identical.

#### 1. Applicability of Subpart D, 33 CFR 156.400

The Coast Guard is proposing to base the applicability of subpart D on Regulation 40 of Annex I. Proposed subpart D would apply to certain oil tankers in U.S. territorial seas, as well as U.S. oil tankers that conduct STS Operations in ports or terminals under the jurisdiction of other parties to MARPOL 73/78. Specifically, it would apply to an oil tanker of 150 gross tons or above conducting STS Operations on or after April 1, 2012, and to the STS Operations if one of the oil tankers involved is 150 gross tons or above.

Regulation 40 specifies several exceptions, which are incorporated into proposed § 156.400. Proposed subpart D would not apply to oil transfer operations associated with fixed or floating platforms used for the offshore production and storage of oil, which we have addressed by specifying, in proposed § 156.400(a), that this subpart applies to the transfer of oil cargo between oil tankers at sea. Proposed paragraph (b) addresses the other exemptions specified in Regulation 40 by stating that subpart D also would not

apply to bunkering operations where the oil transferred is to be used as fuel, to STS Operations for the purpose of securing the safety of a ship or saving life at sea, specific pollution incidents, and to STS Operations involving warships or governmental, noncommercial service.

#### 2. Definitions, 33 CFR 156.405

The Coast Guard is proposing to add a definition section to subpart D defining "oil tanker" and "STS Operations" to ensure that these regulations are applied properly. This proposed section also contains definitions for "Authorized Classification Society," "Flag State," and "marine environment," to eliminate any ambiguity that could arise.

#### 3. Rules on Safety and Environmental Protection, 33 CFR 156.410

Regulation 41 of Annex I contains general rules on safety and environmental protection, which are being proposed in subpart D as § 156.410. These rules require that oil tankers carry an STS Operations Plan developed under best practice guidelines that comply with that plan. It also requires that the person in overall advisory control of the STS Operations be qualified to perform all relevant duties, and that owners or operators of vessels retain records of STS Operations for 3 years. The requirements of Regulation 41 are being proposed as paragraphs (a) through (h) of § 156.410. These regulations would help to ensure that best practices are followed with regard to the transfer of oil at sea, to mitigate the risk of oil pollution and to promote safety.

The Coast Guard is proposing additional requirements for those STS Operations that were formerly categorized as lightering operations. Some lightering operations, which are currently regulated under subpart B of part 156, would be classified as STS Operations under subpart D as a result of the changes in this proposal. Lightering operations are currently subject to more extensive regulation than that being proposed for STS Operations. To avoid confusion in overlapping cases, we are proposing to explicitly exclude STS Operations from the applicability section of subpart B, and regulating all STS Operations under subpart D, as discussed above in section IV.F.1. However, in order to preserve the existing regulatory requirements for those lightering operations that could also be classed as STS Operations, we have added these requirements to subpart D as well. These requirements are listed in § 156.410(i). The specific

items listed, including requirements for Certificates of Inspection, Certificates of Compliance, or Tank Vessel Examination Letters, are derived from the current requirements in § 156.210, which governs lightering operations, and are necessary for liquid bulk cargo transfers.

#### 4. Notification, 33 CFR 156.415

Regulation 42 of Annex I contains notification requirements for vessels engaging in STS Operations, which are being proposed in subpart D as § 156.415, along with additional notification procedures in force today that pertain to lightering operations. Regulation 42 requires that oil tankers engaging in STS Operations provide the relevant MARPOL 73/78 party with 48 hours advance 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 to the MARPOL 73/78 party helps to ensure that STS Operations are conducted safely and that a suitable safety measure is in place to mitigate environmental damage. The proposed regulatory text 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 Captain of the Port (COTP) specified in the existing § 156.215 would be used instead of the 48-hour notice specified in Regulation 42. This is being done to recognize industry best practices and the safety record under the existing notification requirements for these specific areas.

The proposed regulatory text incorporating the notification provisions of Regulation 42 differs further from the text of Annex I, because it also contains some of the notification provisions from the lightering requirements in subpart B, such as the expected number of oil transfers, which are not included in the Annex I requirements. Among these additional proposed requirements is that owners or operators of a vessel that require a Certificate of Compliance (COC) inspection, or other special Coast Guard inspections, request the required inspections from the relevant COTP at least 72-hours prior to commencement of STS Operations. Receiving this information helps the Coast Guard better plan for STS Operations and schedule our inspection workload. We are proposing to add this as § 156.415(e). However, despite the additions, all of the requirements from

Regulation 42 have been incorporated into the proposed regulatory text.

#### 5. Reporting of Incidents, 33 CFR 156.420

The Coast Guard is proposing to add § 156.420 to subpart D relating to the reporting of incidents. This section would ensure that the relevant COTP would be notified of incidents promptly so they may respond to them quickly. This section is not based on Annex I, but we believe that these provisions should be applied to STS Operations to ensure safety and the most effective Coast Guard response to any incident. They are derived from similar requirements found in § 156.220, but now would apply to the STS Operations as well.

#### G. Requirements for Sea Chest Permanently Connected to Cargo Lines, 33 CFR 157.08 and 157.11

The Coast Guard is also proposing requirements for oil tankers of 150 gross tons or more that have a sea chest permanently connected to the cargo pipeline system. A sea chest is a compartment located on a vessel's shell plating, below the waterline, through which seawater is drawn in. The seawater may be used for cooling or ballast purposes. These requirements were added to Annex I through MEPC.117(52), and are located in Regulation 30, paragraph 7. To integrate them into the CFR, we are proposing to add the sea chest requirements as subsection (h) of § 157.11. Additionally, we are proposing a conforming change to § 157.08, the applicability section, by adding a subsection (o) to accommodate vessels delivered on or after January 1, 2010.

This proposal would require that the sea chest be equipped with both a sea chest valve and an inboard isolation valve. It would apply to oil tankers of 150 gross tons or more delivered on or after January 1, 2010. We are proposing to add these requirements to help ensure that oil cargo does not backflow into the sea chest, and thus into the surrounding water. Additionally, the sea chest would need to be capable of isolation from the cargo pipeline system during the transfer or transport of cargo by a positive means that is installed in the pipeline system to prevent, under all circumstances, the section of pipeline between the sea chest valve and the inboard valve from being filled with oil cargo.

#### H. Pump-Room Bottom Protection, 33 CFR 157.14

We are proposing to incorporate Regulation 22, "Pump-room bottom

protection," (added to Annex I by resolution MEPC.117(52) (October 15, 2004)) into our regulations by adding § 157.14. Regulation 22 provides additional protection to the pump room by requiring double bottoms to prevent flooding in the event of an incident. This is necessary to ensure the continual functionality of the ballast and cargo pumping systems. Regulation 22 also contains an exemption from the double bottom requirement if flooding of the pump-room would not render the ballast or cargo pumping system inoperative.

The proposed regulation, which would apply to oil tankers of 5,000 deadweight tons (a measure of the vessel's cargo capacity) or more constructed on or after January 1, 2007, would establish a requirement from Regulation 22 that pump-rooms be protected with a double bottom if the flooding of the pump-room would render the ballast or cargo pumping system inoperative. It would also establish minimum requirements for the depth of the double bottom. Section 157.14 would adopt the Annex I requirements directly by incorporating Regulation 22 by reference.

