

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Parts 150 and 154**

[CGD 91-036]

RIN 2115-AD82

**Response Plans for Marine Transportation-Related Facilities**

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is adopting with some changes, as final, the interim final rule which establishes regulations requiring response plans for marine transportation-related (MTR) facilities including deepwater ports, certain Coast Guard regulated onshore facilities, marinas, tank trucks, and railroad tank cars. This final rule also adopts with some changes, as final, the interim final rule which establishes additional response plan requirements for facilities located in Prince William Sound, Alaska, permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA). These regulations are mandated by the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA 90). The purpose of requiring facility response plans is to enhance private sector planning and response capabilities to minimize the environmental impact of spilled oil.

**EFFECTIVE DATE:** May 29, 1996.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-036), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

**FOR FURTHER INFORMATION CONTACT:** LCDR Walter (Bud) Hunt, Response Division (G-MEP), (202) 267-0441. This telephone is equipped to record messages on a 24-hour basis.

**SUPPLEMENTARY INFORMATION:****Drafting Information**

The principal persons involved in drafting this document are LT Cliff Thomas, Project Manager, Standards Evaluation Branch (G-MES-2), and Jacqueline Sullivan, Project Counsel, Office of Chief Counsel (G-LRA).

**Regulatory History**

On March 11, 1992 the Coast Guard published an advance notice of proposed rulemaking (ANPRM) in the Federal Register (57 FR 8708) entitled "Facility Response Plans." The ANPRM discussed the background, statutory requirements of section 311(j) of the FWPCA, and possible regulatory approaches. In addition, the ANPRM posed questions for public comment. The Coast Guard received 116 comments.

On June 19, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) on the related rulemaking project Vessel Response Plans (VRP) (57 FR 27514). The Coast Guard also gathered public input on the proposed VRP rule through the Oil Spill Response Plan Negotiated Rulemaking Committee. Twenty-six organizations and the Coast Guard were members of the Committee. To maintain consistency between the two regulations, this rule uses certain concepts developed in the VRP NPRM and negotiated rulemaking committee.

The Coast Guard released Navigation and Vessel Inspection Circular (NVIC) No. 7-92 on September 15, 1992. NVIC No. 7-92 provided immediate guidance to the marine industry for preparing facility response plans to meet the February 1993 deadline established by the Oil Pollution Act of 1990 (OPA 90).

On February 5, 1993, the Coast Guard published an Interim Final Rule (IFR) entitled "Response Plans for Marine Transportation-Related Facilities" in the Federal Register (58 FR 7330). The Coast Guard received 55 comments on the IFR. These comments were considered in developing this final rule.

**Background and Purpose**

In response to several recent major oil spills, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380). OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)). It established requirements, and an implementation schedule, for facility response plans and periodic inspections of discharge-removal equipment.

As amended by OPA 90, section 311(j)(5) directs the President to issue regulations implementing the new FWPCA requirements for facility response plans. The President delegated this authority, in part, to the Secretary of Transportation (DOT) by Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757). The Secretary of Transportation, in 49 CFR 1.46(m) (57 FR 8581; March 11, 1992), further delegated, to the Commandant of the Coast Guard, the

authority to regulate marine transportation-related (MTR) onshore facilities, and deepwater ports subject to the Deepwater Ports Act of 1974, as amended (33 U.S.C. 1501, *et seq.*). This rule addresses only MTR facilities that handle, store, or transport oil. Oil spill response plan regulations for vessels are the subject of a separate rulemaking project (CGD 91-034).

Section 311(a)(1) of the FWPCA defines oil as including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils (33 U.S.C. 1321(a)(1)). While the most common oils are the various petroleum oils (e.g., crude oil, gasoline, diesel, etc.), non-petroleum oils such as animal fats (e.g., tallow, lard, etc.), vegetable oils (e.g., corn oil, sunflower seed oil, palm oil, etc.), and other non-petroleum oils, such as turpentine, are included within the ambit of this regulation when handled, stored or transported by an MTR facility.

A major objective of the OPA 90 amendments to the FWPCA was to create a national planning and response system. OPA 90 requires the President to develop nationwide criteria for determining those facilities which could reasonably be expected to cause substantial harm to the environment. The OPA 90 Conference Report (Report 101-653) states that the criteria should result in a broad requirement for facility owners or operators to prepare and submit response plans. Those facilities identified by the President are required to submit response plans.

Section 311(j)(5) of the FWPCA requires the preparation and submission of response plans from all onshore facilities that could reasonably be expected to cause either "substantial" or "significant and substantial" harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone of the United States. Response plans must also be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and applicable Area Contingency Plans (ACPs).

Section 311(j)(5) also requires that, in a facility response plan, an owner or operator identify and ensure by contract or other means approved by the President the availability of private personnel and equipment sufficient to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent substantial threat of such a discharge.

Section 311(j)(5)(F) of the FWPCA allows the Coast Guard to authorize an MTR facility requiring plan approval to

operate for up to 2 years after a plan is submitted for approval. This provides an interim period in which the facility may continue to operate while the plan approval process is completed.

Section 5005 of OPA 90 establishes requirements for response plans for MTR facilities located in Prince William Sound, Alaska, which are permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. 1651, *et seq.*). This section requires a higher level of preparedness for facilities in Prince William Sound in order to provide an even greater margin of safety.

Although OPA 90 requires response plans for oil or hazardous substance spills, section 4202(b)(4) establishes an implementation schedule only for oil spill response plans. Response plans for hazardous substance spills will be the subject of a separate rulemaking.

#### Discussion of Comments and Changes

The Coast Guard received 55 comments on the IFR. The following discussion summarizes the comments and explains substantive changes made to the regulation in response to the comments. Comments are categorized by the specific section of the IFR to which they apply. In addition to these changes, editorial changes have been made to clarify the rule or standardize terminology. The following sections have changes which are purely editorial: §§ 154.1010, 154.1017, 154.1030, 154.1047, 154.1050, 154.1070, 154.1075, 154.1125, and appendix C, sections 1, 3, 4, 5, 7, and 8. The following sections were not changed: §§ 154.1028, 154.1029, 154.1041, 154.1057, 154.1115, 154.1130, 154.1135, 154.1140 and appendix C, sections 6 and 9 and Tables 1–5. For the convenience of the public, the Coast Guard has reprinted subparts F and G of part 154 in their entirety, including both changed and unchanged sections. Two new subparts H and I have also been added to part 154.

#### General Comments

One comment argued that the regulations do not consider economic reasonableness, overstep the intent of Congress in their scope and essentially place the entire burden for cleanup on owners and operators of facilities. The Coast Guard disagrees. The primary intent of the response planning portions of OPA 90 was to require that facility owners or operators identify and ensure, by contract or other approved means, the availability of private personnel and equipment to remove a worst case discharge. The Coast Guard has considered the economic costs of this final rule and they are summarized in

this preamble in the section entitled "Assessment."

**Regulatory consistency.** The Coast Guard received 16 comments urging regulatory consistency in the development of these regulations. All of these comments stated that there should be consistency with the other regulations issued under OPA 90. One of these comments also recommended the establishment of an interagency working group to identify which sections of rules should be consistent and work toward achieving that consistency. Another of these comments also urged that response plan requirements should be amended to resemble EPA's requirements more closely but that the Coast Guard's requirements should have a much closer focus on emergency response. The Coast Guard, EPA, and other Federal agencies met repeatedly throughout the development of each agency's rules. This coordination has produced significant similarities between agencies issuing response plan rules. For example, the Coast Guard and EPA have adopted the same requirements with respect to planning volumes, amounts of response equipment, and the use of dispersants, and other similar new or unconventional spill mitigation techniques including mechanical dispersal.

**Public Participation.** Six comments addressed concerns of public participation in the process of this rulemaking. Four comments argued that the Coast Guard should have issued an NPRM instead of an IFR to facilitate public comment. The IFR was issued to meet OPA 90's deadline for implementing these oil pollution rules. Public comment to the IFR has been considered in the development of this final rule.

One comment argued that the IFR did not meet the requirements of OPA 90 for public input regarding the adequacy of the plans because it does not provide for notification of plan receipt by the Coast Guard; supplying copies of the plans to interested people; making copies of the plans available in a central location for public review; or allowing the public to appeal Coast Guard decisions on deficiencies or classification.

The Coast Guard concludes that there is no requirement contained in OPA 90 for the public to determine the adequacy of individual response plans from onshore or offshore facilities. Along with Federal, state, and local government representatives who are responsible for coordinating environmental issues and emergency response operations, the Coast Guard has encouraged Area Committees to

include environmental groups, representatives from academia, and concerned citizens. The Coast Guard concludes that this is an appropriate method for private citizens to provide advice, guidance, and expertise to the Area Committee and will result in a coordinated community response to an oil discharge.

This same comment requested a public hearing and the establishment of a negotiated rulemaking committee for this regulation. The Coast Guard established an Oil Spill Response Plan Negotiated Rulemaking Committee (56 FR 58202, November 18, 1991). The Coast Guard used information in the final report provided by the Committee in the drafting of the VRP Rule (CGD 91-036) and this rule. The Coast Guard finds it unnecessary to conduct a separate negotiated rulemaking for the Facility Response Plan (FRP) rule.

**Clarification.** Two comments requested general clarification of the IFR. One comment stated that the regulations must be clarified in many respects to avoid differences of interpretation. The other comment was concerned with words in the regulations having different meanings from their accepted meanings. The Coast Guard recognizes these concerns and has strived for clarity in this final rule. For example, in this final rule, the Coast Guard has added definitions of the terms "complex", "tier", and "fish and wildlife and sensitive environment". It has also issued guidance to response plan reviewers to assure uniform understanding and enforcement of response plan requirements.

**Agency jurisdiction.** Two comments addressed the issue of jurisdictional conflicts between agencies. One comment asserted that there is an overlap in Coast Guard and Research and Special Programs Administration (RSPA) authority over pipelines. This comment argued that pipelines used only for transporting fuel between tanks and vessels were previously subject only to Coast Guard jurisdiction. However, this comment argues, new RSPA regulations now apply to all pipelines. This comment contended that such regulation conflicts with the delegation of authority in E.O. 12777 giving RSPA authority over non-MTR pipelines only.

Executive Order 12777 delegated to the Secretary of Transportation responsibility for the issuance of regulations requiring the owner or operator of a transportation-related onshore facility and deepwater ports to prepare and submit response plans. The Secretary delegated to the Commandant of the Coast Guard the responsibility for

the issuance of regulations requiring the owner or operator of a marine transportation-related onshore facility and deepwater ports to prepare and submit response plans. The Secretary delegated to the Administrator of RSPA the same authority for non-marine transportation-related pipelines. The Coast Guard finds that there is no conflict over jurisdiction.

#### *Section 150.129 Response Plans*

The Coast Guard received one comment on this section. The comment requested that the Coast Guard clarify the submission requirements for deepwater ports. Under the IFR, the Coast Guard determined that deepwater ports are significant and substantial harm facilities under § 154.1015 and, therefore, are required to submit a response plan for review and approval. The Coast Guard finds that the submission requirements are clear and, therefore, has made no changes to the final rule on the classification of deepwater ports.

#### *Section 154.106 Incorporation by Reference*

The Coast Guard received one comment on this section. The comment stressed that the Coast Guard should review the standard test methods developed by the American Society of Testing Materials (ASTM) that are incorporated by reference in this section as the standards are revised. The Coast Guard intends to review any revisions to these standards and will conduct appropriate rulemaking to revise this section if warranted by changes to these standards.

#### *Section 154.1010 Purpose*

The Coast Guard received several comments requesting clarification of this section. In response to these comments, the Coast Guard has revised this section to clarify the purpose of response plans.

#### *Section 154.1015 Applicability*

The Coast Guard received eight comments on this section of the IFR. Three comments argued that the classification of facilities should not be determined solely by the amount of oil that a facility is capable of transferring. The comments stated that other factors such as a facility's spill history, proximity to fish and wildlife and sensitive environments, presence of containment structures, and potential worst case discharge should be considered in the classification of facilities.

The IFR reflects the Coast Guard determination that all MTR facilities

that transfer oil to or from a vessel with a capacity of 250 barrels or more could reasonably be expected to cause at least substantial harm to the environment, and that large fixed facilities and deepwater ports could reasonably be expected to cause significant and substantial harm to the environment in the case of an oil discharge. If a facility owner or operator believes that his or her facility should be reclassified from significant and substantial harm to substantial harm or excluded from the substantial harm category based on factors other than the facility's capacity for transferring oil, then under § 154.1075 the facility owner or operator is permitted to appeal the classification to the COTP and then to the District Commander, and then to the Commandant. There have been no changes in these provisions in the final rule.