#### I. Accidental Oil Outflow Performance, 33 CFR 157.20

We also are proposing to adopt the oil outflow performance from Annex I, Regulation 23, "Accidental oil outflow performance." This regulation, which applies to oil tankers delivered on or after January 1, 2010, establishes design requirements to protect against oil pollution in the event of a collision or grounding. For vessels delivered in 2010 or later, it replaces older requirements regulating hypothetical outflow of oil, contained in Regulation 25, and limiting cargo tank arrangement and size, contained in Regulation 26. Regulations 25 and 26 continue to apply to vessels delivered before 2010. The new regulation provides detailed design and performance specifications for oil tankers of all sizes. Section 157.20 would adopt the Annex I requirements directly by incorporating Regulation 23 by reference.

#### J. Limitation of Older Regulations to Tankers Delivered After January 2010, 33 CFR 157.19

We also are proposing an amendment to § 157.19 that would limit the requirements of Annex I, Regulation 25, "Hypothetical outflow of oil," and Regulation 26, "Limitations of size and arrangement of cargo tanks," to oil tankers delivered before January 1, 2010. These requirements, currently found in § 157.19, do not apply to new

tankers, which would comply with accidental oil outflow performance in proposed section § 157.20, described above. The proposed amendments reflect paragraph 6 of Regulation 25 and paragraph 7 of Regulation 26, which states these regulations apply to oil tankers built before 2010.

#### K. Implementation of SOLAS 1974 Requirements for Material Safety Data Sheets (MSDS)

In this rulemaking, the Coast Guard is also proposing to implement SOLAS 1974 amendments regarding MSDS for Annex I cargoes and oil fuels for U.S. vessels and all vessels operating on the navigable waters of the U.S. to which those SOLAS 1974 amendments apply. By aligning the U.S. regulations with international standards, compliant U.S. vessels would encounter fewer difficulties while engaged in international trade.

MSDSs serve an important purpose in ensuring mariner safety, as they focus on the hazards of working with oil products and other hazardous cargoes in an occupational setting. They are intended to provide workers and emergency personnel with procedures for handling or working with these substances in a safe manner, and include information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.

The Coast Guard is proposing to incorporate the MSDS regulations as a new subpart D of 46 CFR part 197, as §§ 197.801 through 197.820. This subpart would apply to all vessels to which SOLAS 1974 applies, carrying the liquids listed in the Annex I List of Oils, either as bulk cargo or as fuel. It would also adopt the tables from the MSC.286(86) (June 5, 2009) as Appendices A and B to subpart D.

#### L. Standards Incorporated by Reference

Finally, the Coast Guard is proposing several updates of standards incorporated by reference or otherwise discussed in the proposed regulations. We are proposing to add Regulation 12A of Annex I to the incorporation by reference paragraph in 33 CFR 155.140, to accommodate the proposed revision of § 155.250. We are proposing to amend § 156.111 by updating the versions of the STS Transfer Guide and the Guide to Helicopter/Ship Operations, referenced in 33 CFR 156.330(b) and (c) respectively, as well as §§ 156.410(c)(2) and (f), to use the most recent versions of those standards, and we are proposing to add the Manual on Oil

Pollution, Section I: Pollution, to § 156.111, a document that is also referenced in § 156.410. Third, we propose adding Regulations 22 and 23 of Annex I to the incorporation by reference paragraph in § 157.02, to conform to the proposed revisions of

§§ 157.14 and 157.20, respectively. Fourth, we propose adding the International Standards Organization (ISO) to the list of entities referenced in 46 CFR 197.205, as an ISO standard is listed in the proposed Appendix B to subpart D of that part. Fifth, we propose

adding the IMO to the list of entities referenced in § 197.205, as an IMO standard is listed in Subpart D of that part. Finally, we propose adding Appendix 1 of Annex I to an incorporation by reference paragraph in § 197.810.

TABLE 1

| CFR Cite   | Amendment sources  | Subject   |
|--|--|---|
| 33 CFR 151.05                                      | Annex I Regulations 1, 12, 13, 17 and 38 MEPC.187(59).                   | New definitions for oil residue (sludge), requirements for oil residue (sludge) tanks.                                |
| 33 CFR 151.13(a)                                   | Annex I Regulation 1.11.10 MEPC.154(55).                                 | Special Area "Southern South African waters."   |
| 33 CFR 151.25                                      | Annex I Regulation 17.2.5 MEPC.187(59).                                  | Oil Record Book: new entries for bunkering of fuel or bulk lube oil.  |
| 33 CFR 155.140                                     | Update incorporation by reference  | Updates incorporated standards to reflect proposed changes to the text.   |
| 33 CFR 155.250                                     | Annex I Regulation 12A MEPC.141(54)                                      | Oil fuel tank protection.   |
| 33 CFR 155.360, 33 CFR 155.370                     | Annex I Regulation 12 MEPC.187(59); Annex I Regulation 14, MEPC.117(52). | Requirements for Oil Sludge Tanks, Exemptions for High-Speed Craft.   |
| 33 CFR 156.111                                     | Update incorporation by reference  | Updates incorporated standards to reflect proposed changes to the text.   |
| 33 CFR 156.200                                     | Annex I Regulations 40, 41, 42 MEPC.186(59).                             | Removal of STS Operations from subpart B Applicability.   |
| 33 CFR 156.205                                     | Annex I Regulations 40, 41, 42 MEPC.186(59).                             | Definitional change of Lightering or Lightering Operations to remove STS Operations.                                  |
| 33 CFR 156.330                                     | Update to most modern standards  | Updates regulatory text to reference current versions of the STS Transfer Guide and Helicopter/Ship Operations guide. |
| 33 CFR 156 Subpart D; 156.400, 405, 410, 415, 420. | Annex I Regulations 40, 41, 42 MEPC.186(59).                             | Prevention of pollution during lightering operations and transfer of oil cargo between oil tankers at sea.            |
| 33 CFR 157.02                                      | Update incorporation by reference  | Updates incorporated standards to reflect proposed changes to the text.   |
| 33 CFR 157.08 and 157.11                           | Annex I Regulation 30.7 MEPC.117(52)                                     | Requirements for sea chest permanently connected to cargo lines.  |
| New 33 CFR 157.14                                  | Annex I Regulation 22 MEPC.117(52) ..                                    | Pump-room bottom protection.  |
| 33 CFR 157.19                                      | Annex I Regulation 25.6 MEPC.117(52)                                     | Older regulations of hypothetical outflow of oil limited to tankers delivered before 2010.                            |
| 33 CFR 157.19                                      | Annex I Regulation 26.7 MEPC.117(52)                                     | Older regulations of size and arrangement of cargo tanks limited to tankers delivered before 2010.                    |
| New 33 CFR 157.20                                  | Annex I Regulation 23 MEPC.117(52) ..                                    | New requirements for accidental oil outflow performance for tankers delivered in 2010 or later.                       |
| 46 CFR 197.205                                     | Update standards availability  | Provide information for ISO standards referenced in Appendix B to Subpart D.  |
| 46 CFR 197 Subpart D; 197.801, 810, 820.           | MSC.286(86)  | Material Safety Data Sheets.  |

**V. Other Alternatives Considered**

As stated in the III. Background section of the preamble, the protection of the marine environment and maritime safety are two of the primary missions of the Coast Guard. As an initiative in furthering our primary missions, the Coast Guard is considering requiring new U.S. non-oceangoing vessels to be equipped with tanks to prevent oily bilge water discharges.