Although the Coast Guard has not changed the final rule to reflect the consideration of factors other than the facility's type and its capacity for transferring oil in the classification of the facility, the Coast Guard has modified the threshold for the initial classification of significant and substantial harm facilities in the final rule, thereby decreasing the number of facilities which will be classified as significant and substantial harm facilities. The Coast Guard has identified several fixed MTR facilities which are segments of non-MTR facilities that have a total storage capacity of less than 42,000 gallons. The Environmental Protection Agency (EPA) has determined that such non-transportation related facilities with a storage capacity of less than 42,000 gallons associated with a MTR facility are not considered as substantial harm facilities. However, these MTR facilities are capable of transferring oil to or from a vessel with a capacity of 250 barrels or more. The Coast Guard has determined that these facilities could reasonably be expected to cause substantial harm to the environment. These facilities must still submit response plans; however, they are no longer classified as "significant and substantial harm" facilities. Paragraph (c)(1) of § 154.1015 has been amended to incorporate this change.

One comment suggested that facilities that transfer only oily water mixtures should be classified as substantial harm facilities. The Coast Guard disagrees. Although a facility may transfer only oil that is mixed with water, the facility may transfer enough oil to reasonably be expected to cause significant and substantial harm to the environment if a discharge were to occur.

Another comment stated that the Coast Guard should clarify that mobile facilities are the only facilities that are not classified as significant and substantial harm facilities. Under the IFR, mobile facilities are the only facilities which initially are classified only as substantial harm facilities; however, under § 154.1016, the COTP may determine that other facilities may reasonably be expected to cause substantial harm to the environment and may upgrade mobile MTR facilities to significant and substantial harm facilities. Additionally, the amended paragraph (c)(1) of § 154.1015 of the final rule, which modifies the threshold for significant and substantial harm facilities, has increased the number of facilities that will initially be classified only as substantial harm facilities.

One comment suggested that the Coast Guard provide guidance on how to determine whether a facility is part of a complex. A facility is part of a complex if the entire facility is regulated by more than one Federal agency under section 311(j) of the FWPCA. Most MTR facilities are part of a larger facility that has segments which are regulated by agencies such as EPA, RSPA or the Minerals Management Service (MMS). If a facility owner or operator is unable to determine whether his or her facility is part of a complex, he or she may request guidance from the COTP.

Two comments contended that the regulation should not apply to non-petroleum oils. One comment specifically stated that the regulation should not apply to facilities which handle animal and vegetable oils because these oils are not toxic to the environment. The Coast Guard disagrees. The response planning requirements of this regulation were developed to ensure that facility owners or operators are prepared to respond to an oil spill originating from their facility, regardless of the type of oil spilled. The Coast Guard recognizes that certain non-petroleum oils, including certain animal fats and vegetable oils, are non-toxic in the marine environment; however, lethal acute aquatic toxicity is not the sole factor considered in determining harm to the environment. A discharge of animal fats or vegetable oils may cause chronic effects for waterfowl and aquatic organisms. Proper response planning for a discharge of non-petroleum oils will have a significant effect in limiting harm to the environment. Therefore, facility owners or operators handling non-petroleum oils at their facility are required to prepare response plans under this regulation.

The Coast Guard has determined, based upon comments, that animal fats and vegetable oils, and other non-petroleum oils will be addressed separately from petroleum oils, and from one another, in the final rule. The final rule removes the response planning requirements for animal fats and vegetable oils, and other non-petroleum oils from § 154.1049 in the IFR and establishes two new subparts H and I, containing requirements for these oils. Subpart H contains requirements for animal fats and vegetable oils, while subpart I contains requirements for other non-petroleum oils. Although new subparts have been established for animal fats and vegetable oils, and other non-petroleum oils, the response planning requirements for these oils are not changed in the final rule.

One comment stated that a facility that is capable of transferring oil to or from a vessel with a capacity of 250 barrels or more, but that does not transfer to a vessel of this size should not be required to submit a response plan. Although the Coast Guard has not lowered the threshold for substantial harm facilities in the final rule, the revised final rule permits the COTP to downgrade a facility. The COTP is in the position to evaluate the individual situation of each facility under his or her jurisdiction with respect to operational history and other factors which would affect the facility's classification. The COTP may downgrade a facility's classification, acting either on his own or upon request of the facility's owner or operator, if he finds that such action is warranted.

#### *Section 154.1016 Facility Classification by COTP*

The Coast Guard received four comments on this section. One comment stated that the COTP should not be permitted to upgrade a facility based on the facility's proximity to areas of economic importance and environmental sensitivity. The comment contended that OPA 90 does not permit such an action. Another comment stated that a facility's spill history does not indicate that the facility is at greater risk for future spills and, therefore, spill history should not be considered in determining a facility's classification. The Coast Guard disagrees. OPA 90 permits the Coast Guard to require response plans for facilities that could reasonably be expected to cause substantial harm and significant and substantial harm to the environment. OPA 90 does not define these terms; therefore, the Coast Guard must determine the criteria used to distinguish these facilities. The Coast

Guard has adopted EPA's term "fish and wildlife and sensitive environments" to refer to areas of environmental sensitivity. The Coast Guard has concluded that a facility's proximity to fish and wildlife and sensitive environments and its spill history are relevant factors in determining whether a facility could reasonably be expected to cause substantial harm or significant and substantial harm to the environment in the case of an oil discharge.

Two comments stated that a facility owner or operator should be permitted to appeal the COTP's decision to upgrade a facility. Under § 154.1075 of the IFR, a facility owner or operator is permitted to request the COTP to review the initial facility classification. The owner or operator may submit relevant data to the COTP to support his or her argument. If the owner or operator is dissatisfied with the COTP's decision, the owner or operator may appeal the decision to the District Commander. The decision of the District Commander may be appealed to the Commandant. This appeals provision is unchanged in the final rule.

Under the IFR, the COTP was permitted only to upgrade a facility's initial classification. Under the final rule, the COTP is permitted to upgrade or downgrade the facility's classification. Upon written request from the facility owner or operator to review the facility's classification, the COTP may downgrade a facility from significant and substantial harm to substantial harm or from substantial harm to a status in which it is exempt from the regulation. This provides the COTP with greater latitude to appropriately regulate his or her port area. This change has prompted the renaming of this section to "Facility Classification by COTP" in the final rule.

#### *Section 154.1017 Response Plan Submission Requirement*

The Coast Guard received many comments on this section of the IFR. Four comments requested the Coast Guard to clarify whether the FRP regulations apply to inactive facilities. Under § 154.100(a), the applicability section for part 154, facilities in caretaker status are exempt from the requirements of this part, with the exception of certain safety requirements set out in § 154.735.

Two comments stated that facility complexes should not be required to submit response plans to more than one Federal agency for approval. The comments further stated that all facilities that transfer oil over water

should be regulated exclusively by the Coast Guard. The Coast Guard recognizes that submitting plans to several agencies for approval may have been burdensome for those facilities whose options necessitated submission of response plans to more than one Federal agency. The initial delegation under Executive Order 12777 to issue regulations and review and approve response plan to multiple Federal agencies reflected agency expertise in the regulated industries and the traditional jurisdiction of Federal agencies under section 311 of the FWPCA. This delegation provided each agency with the opportunity to review response plans and to ensure that the plans reflected industry practices and were in compliance with statutory requirements.

Today, virtually every facility required to submit response plans has already done so in compliance with the rules promulgated by the appropriate agency. It has become apparent that some response plans unnecessarily duplicate information contained in other plans. Federal agencies are interested in streamlining the response plan preparation and submission procedures to reduce significantly the burden when plan revision and resubmission is required. The Coast Guard believes that the "One Plan" or Integrated Contingency Planning concept has merit and discussions are ongoing between industry, the appropriate Federal agencies, and members of the National Response Team (NRT). The NRT is developing guidance for preparation of integrated response plans that will satisfy the regulatory requirements of various Federal agencies while avoiding unnecessary and confusing duplication of standard response procedures and organizational details. With the completion of guidance on Integrated Contingency Planning, the Coast Guard will accept plans developed in accordance with that guidance. The NRT is also examining the feasibility of vesting response plan review in the On Scene Coordinator. The NRT is discussing minimizing the number of Federal agencies involved in reviewing a response plan for those facilities that, due to their diverse nature, may have to prepare and submit a response plan to more than one Federal agency. The Coast Guard is committed to working with the NRT on these issues and working to minimize the regulatory burden on facilities that have marine transportation-related mode and non-transportation-related components.

### Section 154.1020 Definitions

The Coast Guard received many comments on the definitions of the terms used in the IFR. Some comments suggested clarification of certain terms while others suggested the addition of terms. The following discussion addresses only those definitions or issues on which the Coast Guard received comment or made significant revisions.

**Adverse weather.** The Coast Guard received one comment on "adverse weather" which suggested that wind, tides, and the number of daylight hours be included as three additional environmental factors that contribute to adverse weather conditions for a spill response. The Coast Guard did not intend the listed conditions to be exclusive. To address this comment's concern, the Coast Guard is adding language to the definition of "adverse weather" to indicate that other relevant factors including wind, tides, etc., should also be taken into account when identifying response systems and equipment.

**Availability (of response resources).** The Coast Guard received one comment which requested that this term be defined. The comment stated that the definition should indicate that response organizations often have contracts with many facilities and, as a result, there may be instances where the contractor's obligations to one facility may limit its ability to arrive at the scene of an oil spill at another facility within the specified times. The Coast Guard recognizes that actual availability of response resources may be limited by unforeseeable events such as multiple, simultaneous oil spills. The Coast Guard stresses that the requirements are not performance standards. They are intended to be used to develop a plan for responding to a discharge of oil to the maximum extent practicable in the existing conditions. The Coast Guard recognizes that actual conditions may not permit the arrival of resources within the prescribed timelines. The Coast Guard concludes that there is no need to provide a definition.

**Complex.** The Coast Guard received one comment suggesting that it clarify the meaning of "complex" and that the Coast Guard definition be consistent with the definition in EPA regulations. A "complex" is composed of facilities regulated by two or more Federal agencies, and that are used, or intended to be used, to transfer oil to or from a vessel. A "complex" may include marine transportation-related portions and other non-marine transportation-related portions. The Coast Guard has

included a definition that is consistent with the FWPCA and applicable EPA regulations.

**Consistency with EPA regulations.** Two comments stated that the definitions in the Coast Guard regulation should be consistent with those in the EPA regulation. Wherever relevant, the Coast Guard has consulted other agencies and their regulations to ensure that the Coast Guard's OPA 90 regulations do not conflict with those of other agencies. Occasionally, the Coast Guard's definitions diverge from similar definitions of other agencies. In those cases, the Coast Guard has examined the other agency regulations and decided upon a different approach for legal, policy, or technical reasons.

**Environmentally Sensitive Area.** The Coast Guard received one comment suggesting that it add a definition of the term "environmentally sensitive area" to be consistent with EPA regulations, the NCP, and OPA 90. The EPA has adopted the term "fish and wildlife and sensitive environment." For consistency, the Coast Guard is adopting EPA's term and its definition. However, the Coast Guard is adding economically important areas to the EPA definition. OPA 90 requires that response plans be consistent with the applicable Area Contingency Plan (ACP). The ACPs are prepared by Area Committees composed of qualified personnel from Federal, State and local agencies. The Coast Guard has provided guidance to the Area Committees on the preparation of ACPs. Coastal ACPs have been prepared and are available for preparation of facility response plans. The Area Committees identify, and prioritize for protection, specific locations that fall under the category "fish and wildlife and sensitive environments." The ACPs will be revised annually and will identify areas of economic importance. The completed fish and wildlife and sensitive environments plans will likely be geographic-specific annexes to the ACPs. The National Oceanic and Atmospheric Administration (NOAA) published a notice in the Federal Register on March 29, 1994 entitled "Guidance for Facility and Vessel Response Plans Fish and Wildlife and Sensitive Environments." (59 FR 14714) NOAA's notice provides detailed guidance which facility and vessel owners may use to supplement the information contained in the applicable Coast Guard regulations. However, the ACP will still be used to make the final determination regarding fish and wildlife and sensitive environments.