Unlike the provisions in this notice, any future proposal regarding holding tanks for oily bilge water discharges would be pursuant to the Coast Guard's authority to issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels

(33 U.S.C. 1321(j)(1)(C)). This alternative would apply to U.S. non-oceangoing ships 400 tons or greater delivered 3 years after the implementation of a final rule.

The Coast Guard seeks additional data and other information related to this provision. Although the Coast Guard welcomes all public comments related to these potential requirements, the Coast Guard specifically invites comments on the discussion below, and responses to the following questions:

- The Coast Guard requests information on any additional sources of information on the number, size, composition, and resulting damage to the environment of oily bilge water discharges from U.S. non-oceangoing vessels.

- The Coast Guard has identified requiring holding tanks as a means for reducing the discharge of oily bilge water to the environment. The Coast Guard requests information on the cost of holding tanks for new vessels and existing U.S. non-oceangoing vessels.

- The Coast Guard solicits any additional comments on the potential requirements to control oily bilge water discharge from U.S. non-oceangoing vessels, including alternatives that may provide a cost-effective approach for reducing oily bilge water discharge.

To submit a comment on the changes proposed in this section, use one of the methods specified under **ADDRESSES**.

The Coast Guard offers the following discussion regarding the requirement for non-oceangoing ships 400 gross tons or



greater to install oily bilge water retention tanks.

The alternative considered to require a holding tank for oily mixtures would be similar to requirements for certain oceangoing vessels (over 400 gross tons) subject to MARPOL 73/78 that remain at or near facilities where oily mixtures can be discharged. U.S. non-oceangoing vessels of this same size category (over 400 gross tons) have similar operational characteristics as those covered under MARPOL 73/78.

The purpose of such a requirement would be to reduce maritime oil pollution by preventing the discharge of oily bilge water into the marine environment. During the operations of a vessel, oily bilge water accumulates in the lowest part of a vessel from a variety of sources including engines, piping, and other mechanical and operational sources found throughout the machinery spaces of vessels. Oily bilge water is a mixture of water, oily fluids, lubricants, cleaning fluids and other similar wastes.

While U.S. non-oceangoing ships are not required to have oil filtering equipment, § 155.330 prohibits persons from operating these ships in the navigable waters in the U.S. unless the ship can retain all oily mixtures onboard and discharge them to a reception facility. Under § 155.330(b), those ships may currently retain those oily mixtures in the ship's bilges. However, the Coast Guard believes that retaining these mixtures in the ship's bilges has contributed to the risk of oil pollution from inadvertent discharge of substantial quantities of oil into the marine environment. Even small amounts of oil pollution (including oily bilge water discharge) have the potential to seriously damage the terrestrial and aquatic environments. The Coast Guard believes that the risk of oil pollution from inadvertent discharges of oily bilge water from ships would be reduced by requiring ships to have a holding tank with a volume adequate to hold all of a ship's oily bilge water, thereby discouraging ships from holding oily bilge water in their bilges.

This alternative is similar to the requirements in Annex I that provide the option of using holding tanks to reduce the risk of oil pollution. As an Annex I measure, the Coast Guard believes that oily bilge water holding tanks would be effective at combating the risk of oil pollution and that the design of this equipment is well known to the maritime community. While

Annex I requires that most oceangoing vessels be fitted with oil filtering equipment (see Regulation 14.1), Annex I allows vessels that remain close to discharge facilities, such as stationary vessels or ferries, to store oily bilge water in special holding tanks (see Regulation 14.3, Regulation 14.5.3.1). Holding tanks provide a less expensive means to mitigate inadvertent discharges of oily water than oil filtering equipment. Nonetheless, they would function well as these vessels, unlike oceangoing vessels, would consistently operate in close proximity to a discharge facility.

We believe that the application of these types of holding tanks to U.S. non-oceangoing vessels would prevent oily bilge water discharges in the most efficient cost-effective manner, for the reasons stated above. Unlike oceangoing ships, non-oceangoing ships operate relatively close to shore and can discharge oily bilge water from the holding tanks to reception facilities. Therefore, they can take advantage of the use of oily bilge water storage tanks, which do not require maintenance and are much less expensive to install and operate.

In order to minimize the cost to comply with this alternative, we are considering a proposal in which the effective date for this alternative would be three years after the publication of a final rule and limit the requirement to new vessels. This would provide a notice period similar to those granted by the MARPOL 73/78 and SOLAS 1974 amendments, which are typically published several years before the provisions are effective. The three year delayed implementation period would help to reduce the costs to ship owners and operators by allowing them to integrate these holding tanks into ship designs.

The Coast Guard welcomes public comments on this information and questions presented above in relation to installing oily bilge water retention tanks on new, non-oceangoing ships 400 gross tons or greater. As noted, after considering this additional information, the Coast Guard would later request public comment on specific regulatory text if it seeks to implement such requirements.

## VI. Incorporation by Reference

Material proposed for incorporation by reference appears in 33 CFR 155.140, 156.111, 157.02, and 46 CFR 197.810. You may inspect this material at U.S.

Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in 33 CFR 155.140, 156.111, 157.02, and 46 CFR 197.810.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

## VII. Regulatory Analyses

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

### A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

This rulemaking 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 (OMB) has not reviewed it under that Order. Nonetheless, we developed an analysis of the costs and benefits of the proposed rule to ascertain its probable impacts on industry. This preliminary assessment ("Regulatory Analysis") is available in the docket where indicated in section A of this preamble. We consider all estimates and analysis in this Regulatory Analysis (RA) to be draft and subject to change in consideration of public comments. A summary of the draft 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 (CFR) and to require vessels to carry a Material Safety Data Sheet (MSDS) for each Annex I cargo and ship fuel carried in bulk. These provisions are designed to harmonize U.S. regulations with international standards.

Table 1 in the *Discussion of Proposed Rule section* of the preamble provides a summary of the proposed changes to the CFR referencing the applicable Annex I Amendments and the subject of the proposed changes. Detailed descriptions of the proposed CFR changes are described in Section IV Discussion of Proposed Rule of this preamble. A summary of the regulatory analysis is shown in Table 2.

TABLE 2—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) .....    | \$1.8 mil (annualized)<br>\$18.2 mil (10-year)  |
| Unquantified Benefits .....       | Compliance with internationally enforced standards where non-compliance could result in Port State Control interventions and detentions or delays.<br>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.<br>33 CFR 151.360–370 prevents the direct discharge of oily sludge residue and indirect discharge through oily bilge water.<br>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 3.