**Full-scale.** The Coast Guard received five comments suggesting the addition of the term "full scale" in order to

clarify certain requirements for spill drills. The comments proposed that the term mean maximum participation by all levels of a facility's response organization to test major portions of the plan with a high degree of realism and extensive involvement. The Coast Guard extensively revised § 154.1055 of subpart F to reflect concerns expressed by comments, as well as to bring the section into alignment with the vessel response plan final rule and the applicable EPA regulations. Section 154.1055 is now entitled "Exercises" and requires the owner or operator of a facility to conduct exercises that will test the entire response plan every 3 years. The requirements allow the owner or operator to exercise different elements of the plan (e.g. qualified individual notification, spill management team, equipment deployment) at different times. However, the exercises must still test every element of the plan every 3 years and, in addition, an unannounced exercise must also be conducted every 3 years. The revised § 154.1055 also allows owners or operators to fulfill the exercise requirements by complying with the National Preparedness for Response Exercise Program (PREP). In view of these changes, a definition of "full scale" is not necessary.

**Functional.** The Coast Guard received five comments suggesting that the term "functional" be added to the definitions section in the final rule to clarify certain requirements for spill drills. The comments proposed that the term be defined as the limited exercising of specific functions, such as a command and control, internal coordination, external coordination, and tests of the functional planning and response capabilities of personnel and systems. In response to these, and other comments, the Coast Guard has extensively revised § 154.1055 which was entitled "Drills" in the IFR and is now entitled "Exercises." The Coast Guard concludes that the Exercises section now adequately addresses the meaning of the term functional. The functional areas are laid out in § 154.1035(b)(3)(iii) of subpart F. Response plans must contain an organizational structure incorporating the listed functional areas. Section 154.1035(b)(3)(iv) requires response plans to also contain job descriptions for the spill management team members in each functional area identified in the organizational structure described in § 154.1035(b)(3)(iii).

**Group IV oil.** The Coast Guard received several comments indicating that the definition for Group IV oil included Group V oil. The Coast Guard has revised the definition of Group IV

oil which is found in the definition of "persistent oils" to mean oil having a specific gravity equal to or greater than .95 and less than or equal to 1.0.

*Higher volume port areas.* The Coast Guard received one comment which proposed to add Cook Inlet, Alaska to the list of higher volume port areas. The Coast Guard classified higher volume port areas based upon a study of the relative volumes of oil handled, stored or transported. The U.S. Army Corps of Engineers reports on "Waterborne Commerce of the United States" provided the statistics for 34 port areas. The decision to classify some ports as higher volume was based upon the Coast Guard's analysis of the data from the reports. The data revealed a distinct break point. Cook Inlet, Alaska falls below the break point and, as such, does not meet the criteria for designation as a higher volume port area.

*Marine transportation-related facility.* The Coast Guard received three comments on the definition of MTR facility. One comment requested that the Coast Guard clarify the definition by citing specific types of facilities to which it refers. The Coast Guard gave examples of MTR facilities in the preamble to the IFR (e.g., fixed onshore MTR facilities include marinas; and mobile MTR facilities include tank trucks and railroad tank cars). Two other comments requested clarification of Coast Guard and RSPA jurisdiction over pipelines at MTR facilities. As stated in the preamble to the IFR, the definition of transportation-related and non-transportation-related facilities appeared in a 1971 Memorandum of Understanding (MOU) between the Environmental Protection Agency and the Department of Transportation. The MOU appears in the appendix to 40 CFR part 112. The Coast Guard definition of MTR is drawn directly from the MOU. The division point between the transportation-related portion of a pipeline, and the non-transportation-related portion of a pipeline is the first design discontinuance (valve) inside the secondary containment surrounding the tanks in the non-transportation-related portion of the facility. The Coast Guard finds that MTR is clearly defined in accordance with the appropriate legal authority. In a particular situation, if the location of the division between the MTR portion and the non-MTR portion is unclear, then the appropriate Federal officials, including the Coast Guard COTP, should be consulted. As set forth in the definition, these officials may agree to a specific location for the separation.

*Maximum extent practicable.* One comment asserted that the definition of

"maximum extent practicable" is too rigid and does not allow for the flexibility that Congress intended.

According to the comment, location, size, configuration, and other similar factors, should be considered in developing response plans. The Coast Guard has used a number of factors in determining the need to prepare and submit a response plan. The planning process also considers other factors as provided in §§ 154.1035 and 154.1045.

*Maximum most probable discharge.* The Coast Guard received four comments on the definition of maximum most probable discharge suggesting that the Coast Guard revise the maximum most probable discharge volume of 1,200 barrels or 10 percent of the volume of the worst case discharge to be consistent with the EPA maximum most probable discharge volume of 36,000 gallons. As stated in the preamble to the IFR, the Coast Guard based its maximum most probable discharge definition upon historical spill data which indicated that 99 percent of oil spills from coastal zone facilities were approximately 1,200 barrels or less. The Coast Guard concludes that the existing definition is appropriate because it protects the environment while not overly burdening small volume facilities.

*Nearshore area.* The Coast Guard received two comments on the definition of nearshore area. One comment stated that the definition should exclude areas which also meet the definition of rivers and canals. Another comment requested clarification of the relationship between nearshore areas and other terms such as "close-to-shore" in Appendix C and "close to shore response activities in shallow water" in § 154.1045(e). The definition of "Nearshore area" does not presently include areas which meet the definition of rivers and canals because "Rivers and canals" is a subset of the definition of "Inland areas" not "Nearshore areas." The precise meaning of "close-to-shore" is specified at the point where the term is used. Close-to-shore refers to waters six feet or less in depth.

*Notification drill.* The Coast Guard received five comments that suggested the addition of the term "notification drill" to the definition section of the final rule. The comments suggested defining the term to mean a test of the facility's system of notifying or activating, according to the facility's response plan, appropriate agencies, the facility spill management team, the oil spill removal organization, and the next higher level of the facility owner's or operator's organization. A notification

drill tests the facility's ability to start activation of its plan. To be successful, a notification drill need not result in calls to the top of the facility's response organization. The Coast Guard has extensively revised § 154.1055 which was previously entitled "Drills" and is now entitled "Exercises." The revised section includes a "Qualified Individual notification exercise" and specifies that compliance with the National Preparedness for Response Exercise Program (PREP) fulfills all exercise requirements. The Coast Guard concludes that these changes adequately address the points raised by the comments.

*Oil.* The Coast Guard received seven comments on this definition. One comment requested that the Coast Guard narrow the definition of oil to exclude substances which contain small percentages of oil such as ship bilge and ballast water. One comment indicated that the definition of oil in the regulations should be consistent with the definition in OPA 90, which excludes hazardous substances subject to CERCLA. Four comments stated that oil should be limited only to petroleum oils which are liquid under the range of ambient conditions which exist at a facility and which are not considered CERCLA substances. OPA 90 did not amend the definition of oil in section 311 of the FWPCA. The Coast Guard's definition of "oil" is the same definition used by the FWPCA. The statutory definition refers to oil in any form. That includes oily bilge and ballast water because they have been shown to be sources of oil pollution and discharges may result in substantial harm to the environment. The Coast Guard has determined that it is appropriate for response plans to include provisions covering oils which may not be liquid in all conditions. Such oils may sink to the bottom or remain suspended in the water column. In either case, they may cause substantial harm to the environment if not cleaned up as soon as possible. The Coast Guard concludes that the current definition of oil meets both the letter and the spirit of the FWPCA and therefore is not changing the definition of oil.

Another comment stated that the response plan regulations should not apply to edible oils. The comment contended that if edible oils were excluded from the regulations, the owner or operator of a facility handling edible oils still would be required to report and cleanup a spill under the Clean Water Act (CWA). The Coast Guard definition of "oil" is the same definition that is used by the FWPCA. That definition includes edible oils. The

Coast Guard has created new subparts in the final rule to distinguish non-petroleum oils, including edible oils such as animal fats and vegetable oils, from petroleum oils. The scientific data currently available to the Coast Guard strongly indicate that these oils may have an adverse impact upon the environment that is similar to the impact of petroleum oils. As a result, the Coast Guard is not exempting non-petroleum oils from response planning in the final rule. The Coast Guard will continue to assess its position as further data become available on the subject.

*Oil spill removal organization.* The Coast Guard received two comments on the definition of oil spill removal organization which suggested that the definition be revised to be more specific. The Coast Guard crafted the definition if oil spill removal organization to be flexible enough to apply to varying types of organizations which may be called upon to respond to a discharge of oil while complying with OPA 90 requirements. A more specific definition, while useful to some in the industry, might exclude organizations which are able to provide useful and needed response capabilities. The Coast Guard is not changing the definition of oil spill removal organization and suggests that any questions regarding the suitability of a particular organization be directed to the COTP for the area in which the facility is located.

*Other non-petroleum oil.* The Coast Guard has added a definition of "other non-petroleum oil." Other non-petroleum oil means a non-petroleum oil of any kind that is not generally an animal fat or vegetable oil.

*Persistent oil.* The Coast Guard received two comments on the definition of persistent oil. Both comments indicated that the definition proposed in the IFR does not account for oils that have a specific gravity greater than 1.0 that do not sink in salt water. The comments suggest that the definition be revised to include all products which could reasonably be expected to sink in the environment in which they are likely to be discharged. The definition of persistent oils is subdivided based upon specific gravity into Groups II, III, IV and V. The Coast Guard finds that further subdivision is unnecessary because the definition currently includes all oils with a specific gravity of greater than 1.0, regardless of whether or not they sink in salt water. Furthermore, the Coast Guard concludes that, in combination with other factors, even those oils referred to in the comments are very likely to sink in salt water.

*Private shore-based personnel.* The Coast Guard received one comment suggesting the addition of this term to the regulation. The comment indicated that certain Occupational Safety and Health Administration (OSHA) standards are not enforced. The Coast Guard is not tasked with enforcement of OSHA standards except in very specific instances. In the context of pollution control regulations such as OPA 90, the Coast Guard is not responsible for enforcing OSHA standards. Therefore, it is unnecessary for the Coast Guard to add this term to the final rule.

*Rivers and canals.* The Coast Guard received 8 comments on this definition. All eight comments questioned the use of the 12 foot project depth as a criterion for determining whether a waterway is a river or canal. One comment suggested that a project depth of 18 feet be applied as the standard. Four comments suggested that the COTP should be given the discretion to determine which waterways will be determined to be rivers or canals. The 4 comments also stated that the terms rivers and canals should be applied only to certain areas with definite geographical demarcations. Two comments requested clarification on whether the 12-foot project depth criterion applies only to artificially created waterways. Additionally, these 2 comments indicated that the definition of rivers and canals excludes certain rivers. The definition of rivers and canals applies to all waterways with a project depth of 12 feet or less including both naturally and artificially occurring ones. The Coast Guard finds that the 12-foot depth is appropriate to define the inland areas where shallow draft vessels may call at MTR facilities and has not changed it in the final rule. The COTP has the authority to redefine specific operating environments within his or her jurisdiction. This provision is continued in the final rule.

*Specific gravity.* Several comments encouraged the Coast Guard to define specific gravity in the final rule. The Coast Guard agrees and has used the definition of specific gravity found in ASTM Standard D 1298 entitled "Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Projects by Hydrometer Method."

*Spill management team.* The Coast Guard received 5 comments on this definition. Four comments stated that the definition of spill management team should reflect the allowance for tiered spill management teams. Another comment indicated that the FRP regulation should be consistent with the

VRP regulation which permits the spill management team function to be fulfilled by an organization outside the planning area of the spill. A "tiered" spill management team is not prohibited by the regulations as they appeared in the IFR and remain in the final rule. The definition is identical in both the VRP and FRP final rules to ensure consistency in spill management team requirements.

The Coast Guard received 5 comments suggesting that it define the term "corporate spill management team." One comment suggested that this term be defined to mean a national team of operational and functional experts and consultants responsible for moving quickly to a spill site to replace or support a facility response team in managing a response. The Coast Guard also received 5 comments requesting that it add the term "facility spill management team" to the regulation. The comments suggested that the term be defined to mean a team responsible for initiating and managing a response to a spill to its conclusion or until a team member from a higher tier in the overall response organization is activated and on-scene to support the facility team or manage the response until its conclusion.

The Coast Guard concludes that the existing definition of "spill management team" already incorporates the elements that the comments suggest. The Coast Guard therefore finds that it is both unnecessary and undesirable to complicate the regulation by subdividing the definition of spill management team. Section 154.1035(b) contains detailed requirements regarding plan content including the spill management team. The spill management team may include all persons relevant to an effective spill response except Federal, State and local authorities. It may include local, as well as regional or national corporate officials, operational, as well as functional experts, and representatives of OSROs. The local or on-site spill response team members can, and should, be prepared to integrate other persons, such as regional and national corporate officials, into their spill response team structure.