TABLE 3—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  
The primary cost estimate of the proposed rule is displayed in Table 4 and results in a total cost of \$23.2 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 because there are no data on the degree of current compliance. The Coast Guard believes that there is current compliance with many of the provisions and is aware that this assumption may overstate the actual cost of the proposed rule. In present value terms, the total cost estimate is \$20.8 million using a 3-percent discount rate and \$18.2 million using a 7-percent discount rate. Annualized costs are \$2.1 million per year at 3 percent and \$1.8 million per year at 7 percent.

TABLE 4—COSTS SUMMARY BY YEAR (\$ MILLIONS) TO U.S. FLAG SHIPS

|                  | Undiscounted | Discounted |           |
|------------------|--------------|------------|-----------|
|                  |              | 7 percent  | 3 percent |
| Year 1 .....     | \$10.2       | \$9.6      | \$9.9     |
| Year 2 .....     | 1.2          | 1.1        | 1.2       |
| Year 3 .....     | 1.3          | 1.1        | 1.2       |
| Year 4 .....     | 1.4          | 1.0        | 1.2       |
| Year 5 .....     | 1.4          | 1.0        | 1.2       |
| Year 6 .....     | 1.4          | 1.0        | 1.2       |
| Year 7 .....     | 1.5          | 0.9        | 1.2       |
| Year 8 .....     | 1.6          | 0.9        | 1.2       |
| Year 9 .....     | 1.6          | 0.9        | 1.2       |
| Year 10 .....    | 1.7          | 0.8        | 1.2       |
| Total .....      | 23.3         | 18.2       | 20.8      |
| Annualized ..... | .....        | 1.8        | 2.1       |

Costs by provision using a 7-percent discount rate are shown in Table 5.

TABLE 5—COSTS SUMMARY OF INDIVIDUAL PROVISIONS AT 7-PERCENT DISCOUNT (MILLIONS OF \$) TO U.S. FLAG SHIPS

| Provision   | Total cost million \$ (at 7% discounted) | Percentage of total cost (using 7% discounted costs) |
|---|--|--|
| Additional Oil Record Book entry requirements .....                 | \$5.9                                    | 32.24  |
| Valve separating the sludge tank drains from the bilge system ..... | 6.7                                      | 36.61  |
| Preparation of STS Operations Plans and STS Reporting .....         | 5.7                                      | 31.15  |
| <b>Total</b> .....  | <b>18.2</b>                              | <b>100.0</b>   |

**Note:** numbers may not add due to rounding.  
Source: USCG Office of Operating and Environmental Standards.

The provisions of this rulemaking are estimated to cost \$18.2 million, annualized at a 7-percent discount rate. 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 6 displays the unit costs per vessel.

TABLE 6—UNIT COSTS (UNDISCOUNTED) FOR U.S. FLAG SHIPS

| Provision  | Cost per affected ship non-recurring costs | Cost per affected ship recurring costs |
|--|--|--|
| Additional Oil Record Book entry requirements <sup>1</sup> .....                 | .....                                      | \$396                                  |
| Valve separating the sludge tank drains from the bilge system <sup>2</sup> ..... | \$6,140                                    | .....                                  |
| Preparation of STS Operations Plans and STS Reporting <sup>3</sup> .....         | \$5,880                                    | \$230                                  |

Source: USCG Office of Operating and Environmental Standards.

Table 6 outlines the per vessel costs for the provisions. The provisions include both non-recurring and recurring costs.

**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 7.

TABLE 7—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 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. | This provision will reduce the risk of oil spills by insuring 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.   |

<sup>1</sup> This is the incremental cost of the additional record book entries for both current and new ships above the costs currently required.

<sup>2</sup> Valve costs vary between \$5,400 per ship for ships between 400GT and 10,000 GT and \$8,700 per ship for ships over 10,000 GT. The \$6,140 represents a weighted average based on current and future ships in each volume class.

<sup>3</sup> The two non-recurring costs per ship are: the preparation of the STS plan of approximately \$5,023 per ship and the initial training cost of \$857 which together total \$5,880.

TABLE 7—FUNCTIONAL BENEFITS—Continued

| Provision   | Beneficial impact on oil spill risk reduction  |
|---|--|
| 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. |

The purpose of the proposed rule is to harmonize Coast Guard regulations with new provisions of MARPOL 73/78 and SOLAS 1974 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, the Act to Prevent Pollution from Ships (APPS) 33 U.S.C. 1901–1915 (2002), which implements and codifies the MARPOL agreements into U.S. law.

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 or SOLAS. 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/SOLAS 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 in terms of oil spill prevention that would equal the total regulatory cost of this proposed rule. From historical data,<sup>4</sup> 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 (undiscounted) over the 2001–2010 period. Please refer to the Regulatory Analysis for further details.

The undiscounted costs of the provisions of the proposed rule over the ten year period of examination are approximately \$23.2 million (or \$2.3 million per year on average). The proposed regulations would have to reduce the annual volume of oil spills approximately 3.9 percent (\$2.3 million/\$59.7 million—both undiscounted) in order to achieve a breakeven between the regulatory costs and the benefit from reduced oil discharge.

*B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket indicated under Section A of this preamble. 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 510 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). We found that 213 entities were not small according to applicable standards. The remaining 297 entities (approximately 58.2 percent of the sample size) are considered small; 175 of these had revenue or personnel data confirming their small business status using the Small Business Administration size standards and the remaining 125 businesses had no revenue or personnel data and were assumed to be small. None of the small entities was either a governmental or not-for-profit entity. We analyzed revenue impacts for the first year and for the annual recurring costs of this proposed rule. First year costs include costs for additional required Oil Record Book entries, equipment purchase and installation costs, and costs associated with the STS Operations Plan preparation and crew training. As all equipment is either stationary (tanks) or minimal maintenance (valves which only require periodic lubrication in conjunction with other shipboard equipment); we have not considered any additional maintenance expenses. Likewise, the expected life-cycle of the equipment extends beyond the timeframe of the ten year period of analysis, so no inclusion of replacement costs for newly installed equipment was required.

There are three provisions that affect small businesses: Additional Oil Record Book entry requirements; Valves separating the sludge tank drains from the bilge system; and Preparation of STS Operations Plans oil record book entry requirements. Of the costs to small businesses, 53.5 percent are associated with the separator valves with 35.3 percent of the costs for additional oil record book entries and 11.2 percent associated with STS plan requirements. This proposed rule has many provisions that would affect different types of

<sup>4</sup> U.S. Coast Guard MISLE data, 2001 to 2010, oil spilled from U.S. flagged, SOLAS vessels.

vessels and therefore, businesses' revenue impacts would vary according to the number and type of vessel owned. If vessels are subject to all provisions, we determined that approximately 7.3 percent of the small businesses would incur a cost impact of more than 1 percent of revenue during the first year.

For the annual recurring economic impact, we determined that 1.6 percent of small businesses would incur a cost more than 1 percent of revenue. Recurring costs include recordkeeping and costs related to the STS Operations Plan (maintenance and training new crew).

Based on the above information, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES** in the Notice of Proposed Rulemaking, [USCG-2010-0194]. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

#### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Scott Hartley, U.S. Coast Guard Office of Operating and Environmental Standards, (CG-5222); telephone (202) 372-1437, e-mail [Scott.E.Hartley@uscg.mil](mailto:Scott.E.Hartley@uscg.mil). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### D. Collection of Information

This proposed 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 two existing COI reports. An additional breakdown of these information and reporting costs are presented in the section 'Costs' in VI. Regulatory Analyses of this preamble.