*Table top.* The Coast Guard received 5 comments requesting that it add the term "table top" to the final rule to clarify certain spill drill requirements. The comments suggested that the term be defined as a verbal walk-through to discuss action to be taken during simulated emergency situations, designed to elicit constructive discussion by the participants without time constraints. A table top drill does

not involve the movement of equipment or people. The Coast Guard has extensively revised § 154.1055 which was previously entitled "Drills" and is now entitled "Exercises." The revised section specifies that compliance with the National Preparedness for Response Exercise Program (PREP) fulfills all exercise requirements. The Coast Guard concludes that the changes adequately address the points raised by the comments.

*Tier.* The Coast Guard received one comment which stated that the use of "tier" in the IFR was unclear, and suggested that the Coast Guard define the term in the final rule. The Coast Guard agrees and has defined "tier" in the final rule.

The requirements for response to a worst case discharge to the maximum extent practicable are based on the tiering of response resources. The concept of "tier" has two primary components: The amount of equipment and personnel required for a response to a worst case discharge, and the amount of time in which these response resources are required to be on-scene from the time of discovery of an oil discharge. Tiering allows for the arrival of response resources at various stages of the response effort. Tiering the mobilization of response resources recognizes the need for a rapid initial response to an oil spill, yet allows for the identification of response resources from outside the area of the facility to meet the response resource planning requirements.

Sections 154.1045(e) and 154.1047(a)(1) of subpart F of the final rule require a facility owner or operator to identify, by contract or other approved means, equipment and personnel to respond to the facility's worst case discharge for Group I-IV oils and Group V oils, respectively. Appendix C and especially Tables 2, 3, and 4 provide specific guidance on calculating the amount of response equipment required by these sections. Table 4 provides mobilization factors used to calculate the amount of response resources required for on-water recovery for each tier. Table 5 establishes caps to the amount of response resources for which a facility owner or operator must contract in advance. Caps have been established for response resources required for Tiers 1, 2, and 3. The caps recognize the current limits on technology and private removal capabilities. The caps are for planning purposes only; in no way do the caps limit the amount of resources which a facility owner or operator may be required to mobilize during an actual spill response.

Section 154.1045(f) of subpart F establishes three time tiers for the on-scene arrival of response resources for the different operating environments for Group I-IV oils.

#### *Section 154.1025 Operating Restrictions and Interim Operating Authorization*

The Coast Guard received 10 comments on this section of the regulation. One comment requested that the Coast Guard clarify the requirement for facilities to submit response plans meeting the requirements of § 154.1030 for review and approval to the Coast Guard COTP and the requirement to operate in full compliance with the approved plans.

Section 154.1017 requires all facilities which could reasonably be expected to cause at least substantial harm to the environment to prepare and submit response plans to the Coast Guard. Only facilities which could reasonably be expected to cause significant and substantial harm to the environment are required to submit response plans for review and approval by the Coast Guard. Section 154.1025(b) requires all facilities that are required to prepare response plans to operate in compliance with their plans.

The Coast Guard has added to the final rule a provision that requires facility owners or operators making initial response plan submissions after May 29, 1996, to comply with the requirements of the final rule. The Coast Guard is not requiring facility owners or operators who submitted response plans under the IFR or NVIC to revise their response plans to conform with the requirements of the final rule until the plan's 5-year resubmission date. However, a facility owner or operator who has prepared a response plan under the NVIC or the IFR may comply with any of the provisions of this final rule by revising the appropriate section of the previously submitted plan in accordance with the revision and amendment procedures in § 154.1065. An owner or operator who elects to comply with all of the requirements of the final rule must resubmit the entire plan for review and approval, if appropriate, in accordance with § 154.1060.

One comment suggested that § 154.1025(d) be revised to give the Coast Guard authority to prohibit a facility from operating if the COTP determines that a previously approved plan has not been properly revised or updated. The Coast Guard finds that § 154.1065 provides the COTP with adequate authority to enforce the requirements for response plan

amendments and revisions. Under § 154.1065(c), the COTP may require a facility owner or operator to revise a response plan at any time if the COTP determines that the plan does not meet the requirements of this regulation.

Section 154.1025(d) provides four specific circumstances under which a facility may not handle, store, or transport oil including a COTP determination that owner-certified response resources or a submitted response plan do not meet the requirements of the subpart.

One comment indicated that the Coast Guard should limit its review and approval of response plans to 30 days for those plans submitted by February 18, 1993, the deadline for plan submission under the IFR. Limited resources prevented the Coast Guard from guaranteeing a review of every submitted response plan within 30 days. However, to facilitate the operations of facilities requiring Coast Guard review and approval under § 154.1025(c), the Coast Guard permitted these facilities to continue operations for up to 2 years from the date of plan submission. This procedure is in accordance with § 311(j)(5)(F) of the FWPCA.

The same comment suggested that a facility owner or operator should have no more than 30 days to make corrections to a plan if the plan is not approved by the COTP. Because of the varying degrees of plan deficiencies, the Coast Guard has determined that the COTP must have the flexibility to specify the period in which the facility owner or operator could reasonably be expected to correct the deficiencies.

One comment stated that, to be consistent with EPA and RSPA regulations, the Coast Guard should not formally review the letter from a facility owner or operator certifying the availability of response resources. Conversely, another comment indicated that a facility owner or operator should be required to certify in writing not only that he or she has ensured the availability of the necessary response resources, but also that the response resources are capable of being on-scene within the specified response times. The Coast Guard has determined that, until it is able to complete the review of the submitted response plans, its review and acceptance of the certification letters is its primary means of ensuring that facilities are in compliance with the statutory provisions of OPA 90 requiring the identification of response resources. The Coast Guard requires facility owners or operators to indicate in the certification letter that the response resources identified are in compliance with subpart F, G, or H as appropriate.

Section 154.1028(a) requires response resources to be capable of being on-scene within specified times.

One comment indicated that response contractors probably would not have all of the spill response equipment in stock that is necessary to meet the August 18, 1993 deadline in the IFR, particularly the equipment used for recovering oil in shallow waters. The comment requested that the Coast Guard exempt this type of equipment from the response plan requirements. The Coast Guard found that at the time of the comment there was no evidence to indicate that facility owners or operators were unable to identify adequate response resources for recovering oil in shallow water.

Another comment suggested that the Coast Guard clarify the language in § 154.1025(c) permitting interim operating requirements prior to Coast Guard approval of a response plan. The Coast Guard has updated and clarified § 154.1025(c). Additionally, the comment indicated that this paragraph should apply also to substantial harm facilities. Section 154.1025(c) applies only to the owners or operators of facilities for which the Coast Guard must review and approve response plans. Under section 311(j) of the FWPCA and 33 CFR 154.1017(b), only significant and substantial harm facilities are required to submit response plans for Coast Guard review and approval.

#### *Section 154.1026 Qualified Individual and Alternate Qualified Individual*

The Coast Guard received 9 comments on this section of the IFR. Four of the comments contended that the Coast Guard should permit the qualified individual to be identified in the plan by his or her title, rather than his or her name. Two comments suggested that the Coast Guard establish a mechanism by which the qualified individual can be chosen from a group of individuals among whom the responsibility of the qualified individual rotates. Another comment stated that the facility owner or operator should not be required to provide documentation to the qualified individual in order to activate his or her authority as the qualified individual. The Coast Guard finds that the amount of authority vested in the qualified individual warrants that the response plan identify the specific individual(s) assuming this position. For this reason, the Coast Guard also requires the qualified individual to have documentation which clearly indicates his or her role in the facility's response activities.

Five comments requested clarification on the responder immunity provisions

in § 154.1026 (e) and (f). Three of the comments specifically requested that the Coast Guard clarify who is immune from liability under the provisions. Two comments suggested that the Coast Guard address the immunity of the qualified individual in the regulatory text. One comment suggested that the potential liability for the qualified individual is too significant to attract many capable and qualified persons for the position.

As discussed in the preamble to the IFR, section 311(c)(4) of the FWPCA provides that only a responsible party is liable for the removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Response Plan or as otherwise directed by the President. A person does not become a responsible party under section 311(c) of the FWPCA by being designated as a qualified individual for response plan purposes. However, a person whose acts or omissions are grossly negligent, or who engages in willful misconduct may, as a result, become liable for the resulting damages. The Coast Guard does not have the authority to grant immunity to the qualified individual and, therefore, cannot establish immunity provisions in the final rule. However, the Coast Guard does recognize that the qualified individual is not responsible for the adequacy of response plans, nor is he or she responsible for contracting response resources beyond the authority delegated from the facility owner or operator. These points are reflected in the regulatory text.

Seven comments addressed the facility owner's or operator's ability to substitute a person from a higher level of management for the designated qualified individual. Four comments requested that the Coast Guard state this option in the regulatory text. Additionally, three comments questioned whether the person from a higher level of management who is assuming the responsibilities of the qualified individual is considered to be the qualified individual during an actual spill response. The Coast Guard does not intend to limit the discretion of the facility owner or operator to select any qualified person to assume the full range of responsibilities of the qualified individual. A facility owner or operator may, at any time, substitute the designated qualified individual or alternate qualified individual with a person from a higher organizational level who meets the requirements of § 154.1026. In order for that person to be recognized as the qualified individual, the facility owner or operator must

provide the individual with a document designating them as the qualified individual as required by § 154.1026(c). The Coast Guard has changed the language in § 154.1026 to clarify that the Qualified Individual or an Alternate Qualified Individual must be available on a 24-hour basis and must be able to arrive at the facility within a reasonable time.

One comment requested a more stringent English language requirement for the qualified individual and suggested that the qualified individual be required not only to speak fluent English, but also be required to read, comprehend, and write in English at a level of high school equivalency. Although the regulation states only that the qualified individual must speak fluent English, the Coast Guard concludes that this requirement will restrict the designation of the qualified individuals to persons who can communicate effectively with the On-Scene Coordinator during a response effort.

One comment objected to the requirement that both the qualified individual and the alternate qualified individual be available on a 24-hour basis. The preamble to the IFR stated that the Coast Guard's intent is to ensure that either the qualified individual or the alternate qualified individual be available to respond to an oil spill on a 24-hour basis. In response to this comment, the Coast Guard has reworded § 154.1026(a) to make it clear that either the qualified individual or the alternate, but not both, must be available on a 24-hour basis. This conforms with both the intent stated in the IFR preamble and the related section of the VRP rule.

One comment stressed that the qualified individual should be knowledgeable about not only the financial aspect of an oil spill response, but also the technical issues pertaining to an oil spill response. The Coast Guard agrees that familiarity with response methods is an asset to a Qualified Individual and encourages facility owners or operators to designate such persons as qualified individuals; however the ability to commit response resources is the primary requirement.

Under the regulations, the facility owner or operator is required to identify a qualified individual who is capable of arriving at the facility in a reasonable time. To ensure this, the Coast Guard has amended this section to require the qualified individual to be located in the United States. This issue was previously discussed in the preamble to the IFR.

*Section 154.1028 Methods for Ensuring the Availability of Response Resources by Contract or Other Approved Means*

The Coast Guard received 11 comments on this section of the IFR. Four comments suggested that § 154.1028(a)(1), the first means of identifying response resources by contract or other approved means, be revised to indicate that an oil spill removal organization is unable to guarantee the availability of identified response resources to respond to a spill at a facility. The regulations require the owner or operator of a facility to "ensure" the availability of response resources because this is the terminology used in the statute. The Coast Guard has emphasized that response plans are planning documents, not performance criteria, and that neither the owner or operator nor the spill removal organization can guarantee the availability of resources at all times. Acts of God, extremes of weather, labor disputes, the prior commitment of resources, and other events may preclude performance as planned. The Coast Guard also expects certain caveats to be placed in a contract indicating that the response resources identified are not guaranteed to perform response activities at a facility. The Coast Guard expects that the contract will provide for prompt notification of impaired ability to perform and that, when appropriate, facility owners and operators will seek alternate response resources. Notification of changes in response resources may be required under § 154.1065(b)(3).