The information collected under the proposed rule is addressed in the existing COIs: OMB control number 1625-0009 (Oil Record Book for Ships (33 CFR 151.25)), which was reviewed by the OMB on September 9, 2009 and will expire after the 2-year approval period ends on September 9, 2011, unless renewed; and OMB control number 1625-0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates which was reviewed by the OMB on November 19, 2008, and will expire after the 3-year approval period ends on November 30, 2011, unless renewed.

As defined in 5 CFR 1320.3(c), "collection of information" (COI) comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Regarding OMB control number 1625-0009, Oil Record Book for Ships (33 CFR 151.25); the current authorized annual burden is 19,425 hours and the proposed rule would increase the annual burden by approximately 9,111 hours (46.9 percent). Information about this Information Collection Renewal (ICR) is shown in Table 6.

Regarding OMB control number 1625-0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates (33 CFR 156.400 through 156.420 Subpart D-Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea), the current authorized annual burden for all collections in this control number is 2,067 hours and the proposed rule would increase the burden by a single non-recurring burden of 69,120 hours, and a recurring annual burden of 7,168 hours. The annual burden would increase from 2,067 hours to 9,235 hours which equals approximately 347 percent. The increase in burden hours from the proposed rule represents a non-recurring burden of 135 hours per ship and an additional recurring annual burden of 14 hours per ship.

This information collection request involves the preparation of a STS Operations Plan for all oil tankers and tank barges of 150 gross tons and above that engage in transfers of oil at sea. This would require a non-recurring

development burden of 135 hours per vessel for each of the 512 ships affected. This ICR would also require recurring annual burden for training (5 hours per ship) and plan revisions (9 hours per ship). Information on this ICR is shown in Table 7 (non-recurring burden) and Table 8 (recurring burden).

The increases in the annual burdens are not considered material or substantive. To confirm this, the Coast Guard has submitted a change worksheet (OMB Form 83-C) to the Office of Information and Regulatory Affairs (OIRA) noting the change in the annual burden.

Details of the two information collection requests are as follows:

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

*Title:* Oil Record Book for Ships (33 CFR 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 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 could 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.

*Need for Information:* The Act to Prevent Pollution from Ships and MARPOL 73/78 require that information about oil cargo or fuel operations be entered into an Oil Record Book. The requirement is codified in 33 CFR 151.25. MARPOL 73/78 requires that the information be retained onboard a ship so that it is available for inspection, therefore, the electronic transmission of this information to the Coast Guard is not possible.

*Proposed 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. 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 could go undetected, resulting in continued oil pollution of the sea.

*Description of the Respondents:* Oil tankers and tank barges of 150 gross tons and above; ships 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 permit; and manned fixed or floating drilling platforms over 400 gross tons, primarily Mobile Offshore Drilling Units over 400 gross tons.

*Number of Respondents:* The current number of respondents is 1,546. This proposed rule would affect 1,672 respondents. This increase would coincide with an increased number of ships in each category listed above in the Description of Respondents. No new categories of respondents would be added.

*Frequency of Response:* The frequency of response is occasional reports for recordkeeping and reporting. The current number of annual responses authorized is 466,200. This proposed rule would increase the number of annual responses to 684,784. Of the increase of 218,584 responses, 199,504 (91 percent) would result from the increased reporting entries per ship and 19,080 (9 percent) of the reporting entries would result from an increase in the number of ships reporting.

*Burden of Response:* The burden of this proposed rule would require additional entries to the Oil Record Book to record seven types of events not currently recorded: (i) Disposal of oil residue; (ii) discharge overboard or disposal otherwise of bilge water that has accumulated in machinery spaces; (iii) bunkering of fuel or bulk lubricating oil; (iv) any failure of the oil filtering equipment; (v) closing of valves necessary for isolation of dedicated clean ballast tanks from cargo and stripping lines after slop tank discharge operations; (vi) disposal of oil residue; (vii) and any failure of the oil discharge monitoring and control system. The Coast Guard estimates that these additional entries would occur with the same frequency as the 17 events which currently require an Oil Record Book entry. Therefore, the increase in burden hours is 41.2 percent or 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 current annual burden for this collection is 19,424 hours. The proposed rule would increase the total annual burden by approximately 9,105 hours. The calculation of the annual burden increase for the Oil Record Book entries is shown in Table 6.

2. *Information Collection Request:* OMB control number 1625-0041 MARPOL 73/78 Related Documents STS Operations Plan.

*Title:* Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates (33 CFR 156.400 through 156.420, Subpart D—Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea).

*Summary of the Information Collection Request:* 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 73/78), to which the U.S. is a signatory, in order to reduce the possibility of an accidental oil spill/discharge during a STS transfer operation.

*Need for Information:* These provisions of the proposed rule incorporate the new Chapter 8 of the 2009 Amendments to Annex I adopted in MEPC.186(59) adopted in the 2009 Amendments to Annex I. The 2009 Amendments to Annex I relate to regulations covering STS operations. This Amendment entered into force on January 1, 2011 for all nations that are signatory to MARPOL 73/78.

*Proposed Use of Information:* The Coast Guard uses this information to confirm that each ship involved in STS Operations is in compliance with the new Chapter 8 of the 2009 Amendments to MARPOL 73/78. This procedural information documents that each ship involved in STS Operations is compliant with industry guidelines designed to ensure against oil discharges in STS Operations.

*Description of the Respondents:* This ICR would apply to oil tankers and tank barges who engage in STS Operations.

*Number of Respondents:* The current approval number of responses is 1,210, which represents 842 non-tank vessels and 368 tank ships and barges. The proposed rule would require additional reporting from tank ships and barges whose population is currently 512. The increase in the number of respondents would be 144 ships (512 – 368).

*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 preparation of the STS Operations Plan involves the development of twelve procedures and we have estimated that most procedures would take approximately twelve hours to complete. The general requirements of the STS Operations Plan involve definitions of the responsibilities of the person in overall advisory control; descriptions of the required notifications to authorities; and general procedures for submitting radio navigational warnings and where copies of the STS Operations Plan should be located. The recurring burden of the plan has two components: training of 5 hours per vessel per year; and plan revisions of 9 hours per vessel per year. The calculations for the non-recurring costs of plan preparation are shown in Table 7 and the calculations for the recurring annual costs are shown in Table 8.

*Estimate of Total Annual Burden:* The current annual burden for this collection is 2,067 hours. The proposed rule would increase the total burden by a non-recurring requirement of approximately 69,120 hours for preparation of the STS Operations Plan and a recurring burden of approximately 7,168 hours.

TABLE 6—RECURRING ANNUAL BURDEN—OIL RECORD BOOK ENTRIES  
[OMB control number 1625–0009]

| Oil Record Book entries | Current Collection of Information |                        |                 |              |                                  | Amended Collection of Information |                           |                        |                 |              | Total annual cost to industry    |                               | Change from proposed rule |                |
|-------------------------|-----------------------------------|------------------------|-----------------|--------------|----------------------------------|-----------------------------------|---------------------------|------------------------|-----------------|--------------|----------------------------------|-------------------------------|---------------------------|----------------|
|                         | Entries per ship per year         | Burden hours per entry | Number of ships | Burden hours | Annual cost to industry per hour | Total annual cost to industry     | Entries per ship per year | Burden hours per entry | Number of ships | Burden hours | Annual cost to industry per hour | Total annual cost to industry | Change in hours           | Change in cost |
| Oil Tankers .....       | 540                               | 0.04167                | 61              | 1,372        | \$99.00                          | \$135,890                         | 762                       | 0.04167                | 51              | 1,619        | \$99.00                          | \$160,320                     | 247                       | \$24,430       |
| Tank Barges .....       | 540                               | 0.04167                | 461             | 10,372       | 72.00                            | 746,880                           | 762                       | 0.04167                | 461             | 14,638       | 72.00                            | 1,053,930                     | 4,264                     | 307,050        |
| Non-Oil Vessels .....   | 180                               | 0.04167                | 1,024           | 7,680        | 72.00                            | 553,000                           | 254                       | 0.04167                | 1,160           | 12,278       | 72.00                            | 883,990                       | 4,593                     | 330,990        |
| Totals .....            | .....                             | .....                  | 1,546           | 19,425       | .....                            | 1,435,770                         | .....                     | .....                  | 1,672           | 28,535       | .....                            | 2,098,240                     | 9,105                     | 662,470        |

Note: Numbers may not add due to rounding.

TABLE 7—BURDEN OF REPORTING FROM STS OPERATIONS PLAN REQUIREMENTS: NON-RECURRING BURDEN  
[OMB control number 1625–00090041]

| Ship type        | Number of ships | Current requirement | Amended requirement—plan preparation (non-recurring burden) |               |                          | Total change in hours |
|------------------|-----------------|---------------------|---|---------------|--------------------------|-----------------------|
|                  |                 |                     | Burden hours per ship                                       | Cost per hour | Total non-recurring cost |                       |
| Oil Tanker ..... | 51              | .....               | 135   | \$36.00       | \$247,860                | 6,885                 |
| Tank Barge ..... | 461             | .....               | 135   | 36.00         | 2,240,460                | 62,235                |
| Total .....      | 512             | .....               | .....   | .....         | 2,448,320                | 69,120                |

Note: Numbers may not add due to rounding.

TABLE 8—BURDEN OF REPORTING FROM STS OPERATIONS PLAN REQUIREMENTS: RECURRING BURDEN  
[OMB control number 1625–00090041]

| Ship type        | Number of ships | Current requirement | Amended requirement—STS operations plan training (recurring burden) |               |                               | Amended requirement—STS operations plan revision (recurring burden) |               |                                    | Total recurring costs | Total change in hours |
|------------------|-----------------|---------------------|---|---------------|-------------------------------|---|---------------|------------------------------------|-----------------------|-----------------------|
|                  |                 |                     | Burden hours per ship   | Cost per hour | Total recurring cost—training | Burden hours per ship   | Cost per hour | Total recurring cost—plan revision |                       |                       |
| Oil Tanker ..... | 51              | .....               | 5   | \$43.70       | \$11,144                      | 9   | \$36.00       | \$16,524                           | \$27,668              | 714                   |
| Tank Barge ..... | 461             | .....               | 5   | 43.70         | 100,729                       | 9   | 36.00         | 149,364                            | 250,093               | 6,454                 |
| Total .....      | 512             | .....               | .....   | .....         | 111,873                       | .....   | .....         | 165,888                            | 277,761               | 7,168                 |

Note: Numbers may not add due to rounding.

If you submit comments on the COI, submit them both to OMB and to the Docket Management Facility where indicated under ADDRESSES in the Notice of Proposed Rulemaking [USCG–2010–0194], by the date under DATES.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. 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 the Coast Guard’s view is that 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.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel’s obligations, as these categories are within a field foreclosed from regulation by the States (see *U.S. v. Locke*, above), the Coast Guard recognizes the key role State and local governments may have in making regulatory determinations. Additionally, Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected State and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Therefore, we invite 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 to the docket using one of the methods specified under ADDRESSES. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document (1) the extent of the Coast Guard’s consultation with State and local officials that submit comments to this proposed rule, (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard’s position thereon, and (3) a statement of the extent to which

the concerns of State and local officials have been met.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more (adjusted for inflation) in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble and in the Regulatory Analysis.

G. Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

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

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety



Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, 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 proposed rule uses the following voluntary consensus standards:

1. Ship to Ship Transfer Guide, Petroleum,
2. Manual on Oil Pollution, Section I: Pollution,
3. Guide to Helicopter/Ship Operations, and
4. ISO 8217:2005, Petroleum products.

The proposed sections that reference these standards and the locations where these standards are available are listed

in 33 CFR 155.140, 33 CFR 156.111, 33 CFR 157.02, and 46 CFR 197.810.

If you disagree with our analysis of the voluntary consensus standards listed above or are aware of voluntary consensus standards that might apply but are not listed, please send a comment to the docket using one of the methods under **ADDRESSES**. In your comment, please explain why you disagree with our analysis and/or identify voluntary consensus standards we have not listed that might apply.

#### M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. This rule involves regulations which are editorial or procedural; regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels; and congressionally mandated regulations. This rule falls under section 2.B.2, figure 2–1, paragraphs 34(a) and (d) of the Instruction and under section 6(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). We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### 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.

##### 46 CFR Part 197

Benzene, Diving, Incorporation by reference, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 151, 155, 156, and 157, and 46 CFR part 197, as follows:

#### Title 33—Navigation and Navigable Waters

#### 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. Remove the second definition for “Oily mixture” that reads “Oily mixture means a mixture with any oil content, including bilge slops, oily wastes, oil residues (sludge), oily ballast water, and washings from cargo oil tanks”;

b. Relocate, in alphabetical order, the definitions for “Oil-like NLS” and “Oil tanker”;

c. Revise the definition for “Oil residue” as set out below; and

d. Add new definitions, in alphabetical order, for “Oil residue (sludge)”, “Oil residue (sludge) tank”, “Oily bilge water”, and “Oily bilge water holding tank”, as set out below.

#### § 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), (d)(4), (e)(9), and (e)(10), and add paragraphs (d)(5), (d)(6), and (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, and the reasons for, of 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)(3) to read as follows:

**§ 155.140 Incorporation by reference.**

\* \* \* \* \*

(d) \* \* \*

(3) MARPOL 73/78, Annex I, regulation 12A, incorporation by reference approved for § 155.250.

\* \* \* \* \*

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.

\* \* \* \* \*

### PART 156—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

10. 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.

11. 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 Compliance (CG–543), 2100 2nd Street SW., Washington, DC 20593–0001, 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](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) 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)(2), and § 156.410(f).

(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, as amended, incorporation by reference approved for § 156.410(c)(2), and § 156.410(f).

(2) [Reserved]

(d) 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, 2009, incorporation by reference approved for § 156.330(c).

(2) [Reserved]

#### § 156.200 [Amended]

12. 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.”.