Another comment stated the Coast Guard should require a facility owner or operator who ensures the availability of response resources by certifying his or her active membership in an oil spill removal organization under § 154.1028(a)(3) also to certify that the oil spill removal organization has committed to respond to an oil spill from the facility. The Coast Guard finds that a facility's active membership in a spill removal organization that has identified specified personnel and equipment required by the regulation to arrive at the specified times is adequate assurance that the spill removal organization will respond to an oil spill at the facility.

Four comments questioned whether an oil spill removal organization that has identified specific response resources to respond to an oil spill at one facility can list the same resources to respond to a spill at another facility. The Coast Guard recognizes that there

are current limits on the amount of available response resources in the U.S.

Facilities would be unable to operate due to their inability to identify available response resources which were not contracted for by other facilities. In addition, prohibiting oil spill removal organizations from contracting response resources for more than one facility is economically prohibitive for oil spill removal organizations.

One comment suggested that the Coast Guard remove the fourth method of ensuring by contract or other approved means in § 154.1028(a)(4). Section 154.1028(a)(4) permits the facility owner or operator to ensure the availability of response resources by providing a document that: (1) Identifies response resources to be provided by an oil spill removal organization in the stipulated response times in specific geographic areas; (2) sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the case of a spill; (3) permits the Coast Guard to verify the availability of the response resources through tests, inspections, and drills; and (4) is referenced in the response plan. The comment indicated that this provision is not necessary. The Coast Guard disagrees. Section 154.1028(a)(4) provides the owner or operator of a facility with an alternate means of identifying and ensuring the availability of response resources. This flexibility may prove to be economically essential for certain facilities.

Four comments stated that an oil spill removal organization should not be required to list the names of the response personnel who are identified to be available to respond to an oil spill. The comments contend that OSROs are responsible for maintaining sufficient numbers of trained personnel to respond to any potential spills to which it has committed to respond. The Coast Guard agrees. An OSRO is not required to list the names of persons who are identified to be available to respond to an oil spill; however, an oil spill removal organization must specify the response personnel available to respond to an oil spill.

One comment indicated that a signed service agreement should be sufficient to meet the requirements of § 154.1028(a)(5). As long as the "signed service agreement" meets the requirements of § 154.1028 it is acceptable to the Coast Guard. Such an agreement, to be valid under § 154.1028(a)(5), would need to identify specified equipment and personnel available within the applicable stipulated response times; and, the

OSRO would need to consent to being identified in the plan.

Another comment stated that the Coast Guard should require a facility owner or operator to ensure that identified response resources not only are available to arrive at stipulated times, but also are capable of sustaining a response effort. The comment indicated that the Coast Guard should analyze the adequacy of response resources on a systems basis to ensure that all identified resources are capable of functioning together. The Coast Guard finds that the response resource requirements are sufficient as set forth in this final rule. The requirements are for planning purposes only and are not intended to be performance standards. Where the Coast Guard has determined that it is both appropriate and necessary it has included times for sustained response effort (see Appendix C).

One comment indicated that a facility that operates only on a seasonal basis should not be required to ensure the availability of response resources when it is not operating. Under the provisions of § 154.100(a), a facility which is in caretaker status is exempt from the requirements of this regulation and, therefore, is not required to ensure the availability of response resources when it is in caretaker status.

One comment suggested that the Coast Guard provide a mechanism for contractors to exercise some control over where they are named as response resources. This comment expanded upon its suggestion by stating that the Coast Guard should require some documentation which validates the relationship between the contractor and the owner or operator. Section 154.1028 provides for five methods of ensuring the availability of response resources, including OSROs, by contract or other approved means. At a minimum, the OSRO must provide written consent to being identified in a response plan. Under some conditions, a written contractual agreement must be executed between the OSRO and the owner or operator of the facility. These contracts must be made available for review upon request by the Coast Guard. The Coast Guard contends that this provides adequate documentation that the proper relationship exists between the OSRO and the owner or operator of the facility.

One comment argued that contracts should be required as an outgrowth of comprehensive risk analyses at each potential spill site rather than the result of an intuitive need to have resources available. The Coast Guard disagrees. OPA 90 requires the preparation and submission of a response plan for an onshore facility that, because of its

location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines. The OPA 90 Conference Report (Report 101-653) states that even small onshore facilities could result in substantial harm under some circumstances. Therefore, the requirements to prepare and submit a response plan should be broadly applied. Along with other Federal agencies, the Coast Guard has established criteria to be considered in designating a facility as substantial harm. These factors include, but are not limited to: type and quantity of oils handled in bulk, facility spill history, proximity to public and commercial water supply intakes; proximity to navigable water and proximity to areas of economic importance.

#### *Section 154.1029 Worst Case Discharge*

The Coast Guard received a total of 16 comments on this section of the IFR. Ten comments addressed the relationship between the Coast Guard's definition of worst case discharge and the term as it is defined by other Federal agencies. Four comments indicated that the Coast Guard's definition of worst case discharge should be the same as the definition found in EPA's response plan regulations. Five comments indicated the need for consistency among Coast Guard, EPA, and RSPA definitions of worst case discharge, and suggested that the Coast Guard adopt RSPA's definition. The Coast Guard disagrees with these comments. Because the Coast Guard, EPA, and RSPA regulate different portions of an oil complex, the amount of oil in a worst case discharge volume from each of these portions of the complex will vary depending on the nature of the facility's operations. Coast Guard regulations address only the MTR portion of the complex.

Three comments indicated that the Coast Guard should adopt the EPA and RSPA policy of giving credit to the facility for the use of secondary containment and other preventive measures. Seven comments reiterated the point that Coast Guard regulations should encourage the use of preventive measures. The Coast Guard strongly encourages facilities to employ pollution prevention measures including secondary containment. However, the nature of MTR facilities makes secondary containment impractical in most cases and therefore very uncommon. For this reason, the Coast Guard does not require MTR facilities to have secondary containment. The Coast Guard does not

give credit for such measures because, while these measures will reduce the risk to the environment from an oil spill, they will not eliminate it altogether. Subparts A and B of 33 CFR part 154 already contain pollution prevention regulations. The Coast Guard considers additional pollution prevention regulations to be outside the scope of this regulation.

The Coast Guard received several comments on the amount of the worst case discharge volume. All comments indicated that the worst case discharge volume, as calculated using the formula in § 154.1029(a)(2), should be reduced. Many of the comments stated that the Coast Guard's definition of worst case discharge should not include a total loss of a facility's oil storage capacity and suggested that it be based on factors such as spill history, the capacity of the largest single pipeline, or the capacity of pipelines to the single largest docking pier. Additionally, four comments indicated that the definition exceeded the congressional intent of this term—the largest foreseeable discharge from a facility. The Coast Guard disagrees. Section 4201(b) of OPA 90 defines a worst case discharge as the largest foreseeable discharge (from a facility) in adverse weather conditions. The Coast Guard has interpreted this to mean the largest probable discharge that could occur from a facility and has determined that the worst case discharge includes the volumes of oil from all pipelines between the dock and the storage tanks. Additionally, the formula for calculating the worst case discharge in § 154.1029(a)(2) accounts for the time to detect a spill from the piping and the time to secure the operation.

One comment contended that the Coast Guard should not deny the validity of a response time calculation without substantial evidence that it cannot be accomplished in the time stated. The Coast Guard disagrees. Section 154.1045 and appendix C of the final rule provide requirements on which to base on-water and on-land response times. A facility owner or operator proposing to use more rapid response times bears the burden of proving the validity of the alternate calculation.

One comment suggested that both human and mechanical systems should be considered for detecting spills during transfer operations. The comment notes that, in the preamble to the IFR for this section, the Coast Guard referred only to "fail-safe features designed into the operation such as leak detection and mechanical methods of isolating segments of the pipeline."

The Coast Guard is concerned that undue reliance on fail-safe features may lead to an underestimation of necessary response resources in the event of a discharge from the facility. The Coast Guard concludes that it is reasonable to base the worst case discharge planning volume on the failure of such fail-safe features since it has been the Coast Guard's experience that these features do not always work as expected.

One comment argued that worst case discharge calculation methods should be maintained separate from the facility response plan to keep the document from becoming too bulky. The Coast Guard agrees. It is not required that the response plan contain the method or numbers used in calculating the worst case discharge. Only the volume of the average most probable, maximum most probable, and worst case discharges need be provided. However, providing the numbers used to arrive at the worst case discharge will facilitate review of the response plan.

#### *Section 154.1030 General Response Plan Contents*

The Coast Guard received 10 comments on the requirements for general response plan contents. Two comments expressed approval of the plan format requirements established in the IFR and indicated that other Federal agencies should adopt these requirements. Another comment, however, expressed that the order of the sections required in the plan is inappropriate and should be changed. The Coast Guard has reviewed the response plan formatting requirements and has determined that the current response plan format facilitates easy use of the response plan; therefore, the Coast Guard has made no changes to the formatting requirements in the final rule. Section 154.1030(e), however, does permit a facility owner or operator to submit a response plan that does not follow the format specified in the regulation as long as the plan is supplemented with a detailed cross-reference section identifying the location of the applicable sections required by the regulation.

One comment stated that a facility owner or operator should be permitted to reference previously established procedures in the plan's appendices rather than restating them in the plan. The Coast Guard disagrees. The Coast Guard intends for the response plan to serve as the primary document referenced by facility personnel during a spill response. In the event of an oil discharge, facility personnel should be required to refer to only one comprehensive manual for instruction

on spill response activities and procedures. The regulation, however, does not preclude a facility owner or operator from referencing previously established material in the plan as long as the information required by the regulation is contained in the appropriate section on the response plan.

Many comments addressed the requirements for response plan contents. One comment suggested that response plans be expanded to include measures for prevention, control, containment, and restoration as well as methods for cleanup and disposal. The regulation currently addresses these issues, with the exception of prevention and restoration methods. Section 4202 of OPA 90, the authorizing provision for response plan requirements, grants the Coast Guard authority to issue regulations addressing only spill response activities. It does not address spill prevention or restoration and, therefore, these issues are not addressed by this regulation.

Four comments suggested that the plans address company or site-specific information. Section 154.1035(g) requires facility specific information to be included as an appendix to the plan. A facility owner or operator may also include company specific information as a separate appendix to the plan.

One comment suggested that the Coast Guard reduce the amount of information required in the plan and indicated that the Coast Guard should require only vital emergency response information in the plan to streamline the initial notification process. The regulations establish minimum content requirements for response plans and require information that the Coast Guard has determined to be essential for the plan to be of significant use by facility personnel. The Coast Guard, however, encourages facility owners or operators to develop response plans which incorporate flowcharts and checklists to facilitate the use of the plan in an emergency.

Several comments addressed the requirement for response plans to be consistent with the NCP and the ACPs, particularly as it applies to the identification of sensitive areas under § 154.1035(b)(4). Some comments pointed out the difficulties of developing response plans that are consistent with the ACPs when many of the ACPs are not yet published. In the preamble to the IFR, the Coast Guard recognized that many of the ACPs were not complete when the IFR was published. The Coast Guard indicated that, in these cases, the facility owner or operator would be required to identify

the fish and wildlife and sensitive environments described in the applicable local contingency plans. Additionally, Appendix D of part 154 was developed to assist facility owners or operators in identifying fish and wildlife and sensitive environments which could be impacted by a worst case discharge from the facility. Because the coastal ACPs are now complete, in this final rule the Coast Guard has replaced appendix D of part 154 which provided guidance in identifying fish and wildlife and sensitive environments with a new appendix D which covers training. On March 29, 1994, the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce published a notice establishing guidelines for the identification of fish and wildlife and sensitive environments to further assist facility owners or operators in identifying areas requiring additional protection from discharged oil (59 FR 14714). This interim guidance was to be used by a facility owner or operator until the applicable ACPs were completed.

Since the publication of the NOAA guidance, all of the ACPs have been completed. Facility owners or operators must ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). The facility owner or operator who submits plan is not required to, but may, at the owner or operator's option, conform to an ACP which is less than 6 months old at the time of plan submission.

One comment expressed that the ACPs should be open for public comment because of their impact on the response plans. Any member of the public may attend meetings held on the development of the ACP.

One comment urged the Coast Guard to provide guidance as to how an owner or operator could cover more than one facility in a response plan. Facility response plans must be developed for a specific facility and it is not practical for a plan to cover more than one facility. Portions of a corporate response plan may be appropriate for inclusion in several facility response plans.

Two comments urged that the facility response plan be part of a more comprehensive plan and not necessarily a stand-alone document. The Coast Guard disagrees. The facility response plan must be comprehensive. While it may reference other documents, it must demonstrate adequate response planning and outline facility response to a discharge from the facility.