#### § 156.205 [Amended]

13. 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.

14. In § 156.330, revise paragraphs (b) and (c) to read as follows:

#### § 156.330 Operations.

\* \* \* \* \*

(b) Lightering operations should be conducted in accordance with the Oil Companies International Marine Forum (OCIMF) Ship to Ship Transfer Guide, Petroleum, Fourth Edition, 2005 (incorporated by reference, see § 156.111) to the maximum extent practicable.

(c) Helicopter operations should be conducted in accordance with the International Chamber of Shipping Guide to Helicopter/Ship Operations, Fourth Edition, 2009 (incorporated by reference, see § 156.111) to the maximum extent practicable.

\* \* \* \* \*

15. 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.          |
| 156.405 | Definitions.            |
| 156.410 | General.                |
| 156.415 | Notification.           |
| 156.420 | Reporting of Incidents. |

#### § 156.400 Applicability.

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

(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 the oil transfer operation is for the purpose of securing the safety of a ship, saving life at sea, or addressing specific pollution incidents to minimize damage from pollution; or

(3) 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.

(4) 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 § 156.420.

#### § 156.405 Definitions.

(a) 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.

(b) 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) After April 1, 2012, oil tankers subject to this subpart, and for each U.S. oil tanker, wherever located, subject to this subpart, shall 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 January 1, 2011.

(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 IMO Manual on Oil Pollution, Section 1: Prevention, as amended, and in the ICS and OCIMF Ship to Ship Transfer Guide (Petroleum), fourth edition, 2005 (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-5431) 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 IMO Manual on Oil Pollution, Section I: Prevention, as amended, and in the ICS and OCIMF Ship to Ship Transfer Guide (Petroleum), fourth edition, 2005 (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 paragraph (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) Whether STS operations are to be conducted at anchor or underway;

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

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

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

(c) 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.

(d) 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.

(e) 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.

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

(g) The master, owner or agent of each oil tanker subject to this subpart planning to conduct STS Operations in a designated lightering zone must give at least 24 hours advance notice to the COTP nearest the geographic position chosen to conduct these operations. This advance notice must include the items listed in paragraph (a) of this section.

(h) If STS operations are conducted under exigent circumstances to secure the safety of a ship, 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 to 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 receiving vessel in 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

16. 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.

17. In § 157.02, add paragraphs (b)(9) and (b)(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 73/78, Annex I, regulation 22, incorporation by reference approved for § 157.14.

(10) MARPOL 73/78, Annex I, regulation 23, incorporation by reference approved for § 157.20.

\* \* \* \* \*

18. 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.

19. 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 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.

20. 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 MARPOL 73/78, as amended, Annex I, regulation

22 (incorporated by reference, see § 157.02).

21. Amend § 157.19 as follows:

a. Revise paragraph (a) introductory text to read as set out below;

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

c. Add new paragraph (b) to 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.

\* \* \* \* \*

22. 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 MARPOL 73/78 Annex I, regulation 23 (incorporated by reference, see § 157.02).

### Title 46—Shipping

## PART 197—GENERAL PROVISIONS

23. The authority citation for part 197 continues to read as follows:

**Authority:** 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 6101; Department of Homeland Security Delegation No. 0170.1.

24. Revise § 197.205 by adding paragraph (b)(3) and (b)(4) to read as follows:

#### § 197.205 Availability of standards.

\* \* \* \* \*

(b) \* \* \*

(3) International Standards Organization, ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland.

(4) International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

25. Add subpart D, consisting of §§ 197.801 through 197.820, to read as follows:

#### Subpart D—Hazard Notification

Sec.

197.801 Applicability.

197.805 Definitions.

197.810 Incorporation by reference.

197.820 MSDS Certificates.

Appendix A to Subpart D—

Recommendations for Material Safety Data Sheets (MSDS) for Marine Use That Meet the Particular Needs of the Marine Industry and Contain Safety, Handling, and Environmental Information To Be

Supplied to a Ship Prior to the Loading of Annex I Type Oil as Cargo in Bulk and the Bunkering of Oil Fuel  
 Appendix B to Subpart D—Guidelines for the Completion of MSDS for the Annex I Type Oil as Cargo in Bulk and Oil Fuel

**Subpart D—Hazard Notification**

**§ 197.801 Applicability.**

This subpart applies to all vessels subject to SOLAS 1974, including tank ships and barges that are carrying the liquids listed in MARPOL 73/78, Annex I List of Oils, in bulk as cargo or as oil fuel.

**§ 197.805 Definitions.**

As used in this subpart:

*MARPOL 73/78* means the International Convention for the Prevention of Pollution from Ships, 1973 (done at London, November 2, 1973), modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (done at London, February 17, 1978).

*Oil* means petroleum, whether in solid, semi-solid, emulsified, or liquid form, including, but not limited to, crude oil, fuel oil, sludge, oil refuse, oil residue, and refined products. This term also includes the substances listed in Appendix I of Annex I of MARPOL 73/78. This term does not include animal- and vegetable-based oil or noxious liquid substances (NLS) designated under Annex II of MARPOL 73/78.

*Oil fuel* means oil used as fuel for machinery in the vessel in which it is carried.

*SOLAS 1974* means the International Convention for the Safety of Life at Sea, as amended.

**§ 197.810 Incorporation by reference.**

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. To enforce any edition other than the one (b) 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 U.S. Coast Guard, Office of Operating and Environmental Standards (CG-522), 2100 Second Street SW., Washington, DC 20593-0001 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](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). All approved material is available from the sources indicated in paragraph (b) of this section.

(b) International Maritime Organization (IMO) Publications Section, International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom

(1) Appendix 1 to Annex I of 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), incorporation by

reference approved for §§ 197.805 and 197.820.

(2) [Reserved]

**§ 197.820 MSDS Certificates.**

(a) 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.

(b) The data in the MSDS may be either specific to the individual cargo or fuel oil or it may be generic for that cargo or fuel oil.

(c) Due to the human health hazards from benzene and hydrogen sulfide, and to the fact that sulfur can form hydrogen sulfide, the MSDS must contain the benzene, hydrogen sulfide, and sulfur concentration ranges and their related health hazards.

(d) The MSDS information must be in the English language. However, if the crew cannot understand English, the MSDS must also be in the working language or languages of the ship.

(e) Appendix A to Subpart D contains a non-mandatory example of one format for the MSDS.

(f) Appendix B to Subpart D contains guidelines for completing the MSDS Appendix A to Subpart D.