#### *Section 154.1035 Specific Requirements for Facilities That Could Reasonably be Expected to Cause Significant and Substantial Harm to the Environment*

The Coast Guard received 19 comments on the response plan requirements for significant and substantial harm facilities. The following discussion is divided to address the specific sections of the response plan on which comments were received.

*General.* The Coast Guard received 2 comments addressing § 154.1035(a), the response plan requirements for significant and substantial harm facilities, in general. One comment stated that the regulations require too much detail to be continued in the response plans. Another comment suggested that the response plans be required to address planning and prevention programs for spills that occur most frequently. The Coast Guard disagrees. As explained in the discussions on the requirements of § 154.1030, the regulations require information that the Coast Guard has determined to be essential for a response plan to be of significant use to facility personnel for all reasonably foreseeable discharges. The plans address only spill response activities; they do not address spill prevention. Although the Coast Guard encourages facility owners or operators to establish spill prevention measures, they are beyond the scope of this regulation. The Coast Guard has issued pollution prevention regulations in 33 CFR part 154.

*Notification procedures.* Six comments addressed § 154.1035(b)(1), requirements for notification procedures in the response plan. One comment suggested that the Coast Guard require the facility owner or operator to report to the initial notification if there was an early arrival of response equipment and whether response equipment was on-site during the transfer. The comment indicated that this would assist the Coast Guard On-Scene Coordinator (OSC) in assessing the need for additional response resources and in determining an appropriate response strategy for the spill.

Under this section, the facility owner or operator is required to develop a notification sheet, which contains the information identified in Figure 1, to be transmitted to Federal, State, or local agencies in the initial and follow-up notifications of an oil discharge. The Coast Guard limited the required information to the minimum necessary. The facility owner or operator is not

required to use the same format as Figure 1, but must develop a notification sheet that includes space for the information contained in Figure 1. The notification sheet may include any additional information that the facility owner or operator determines could be helpful to responding agencies. For this reason, the Coast Guard will not require additional information to be included on the notification sheet. The Coast Guard, however, urges the facility owner or operator to provide agency officials with any information that will assist them in developing appropriate spill response strategies.

Five comments question whether the facility owner or operator is required to notify each individual in the spill management team and oil spill removal organization. This is not required. However, the facility owner or operator must notify someone in the management team and a representative of the oil spill removal organization. The Coast Guard encourage facility owners or operators to coordinate with the spill management team and oil spill removal organization to designate a primary, and an alternate, point-of-contact for notifications in each organization.

*Facility spill mitigation procedures.* The Coast Guard received two comments on § 154.1035(b)(2), facility spill mitigation procedures which addressed spill prevention measures, secondary containment, and requirements for complexes. These issues have been addressed in discussions on §§ 154.1030, 154.1029, and 154.1017 respectively.

*Facility response activities.* The Coast Guard received two comments on § 154.1035(b)(3) which suggested that the Coast Guard require an OSRO to provide trained personnel necessary to continue operation not only for the first 7 days of the response, but for the total time needed to complete the spill response or until the OSRO is released from its response obligations by the COTP. The comments indicated that 7 days is too short to complete response activities for a large oil spill. The Coast Guard agrees that 7 days is not long enough to complete a response to a large spill; however, the requirements of this section are for planning purposes only. The facility owner or operator is required only to identify resources for the first 7 days of the spill response; however, he or she is required to ensure that adequate response resources are available until all spill response activities are concluded and the resources are dismissed by the OSC.

One of the comments also suggested that the Coast Guard require the use of the National Interagency Incident

Management System (NIIMS) Incident Command System (ICS) to standardize incident command in the United States. Facility owners or operators should refer to the ACPs for guidance on the use of NIIMS ICS.

The Coast Guard has revised § 154.1035(b)(3)(iii) and (iv) of the final rule to be consistent with the language found in comparable sections of the VRP regulation. These revisions do not change the substantive requirements of this section.

*Sensitive environments.* The Coast Guard received 14 comments addressing § 154.1035(b)(4), requirements to protect sensitive environments.

Two comments stated that the definition of sensitive environments should be the same in both the Coast Guard and EPA response plan regulations. As previously stated in the discussion on § 154.1020, the Coast Guard has added the term "fish and wildlife and sensitive environments" to the definitions in the final rule. This term also has been adopted by EPA. Accordingly, this subsection has been renamed "Fish and Wildlife and Sensitive Environments" in the final rule.

Several comments addressed the identification of fish and wildlife and sensitive environments, particularly the requirement that these areas be consistent with those identified in the ACPs. These comments have been addressed in the preamble discussion on § 154.1030.

Many comments indicated that the requirement in the IFR to identify areas of economic importance results in the identification of certain areas that have no significant environmental sensitivity. As an example, one comment indicated that certain areas such as transportation routes are economically important, but not environmentally sensitive. As this comment illustrates, this requirement is not intended to result in the identification of every area of economic importance. It is, however, intended to protect those areas that are not otherwise identified as environmentally sensitive, such as recreational beaches, parks, and aquaculture sites, industrial water intakes and other areas important to the economic well-being of the surrounding community. These areas of economic importance will be identified by the ACPs.

One comment suggested that the Coast Guard include water intakes within fish and wildlife and sensitive environments. The Coast Guard defers to the ACPs for such identifications.

Two comments indicated that this section of the regulation does not provide enough guidance on

determining the adequacy of the planning distances and the response equipment identified for the protection of fish and wildlife and sensitive environments. The comments recognized the utility of spill trajectory models, but indicated that they all are not equally reliable. Under the regulation, facility owners or operators are not limited to using spill trajectory models to determine the location of fish and wildlife and sensitive environments that may be affected by a discharge of oil from their facility.

Section 154.1035(b)(4)(iii)(B)(I) of the final rule provides facility owners or operators with a basic formula for calculating the distances that discharged oil will flow from the facility under certain conditions at specified times. The Coast Guard recognizes that this formula may not take into account certain geographic and weather-related conditions that normally exist in some ports which may affect the distances that discharged oil may travel from the facility; therefore, the COTP will determine whether the appropriate factors have been accounted for in the identification of fish and wildlife and sensitive environments. The adequacy of the identified resources also will be assessed by the COTP.

The final rule also provides facility owners or operators with a third means of complying with the requirements of this section. In addition to using the formula in § 154.1035(b)(4)(iii)(B)(I) or developing a spill trajectory model, facility owners or operators are permitted to use the formula in appendix C of Attachment C-III of EPA's FRP final rule that is most appropriate for the facility (59 FR 34070; July 1, 1994).

Three comments addressed the planning distances required under the IFR. Two comments suggested that the Coast Guard expand the provision in § 154.1035(b)(4)(iii)(B)(I) of the IFR, which requires the identification of response resources for areas that will be impacted in 48 hours in non-tidal waters, to non-persistent oils. Because of the rapid rate at which non-persistent oils evaporate, the Coast Guard is only requiring facility owners or operators to plan to respond to areas reached by non-persistent oil in 24 hours in non-tidal waters at maximum current.

Conversely, one comment stated that the planning distances required by this section are significantly greater than is warranted by the potential impact of the facility's worst case discharge. The Coast Guard disagrees and contends that the effects of tides and currents on discharged oil warrant these planning distances.

Two comments addressed response activities for wildlife protection. One comment suggested that response plans be required to address issues such as wildlife dispersal, collection, cleaning, rehabilitation, and recovery. Another comment suggested that response personnel be required to undergo special training for wildlife response. Although the Coast Guard encourages facility owners or operators to identify resources for wildlife response, it will not require these resources to be identified by contract or other approved means. The applicable ACP identifies these private and public sector resources.

One comment states that the facility owner or operator should be permitted to estimate the amount of shoreline requiring protection and suggested that the estimate be reviewed and approved by the COTP. The regulation requires the owner or operator to identify required quantities of boom for the protection of fish and wildlife and sensitive environments. Facility owners or operators will be expected to identify enough boom to adequately protect each of the fish and wildlife and sensitive environments identified in their plan.

Another comment indicated that 1 day should be reduced from the planning requirement if the response equipment is determined to be capable of arriving in less than half of the maximum required arrival time. The Coast Guard encourages the early arrival of response resources; however, it does not plan to reduce the requirements of this section.

*Hazard Evaluation and Spill Scenarios.* The Coast Guard received a total of four comments on these two topics. The comments indicated that the final rule should include information on hazard evaluations and spill scenarios. Sections 154.1035(c) and (d) has been reserved for these topics to ensure consistent formatting of Coast Guard and EPA response plan regulations and to prevent plans which contained information required by the EPA regulations from being rejected by the Coast Guard. However, because the Coast Guard does not intend to provide guidance on hazard evaluation or spill scenarios at this time, it has removed these reserved paragraphs from the final rule and has redesignated the remaining paragraphs of this section accordingly. It will continue to accept plans prepared to comply with both EPA and Coast Guard response plan regulations.

*Training and Exercises.* The Coast Guard received one comment on § 154.1035(c) of the regulation. It is addressed in the preamble discussion on § 154.1055.

*Appendices.* The Coast Guard received one comment on § 154.1035(e) which contended that the information in the appendices is redundant with information found elsewhere in the plan and suggested that the appendices should not be required. The Coast Guard disagrees. However, it recognizes that some of the information in the appendices may be found in other sections of the plan; telephone numbers need not be listed elsewhere in the response plan if provided in the appendices.

*Facility specific information.* The Coast Guard received three comments on § 154.1035(e)(1). Two comments suggested that the Coast Guard should not require material safety data sheets for materials which are not handled by the MTR portion of the facility. The Coast Guard agrees and does not require this information for substances that are not handled by the MTR portion of the facility. The third comment addressed firefighting capabilities and is discussed in the appropriate section of § 154.1045.

*Equipment lists and records.* The Coast Guard received one comment on the § 154.1035(e)(3) requirement to include equipment lists and records in the response plan. The comment stated that the Coast Guard should require the identification of equipment that would be used to respond to the maximum most probable discharge in addition to the equipment used to respond to the average most probable discharge, as currently required by the regulation. The Coast Guard agrees and, under the final rule, requires facility owners or operators to list all the major equipment belonging to the oil spill removal organization for response to a maximum most probable discharge.

Four comments were received addressing the issue of contractor classification and one of these comments also addressed classification as outlined in NVIC 12-92. One comment urged the Coast Guard not to require plans to list specific quantities of equipment when listing a Coast Guard classified oil spill response organization (OSRO) for recovering volumes above the caps. This same comment urged that the Coast Guard and the EPA extend the classification program to include both coastal and inland contractors, arguing that this extension would enhance uniformity and improve response capabilities for large oil spills.

Section 154.1035(g)(3)(iii) of the final rule states that it is not necessary to list response equipment from an OSRO when the OSRO has been classified by the Coast Guard and its capacity has been determined to equal or exceed the

response capability needed by the facility. The Coast Guard will accept the listing of an appropriate OSRO for response resources up to and beyond the listed caps. The EPA has determined that it will utilize the OSRO classification system established by the Coast Guard. An OSRO may be classified for certain size discharges and operations in certain specified geographic areas. Both coastal and inland contractors may apply for classification by the Coast Guard.

One comment argued that industry rather than the Coast Guard should certify contractors. The Coast Guard finds that this is impractical. The Coast Guard is concerned that inconsistencies may occur in the classification of OSROs unless it is conducted by one organization. At the present time, the Coast Guard is the appropriate agency to conduct on OSRO classification program. The Coast Guard plans to explore using third parties to inspect or approve OSROs.

#### *Section 154.1040 Specific Requirements for Facilities That Could Reasonably be Expected to Cause Substantial Harm to the Environment*

The Coast Guard received 2 comments on this section of the IFR. One comment indicated that the requirement for significant and substantial harm facilities to identify a corporate organizational structure that would be used to manage the oil spill response under § 154.1035(b)(3)(iii) should be applied to substantial harm facilities. Additionally, the comment suggested that the Coast Guard require contacts for wildlife response resources; however, another comment stated that these facilities should be required to use legally binding contracts for the identification of all responses resources. The Coast Guard disagrees. The requirements of this section were developed to lessen the regulatory burden and economic impact on substantial harm facilities. The Coast Guard has determined that the costs of identifying a corporate organizational structure and contracting for response resources outweigh the benefits for substantial harm facilities.

The IFR required the owners or operators of substantial harm facilities to have at least 200 feet of containment boom immediately available to respond to the average most probable discharge. The IFR was unintentionally more stringent for substantial harm facilities than for significant and substantial harm facilities. However, under the final rule, the requirement has been reduced to permit facility owner or operators to identify 200 feet of boom and the means

of deploying it that is capable of arriving at the spill site within 1 hour of the detection of the spill.

*Section 155.1041 Specific Response Information to be Maintained on Mobile MTR Facilities*

The Coast Guard received one comment on this section of the IFR which addresses contracts or training permits for wildlife response. This issue is addressed in the discussion of fish and wildlife and sensitive environment requirements in § 154.1035.

*Section 154.1045 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Group I Through Group IV Petroleum Oils*

The Coast Guard received several comments addressing this section which concerns the inclusion of certain information in the response plans for facilities handling, storing, or transporting Group I through Group IV petroleum oils. Two of these comments addressed this section generally. One comment argued that the Coast Guard should require contracts or training and permits, for wildlife response. As indicated in the discussion on fish and wildlife and sensitive environments in § 154.1035, the Coast Guard will not require these resources to be contracted for in the final rule.

Another comment contended that the regulations should provide further guidance on matching response equipment with the grade of petroleum oil spilled, arguing that the groups of petroleum oil do not necessarily correspond to the grades of petroleum oil and that the grade spilled is not necessarily the grade recovered. Response equipment must be certified for the grade of oil handled, stored or transported by any facility for which the equipment is identified as a response resource. The Coast Guard expects that discharged petroleum oil will weather and that the grade of petroleum oil discharged will weather sufficiently to be recovered by response equipment.

*Reclassification of bodies of water.* Six comments were received specifically addressing the COTP's reclassification of specific bodies of water as being operating environments needing more or less stringent response resource planning in § 154.1045(a)(3). Four comments argued that significant wave height may be such that it is unsafe to conduct recovery operations, making more response equipment moot. These comments suggested that the regulation allow less response equipment if operation would be unsafe in wave conditions exceeding the

significant wave height criteria during more than 35 percent of the year. The Coast Guard requires the facility owner or operator to plan to recover the oil in the operating environment in which the facility is located. As stated in § 154.1010, the regulation establishes a planning standard and not a performance standard. Decisions on whether to deploy equipment at the time of a discharge will remain with the COTP in consultation with the responsible party and OSRO.

Two comments argued that significant wave height is only one criterion which should be considered during the reclassification determination. These comments stated that the presence of debris, ice, currents, wind, and darkness should also be determining factors. These comments further argued that the standard for reducing classification should be the presence of prevailing wave conditions not exceeding the significant wave height criteria for the less stringent operating environment during 85 percent of the year while the standard for increasing classification should remain the presence of prevailing wave conditions exceeding the significant wave height criteria for more than 35 percent of the year.

The Coast Guard has retained the percentages from the IFR. The 35 percent threshold provides balance between anticipated area environmental conditions and equipment available to operate in those conditions. Setting a lower threshold would require new areas to stockpile equipment with the capability of operating in unlikely conditions. The rule requires that ice conditions, debris, and other conditions as determined by the COTP must also be considered in the area where the facility operates.

*Requirements pertaining to average most probable discharges.* The Coast Guard received one comment which responded to the requirements of § 154.1045(c). It argued that the Coast Guard should clarify that facilities are not responsible or obligated to respond to spills from vessels they do not own or operate. While the Coast Guard requires the facility to plan for responding to an average most probable discharge at the facility, it remains the responsibility of the owner or operator of the source of the discharge to initiate effective response at the time of the discharge. The regulation does not require the facility to respond to a discharge from a vessel and the regulation has not been changed to state otherwise.

Under § 154.1045(c) (1) and (2) of the IFR, facility owners or operators are required to identify certain equipment

such as containment boom and means of deploying and anchoring the boom, oil recovery devices, and recovered oil storage capacity that are capable of arriving at the facility within specified times to respond to the average most probable discharge. Upon review of the IFR, the Coast Guard determined that the phrase "at the facility" does not indicate that this response equipment must be available at the scene of the oil discharge in the specified times. Accordingly, the Coast Guard has revised these provisions of the final rule to require the identification of response equipment that is capable of arriving at the spill site within the times specified by this section. This change also applies to comparable sections in § 154.1047 of subpart F, § 154.1225 of subpart H, and § 154.1325 of subpart I.

*Requirements pertaining to response to maximum most probable discharges.* The Coast Guard received three comments in response to the requirements of § 154.1045(d). One comment argued that the planned response time for possible spills in the Great Lakes should not be lower than it is for other bodies of water. The Coast Guard disagrees and has retained the 6-hour requirement for response to a maximum most probable discharge. The Great Lakes are unique, self-contained, bodies of fresh water especially vulnerable to spills. Because of this, it is especially important that the response capability be available to respond rapidly. The maximum most probable discharge response capability provides a base capability that can be deployed rapidly to the scene of a discharge to mitigate its effects.

Several comments argued that the Coast Guard should allow resources located in one or more COTP zones to be moved to another zone as part of a response effort. The Coast Guard expects that response resources may be shifted in response to large pollution incidents. The rule does not prohibit this shifting of resources. It may be necessary for the facility owner or operator to confirm the availability of other response resources or those response resources identified in the response plan above the caps. The Coast Guard reserves the right to invalidate a plan due to the absence of available response resources to respond to a maximum most probable discharge or the worst case discharge. However, under the final rule, the COTP may impose operational restrictions on a case-by-case basis, such as limitations on the number of transfers at the facility, or, where appropriate, may permit the facility to operate with temporarily modified response plan

development and evaluation criteria (e.g., modified response times, alternate response resources, etc.).

The Coast Guard has made minor organizational changes to this section of the final rule to clarify the planning requirements for the maximum most probable discharge. These changes more clearly indicate that resources identified to respond to the maximum most probable discharge include all equipment and personnel identified to respond to the average most probable discharge.

*Requirements pertaining to response to a worst case discharge to the maximum extent practicable.* The Coast Guard received 3 comments responding to the requirements of § 154.1045(e). One comment argued that owners and operators should be required to plan only for a worst case discharge.

The Coast Guard's authority to regulate is broader than OPA 90. Section 311(j)(1)(C) of the FWPCA authorizes the Coast Guard to require planning for discharges other than the worst case. Based on the recommendations of the Oil Spill Response Plan Negotiated Rulemaking Committee, the Coast Guard determined that the rule also should address operational discharges. The Coast Guard is using its FWPCA authority to require planning for spills other than a worst case discharge.

*Response times and tiers.* The Coast Guard received 12 comments addressing the response time and tier requirements for worst case discharges (§ 154.1045(f)). Two of these comments dealt with the issue of giving credit for early arrival of response resources. One comment argued in favor of this proposal and suggested that such credit take the form of a reduction of monetary liability for a spill, a reduction in liability for natural resource damage assessments, or a reduction in drill requirements. One comment argued against issuing credit for early arrival. This comment specifically argued that credit should not be given for dispersants if such credit would result in planning to use a lesser amount of mechanical recovery equipment during a spill. The other comment argued that the Coast Guard should encourage early arrival of response equipment but that it should not issue credit for meeting an early or minimum arrival time.

The rule is written to require the arrival of resources in a timely manner to contain and remove discharged oil before it has the opportunity for greater dispersal. The Coast Guard cannot lessen the monetary liability or the liability for damage to natural resources based on the arrival times of response resources. The early arrival of these

resources will lessen the likelihood of damage to natural resources.

The use of dispersants is a valid response technique in certain circumstances. A facility that handles, stores, or transports Group II or III petroleum oils can receive up to 25 percent credit against on-water recovery capability in any environment with year-round preapproval for use of dispersants. The response plan must address the arrival of these dispersants within 12 hours. The Coast Guard's position is that the rule strikes a proper balance in planning for the use of dispersants and mechanical recovery.

One comment addressed the tiering of response resources. The comment indicated that this approach is not useful because it does not allow for an initial response with all available resources. The tiering requirements provide a maximum time in which certain response resources are capable of arriving at the scene of a petroleum oil spill; they do not preclude the early arrival of response resources and, therefore, do not preclude an initial spill response with all available resources.

The same comment also indicated that the evaluation of the equipment's recovery capacity should not be based on the equipment's operability in the different operating environments because those conditions may not exist during an actual spill response. The Coast Guard recognizes that the conditions and assumptions on which a response plan is based may not exist during an actual spill response. However, to develop an effective response plan, a facility owner or operator must identify and plan to respond in the conditions which normally exist in the port or at the facility. As § 154.1010 indicates, the regulation establishes a planning standard and not a performance standard. During an actual spill response, a final assessment as to the type of equipment to be deployed for response to a discharge will be made by the COTP in the consultation with the responsible party and OSRO.

Eight comments addressed various issues concerning the amounts of time allotted for responding to an oil spill. Two comments argued that facilities in higher volume port areas and the Great Lakes should plan using 48-hour response times for Tier 3 response resources. Two comments urged the Coast Guard to increase the Tier 1 response time to 12 hours as opposed to 6 hours for higher volume port areas. Four comments argued that the response times should be the same regardless of the location of the spill. These

comments further contended that the major reason for requiring shorter times should be for fish and wildlife and sensitive environment purposes, which varies for vessels but seems irrelevant for stationary facilities. Two comments argued that the response times were too low in light of the levels agreed upon at the Negotiated Rulemaking meetings. One of these comments urged the Coast Guard to reconsider these response times because current response times are difficult and expensive to achieve. One comment urged the Coast Guard to review and revise the response times in light of response capability. This comment also urged the Coast Guard to clarify that response times apply to arrival on-scene rather than deployment of response resources and argued that the Coast Guard should only require first tier dispersants to be on-scene within 12 hours, with more dispersants being available as needed.

The Coast Guard contends that the tiering concept is valid and adequately approximates the availability of response resources. The tiering process reflects the arrival of available response resources from nearby and more distant locations. The response times in this rule are different than those applicable to vessels. The response times for vessels are predicated on responding to an incident at the outermost boundaries of the applicable areas, including up to 6 hours on-water transit of response equipment. Since MTR facilities are located on or along the shoreline, it will not be necessary to account for extensive over-water transit times. The response times provided in the final rule are for the planned arrival of response resources at the MTR facility which is the likely site of the initial cleanup activity and does not account for on-water deployment time. Therefore, the transit times in this final rule are less than those provided for vessel response plans.

One comment addressed the definition of tiers and urged the Coast Guard to adopt the EPA terminology and definitions of tiers to avoid confusion and duplication. The EPA and the Coast Guard have used the same approach to the concept of tiering response resources. Tier has been defined under § 154.1020 of the final rule.

*Identification of firefighting capability.* The Coast Guard received several comments on firefighting capability requirements (§ 154.1045(j)). Because many of the requirements for firefighting capability in this section also are contained in §§ 154.1047 and 154.1049, comments addressing those sections also will be discussed.

Two comments suggested that the coordinator of firefighting activities for a facility should be extremely familiar with the facility and its operations. Additionally, one comment argued that "sufficient firefighting capacity" would be difficult to define and should not be included in the rule. Another comment urged the Coast Guard to develop more specific firefighting requirements.

The many variables involved in the design and construction of MTR facilities, the products handled, and the conditions encountered in an actual fire, preclude the development of a fixed definition or formula for calculating "sufficient firefighting capacity." The IRF and the final rule require a facility owner or operator to provide an in-house expert to work with the local and facility firefighting resources. This in-house expert is responsible for verifying that the firefighting resources are sufficient to respond to a worst case scenario. The Coast Guard believes that this approach is flexible enough to be adapted to the peculiarities of different facilities, and at the same time, provides the best practical assurance that the firefighting resources identified in the plan will be able to handle a fire or explosion resulting in a facility's worst case discharge scenario.

One comment argued that firefighting should be addressed by the facility itself along with its local fire department. As written, the rule requires a facility owner or operator to work with local fire departments through an in-house expert when developing and implementing response planning requirements. The rule requires additional firefighting capability, ensured by contract or other approved means, only when both the facility's firefighting resources and the local firefighting resources are inadequate.

One comment argued that petroleum oil fires are so rare that firefighting contracts should not be required. The Coast Guard disagrees. A facility owner or operator must be prepared to respond to any situation which may cause or arise from a petroleum oil discharge into the marine environment. Section 311(j)(5)(C)(iii) of the FWPCA requires resources to remove, mitigate or prevent a discharge including one caused by fire. The Coast Guard has consistently interpreted this provision to authorize the requirement that response plans ensure the availability of firefighting resources by contract or other approved means.