**Appendix A to Subpart D—Recommendations for Material Safety Data Sheets (MSDS) for Marine Use That Meet the Particular Needs of the Marine Industry and Contain Safety, Handling, and Environmental Information To Be Supplied to a Ship Prior to the Loading of Annex I Type Oil as Cargo in Bulk and the Bunkering of Oil Fuel**

| Section | Heading   | Content   |
|---------|---|---|
| 1 ..... | Identification of the substance or mixture and of the supplier. | <ul style="list-style-type: none"> <li>• Name of the category. See guidance in Annex II for Annex I type oil cargoes and oil fuels.</li> <li>• The name of the substances.</li> <li>• Trade name of the substances.</li> <li>• Description on Bill of Lading (B/L), Bunker Delivery Note or other shipping document.</li> <li>• Other means of identification.</li> <li>• Suppliers details (including name, address, telephone number, etc.).</li> <li>• Emergency telephone number.</li> </ul>  |
| 2 ..... | Hazards identification .....                                    | <ul style="list-style-type: none"> <li>• GHS* classification of the substance/mixture and any regional information.</li> <li>• Other hazards which do not result in classification (e.g., hydrogen sulphide) or are not covered by the GHS. See Guidelines in Annex II.</li> </ul>  |
| 3 ..... | Composition/information on ingredients .....                    | <ul style="list-style-type: none"> <li>• Common name, synonyms, etc.</li> <li>• Impurities and stabilizing additives which are themselves classified and which contribute to the classification of the substances.</li> <li>• The chemical identity and concentration or concentration ranges of all ingredients which are hazardous within the meaning of GHS and are present above their cut-off levels. Cut-off level for reproductive toxicity, carcinogenicity and category 1 mutagenicity is 0.1%. Cut-off level for all other hazard classes is 1%. See Guidelines in Annex II.</li> </ul> |
| 4 ..... | First aid measures .....  | <ul style="list-style-type: none"> <li>• Description of necessary measures, subdivided according to the different routes of exposure, i.e. inhalation, skin and eye contact, and ingestion.</li> <li>• Most important symptoms/effects, acute and delayed.</li> <li>• Indication of immediate medical attention and special treatment, if necessary.</li> </ul>   |

| Section | Heading   | Content   |
|---------|---|---|
| 5       | Fire-fighting measures  | <ul style="list-style-type: none"> <li>• Suitable extinguishing media.</li> <li>• Specific hazards arising from the chemical (e.g., nature of any hazardous combustion products).</li> </ul>  |
| 6       | Accidental release measures   | <ul style="list-style-type: none"> <li>• Special protective equipment and precautions for fire-fighters.</li> <li>• Personal precautions, protective equipment and emergency procedures.</li> <li>• Environmental precautions.</li> <li>• Methods and materials for containment and clean-up.</li> </ul>  |
| 7       | Handling and storage  | <ul style="list-style-type: none"> <li>• Precautions for safe handling.</li> <li>• Conditions for safe storage, including any incompatibilities.</li> </ul>   |
| 8       | Exposure controls/personal protection   | <ul style="list-style-type: none"> <li>• Control parameters (e.g., occupational exposure limit values).</li> <li>• Appropriate technical precautions.</li> <li>• Individual protection measures, such as personal protective equipment.</li> </ul>  |
| 9       | Physical and chemical Properties  | See Guidelines in Annex II.   |
| 10      | Stability and reactivity  | <ul style="list-style-type: none"> <li>• Chemical stability.</li> <li>• Possibility of hazardous reactions.</li> <li>• Conditions to avoid (e.g., static discharge).</li> </ul>   |
| 11      | Toxicological information   | <ul style="list-style-type: none"> <li>• Concise but complete and comprehensible description of the various toxicological (health) effects and the available data used to identify those effects, including: <ul style="list-style-type: none"> <li>▪ Information on the likely routes of exposure (inhalation, ingestion, skin and eye contact); Symptoms related to the physical, chemical and toxicological characteristics;</li> <li>▪ Delayed and immediate effects and also chronic effects from short- and long-term exposure.</li> </ul> </li> <li>• Numerical measures of toxicity (such as acute toxicity estimates).</li> <li>• See Guidelines in Annex II.</li> </ul> |
| 12      | Ecological information  | <ul style="list-style-type: none"> <li>• Ecotoxicity (aquatic and terrestrial, where available).</li> <li>• Persistence and degradability.</li> <li>• Bioaccumulation potential.</li> <li>• Mobility in soil.</li> <li>• Other adverse effects.</li> <li>• See Guidelines in Annex II.</li> </ul>   |
| 13      | Disposal considerations   | Description of waste residues and information on their safe handling and methods of disposal, in line with MARPOL 73/78 requirements.   |
| 14      | Transport information   | <ul style="list-style-type: none"> <li>• UN number, where applicable.</li> <li>• UN Proper shipping name, where applicable.</li> <li>• Transport Hazard class(es), where applicable.</li> <li>• Special precautions that a user needs to be aware of or needs to comply with in connection with transport (e.g., heating and carriage temperatures).</li> <li>• Note that this product is being carried.</li> </ul>   |
| 15      | Regulatory information  | Safety, health and environmental regulations specific for the product in question.  |
| 16      | Other information, including information on preparation and revision of the MSDS. | <ul style="list-style-type: none"> <li>• Version No.</li> <li>• Date of issue.</li> <li>• Issuing source.</li> </ul>  |

Globally Harmonized System of Classification and Labeling of Chemicals (GHS), United Nations (2007 edition, as revised).

## Appendix B to Subpart D—Guidelines for the Completion of MSDS for the Annex I Type Oil as Cargo in Bulk and Oil Fuel

### 1 Categories of Liquids

The following categories subdivide the full scope of substances covered by Annex I of MARPOL 73/78 and set in groups specific products for general identification purposes.

- .1 Crude oils;
- .2 Fuel and residual oils, including ship's bunkers\*;
- .3 Unfinished distillates, hydraulic oils and lubricating oils;
- .4 Gas oils, including ship's bunkers\*\*;
- .5 Kerosenes;
- .6 Naphthas and condensates;
- .7 Gasoline blending stocks;
- .8 Gasoline and spirits; and
- .9 Asphalt solutions.

### 2 Properties and Information

In addition to properties and information specified in Annex 1, the following properties and information should be reported:

- .1 For the following provide appropriate hazards identification in section 2, composition/information on ingredients in section 3, and toxicological information in section 11 of the MSDS:
  - .1 Benzene. If present  $\geq 0.1\%$  by weight (even if naturally occurring ingredient of the material);
  - .2 Hydrogen sulphide. If present at any concentration, in liquid and vapor phases, or if possible to accumulate in a tank's vapor space; and
  - .3 Total Sulphur. If present  $\geq 0.5\%$  by weight, identify in section 3 and warn of potential for hydrogen sulphide evolution in sections 2 and 11;
- .2 For physical and chemical properties in section 9 of the MSDS:
  - .1 Appearance (physical state, color, etc.);
  - .2 Odor;
  - .3 Pour point;
  - .4 Boiling range;
  - .5 Flashpoint;

- .6 Upper/lower flammability or explosive limits;
  - .7 Vapor pressure (Reid vapor pressure (RVP) when appropriate);
  - .8 Vapor density;
  - .9 Density;
  - .10 Auto-ignition temperature; and
  - .11 Kinematic viscosity; and
  - .3 For ecological information in section 12 of the MSDS: Persistent or non-persistent oil as per the International Oil Pollution Compensation (IOPC) Fund definition\*.
    - \* Refer to standard ISO 8217:2005, Petroleum products. Fuels (class F). Specifications of marine fuels, table 2.
    - \*\* Refer to standard ISO 8217:2005, Petroleum products. Fuels (class F). Specifications of marine fuels, table 1.
- Dated: March 1, 2012.

**F.J. Sturm,**

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