One comment suggested that the Coast Guard cross-reference other applicable firefighting sections of the regulation (§§ 154.1047 and 154.1049). The Coast Guard has determined that

these requirements should be set out in each section for ease of reference.

*Consistency with ACP(s).* The Coast Guard received one comment on § 154.1045(k). This comment argued that according to the IFR, a response method not mentioned in the ACP would be considered appropriate to protect fish and wildlife and sensitive environments. This comment suggested that the Coast Guard change the language of the IFR to indicate that the response plan must be consistent with the appropriate ACP.

The Coast Guard has revised this section of the final rule to state that any plan submitted 6 months or more after the appropriate ACP is published must be consistent with that ACP. A plan that is consistent with that ACP must at least identify the fish and wildlife and sensitive environments covered by the ACP; however, a facility owner or operator who has identified additional fish and wildlife and sensitive environments also may identify these areas in the plan. The IFR provision was developed so that the facility owner or operator who submitted a response plan prior to the publication of the ACP would not be required to resubmit or amend the plan once the ACP was published or at the time of each annual revision of the ACP. However, since the publication of the IFR, all of the ACPs have been published; therefore, all facility owners or operators making initial plan submissions under the final rule, the required annual update, or resubmitting plans at the plan's 5-year resubmission date will be required to submit plans which are consistent with the appropriate ACP.

*Future caps review process.* The Coast Guard received seven comments which addressed the provisions of § 154.1045(m) regarding the review of caps in the years 1998 and 2003. One comment argued that the Coast Guard should delete the 1998 cap increases until the need for such increases is assessed. This comment contended that the percentage increase as noted currently in the regulations is arbitrary and instead should be based on valid data.

One important goal of OPA 90 is to increase the overall oil spill response capability in the United States. The Coast Guard believes that setting the 1998 cap now provides a clear upper target for which facility owners or operators and the oil spill response industry must plan. The Coast Guard, however, will conduct an evaluation of the 1998 cap increase to determine if it remains practicable before it becomes effective.

Four comments suggested that if the spill history of a facility between 1993 and 1998 is consistently better than required, then the 25 percent increase in caps should not be required. These comments argued that such an exemption would encourage a quick response to an oil spill. Although the Coast Guard encourages rapid response to an oil spill, it does not believe that exempting certain facilities from the cap increases will expedite a facility's spill response. Additionally, this option does not move toward Congress's goal to increase the overall spill response capacity in the United States.

One comment suggested that planning caps be increased when the plan is due for resubmission rather than in 1998. The Coast Guard has determined that the planning caps will be increased in 1998 provided that the required review confirms the practicability of the increases. A facility owner or operator will not be required to incorporate these caps into their plans until the Coast Guard completes the review.

One comment suggested that the caps be rejected because the Coast Guard offers no rationale for the levels prescribed. This comment further suggested that the Coast Guard reevaluate its approach to caps and instead base it on an analysis of what would be a response to the maximum extent practicable. Alternatively, this comment suggested that the cap increases in Table 5 of the regulations would be acceptable if the amounts were doubled initially.

As discussed in the VRP NPRM (57 FR 27514, June 19, 1992), the caps set out in the IFR were established by the Coast Guard upon recommendation by the Negotiated Rulemaking Committee. The Committee recognized that the current limits on response technologies would require a cap to be placed on the amount of response resources required to be identified for responding to a petroleum oil discharge to the maximum extent practicable. The caps established in the IFR reflect the Coast Guard's assessment of the overall response capability that can be achieved in the United States by 1998 taking into account factors such as anticipated advances in skimming efficiencies and technology, the development of high rate response techniques, and other applicable response technologies.

*Identification of equipment above Tier 3 cap.* One comment was received addressing this provision. It argued that the capability may not exist to meet this requirement. Through its discussions with representatives of the spill response industry, the Coast Guard has determined that adequate response

resources are currently available to enable facility owners or operators to meet this requirement. The final rule requires the identification of response equipment above the Tier 1 and 2 caps, as well as the Tier 3 cap. Since there is no requirement to contract for these resources, this is not a significant change. Response plans submitted prior to the IFR, following the guidance in NVIC 7-92, readily met this requirement.

*Section 154.1047 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Group V Petroleum Oils*

The Coast Guard received three comments on this section which requires the inclusion of certain information in response plans for facilities involving Group V petroleum oils. One comment addressed this section generally, asking for clarification of the term "the impact of such discharges" in paragraph (c)(4) of this section which requires the identification of equipment necessary to assess the impact of a worst case discharge of Group V petroleum oils to the maximum extent practicable. The physical characteristics of Group V petroleum oils make them likely to sink when spilled. As a result, traditional response techniques such as containing the spread of the oil on the surface of the water are often ineffective against these petroleum oils. The Coast Guard has required equipment to assess the impact of Group V petroleum oil discharges because that impact cannot be ascertained by the usual methods such as visual examination. The impact of discharges of Group V petroleum oil will only be detectable through the use of such methods as sonar or sampling equipment which can, for example, ascertain what petroleum oil has sunk to the bottom or remains suspended in the water column.

*Response time for deployment of response equipment.* One comment was received which concerned the provisions in § 154.1047(d) regarding the required response time for deployment of equipment. This comment argued that the 24-hour response time would not necessarily be the best for heavy petroleum oils since they are best recovered after hardening. This comment further argued that the Coast Guard should design more appropriate response times for Group V petroleum oils in general and asphalt in particular. The Coast Guard has designed the response times to ensure that an effective response is made while taking into account the different properties of the various petroleum oils,

as well as the different natures of the MTR facilities and their operating environments. The Coast Guard recognizes that Group V petroleum oils react differently from other petroleum oils and this is why the Coast Guard separated these oils into a different category. The Coast Guard believes that the 24-hour response time is appropriate given the varied nature of Group V petroleum oils themselves, as well as the varied environments and conditions in which a discharge might occur.

*Firefighting capability.* The Coast Guard received one comment addressing the requirements for firefighting capability contained within § 154.1047(e). This comment argued that "sufficient firefighting capacity" would be difficult to define and should not be included in the rule. This comment further argued that firefighting should be addressed by the facility itself along with its local fire department. Identical comments were also made to §§ 154.1045 and 154.1049. See § 154.1045 of this preamble for the Coast Guard response.

*Section 154.1049 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Non-Petroleum Oil*

*Firefighting capability.* The Coast Guard received one comment addressing the requirements for firefighting capability contained within § 154.1049(e) of the IFR. This comment argued that "sufficient firefighting capacity" would be difficult to define and should not be included in the rule. This comment further argued that firefighting should be addressed by the facility itself along with its local fire department. Identical comments also were made to §§ 154.1045 and 154.1047. See § 154.1045 of this preamble for the Coast Guard response.

*Non-Petroleum Oils.* The Coast Guard received comments addressing the issue of whether the requirements set forth in the IFR for petroleum oils should apply to animal fats and vegetable oils and other non-petroleum oils. The comments proposed that animal fats and vegetable oils should be more clearly differentiated from petroleum based oils. The comments also suggested allowing unique response procedures for non-petroleum oil spills.

In support of their proposals, the comments provided an industry sponsored study entitled "Environmental Effects of Releases of Animal Fats and Vegetable Oils to Waterways" and an associated study. The study claimed that the presence of these oils in the environment does not cause significant harm. The study

reached its conclusion based upon its assertions that animal fats and vegetable oils are not toxic to the environment; are essential components of human and wildlife diets; readily biodegrade; and are not persistent in the environment like petroleum oils. The industry study also found that these oils can coat aquatic biota and foul wildlife, causing matting of fur or feathers which may lead to hypothermia; and that animal fats and vegetable oils in the environment have a high Biological Oxygen Demand which could result in oxygen deprivation where there is a large spill in a confined body of water that has a low flow and a low dilution rate.

The comments acknowledged that the International Maritime Organization (IMO) Subcommittee on Bulk Chemicals recently recognized the potentially harmful effect on birds from contact with floating animal fats and vegetable oils discharged from vessels. The comments also conclude, based upon Coast Guard data, that the likelihood of a non-petroleum oil spill of a magnitude to cause environmental harm is extremely small. Additionally, the comments noted the differences in the average size of the vessels which carry petroleum and non-petroleum oils.

In the preamble to the VRP IFR, the Coast Guard disagreed with comments on the VRP NPRM which claimed that edible oils pose less relative risk to the environment. The environmental effects of discharges of non-petroleum oils are clearly documented and in many respects are similar to the environmental effects of discharges of petroleum oils.

In letters to the docket, the Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Fish and Wildlife Service (FWS) discussed the environmental effects of discharges of animal fats and vegetable oils and other non-petroleum oils. DOI, NOAA and FWS all concluded that these oils pose risks to the marine environment when spilled.

The agencies attributed the detrimental effects of non-petroleum oils to the similarity in physical properties between petroleum and non-petroleum oils. The effects outlined by DOI and NOAA include physical coating of bird feathers and mammal fur leading to hypothermia, a loss of buoyancy, and subsequent mortality. All three agencies also confirmed the industry report's conclusion that discharges of non-petroleum oils can result in increased Biological Oxygen Demand in receiving waters, thereby decreasing available oxygen in the

affected waterbody and often resulting in fishkills. NOAA also stated that coconut and palm oils are very viscous and when spilled in most coastal waters would behave like Crisco (a hydrogenated animal fat) probably persisting for over a decade.

The Fish and Wildlife Service letter specifically responded to the industry sponsored study. The FWS expressed great concern over the veracity of many of the study's conclusions. The FWS characterized the industry study as "misleading, weak and erroneous" and stated that "key facts have been misrepresented, are incomplete or are omitted," and that "[t]he biggest oversight of the (industry study) is the insignificance given to the fouling potential of the edible oils."

The FWS acknowledged that there are differences between petroleum and non-petroleum oils including different toxicity levels. It pointed out that physical fouling is similar for both petroleum and non-petroleum oils, and additionally, that the removal of non-petroleum oils can be more difficult and strenuous for the wildlife because, in many instances, complete removal can only be accomplished with scalding hot water and excessive washing. The FWS also stated that wildlife rehabilitators consider edible oils and fats to be some of the most difficult substances to remove from wildlife because the low viscosity of these oils allows deeper penetration into the plumage of fur, creating a more thoroughly contaminated animal.

The FWS was extremely critical of the industry study for suggesting that ingestion of edible oils is harmless to wildlife. The FWS stated that the study misleads uninformed readers by not clarifying that these oils, if consumed in large quantities, will cause harm to organisms through means other than toxicity. For example, according to the FWS, the ingestion of large quantities of non-petroleum oils can cause lipid pneumonia, diarrhea, and dehydration in birds or other wildlife which try to clean these oils from their feathers or coats by preening. This problem is magnified, also according to the FWS, by the fact that these oils do not have a repugnant smell or iridescent appearance to frighten wildlife away, therefore making it more likely that wildlife will come in contact with them during a spill.

In addition to the agency letters, the Coast Guard has placed in the docket several studies attesting to the harmful effects of non-petroleum oils in the environment. One such study, conducted by the International Maritime Organization (IMO) is titled "Harmful

Effects on Birds of Floating Lipophilic Substances Discharged from Ships." This study examined the literature concerning non-petroleum oils spilled into the environment and concluded that a number of lipophilic substances, including vegetable oils, cause lethal harm to birds as a specific group of marine life. The study found that lipophilic substances adhere to the feathers of seabirds due to the lipophilic character of the feathers' wax layer. This causes the grid structure of the plumage to be disrupted thereby destroying its insulating properties.

The IMO study gives numerous examples of lethal contamination of seabirds by lipophilic substances spilled from ships. These examples include the death of thousands of seabirds because of a discharge of palm oil off the Netherlands coast; over 300 dead birds as a result of a 1,000-liter spill of rapeseed oil into the harbor of Vancouver, Canada; diseased gannets found along the Dutch coastline whose plumage was found to be coated with paraffin and consequently was no longer water repellent; and surveys of Dutch beaches in 1990 which found that 25 percent of the dead birds washed ashore were at least partly contaminated with vegetable oils. The IMO study also warns that a serious discharge of lipophilic substances in the open sea would cause more harm to seabirds than a nearshore discharge because the birds in the open sea would be unable to rest on shore to clean their plumage.

For these reasons, the Coast Guard has determined that a worst case discharge of animal fats or vegetable oils or other non-petroleum oils from an MTR facility could reasonably be expected to cause harm to the environment. Therefore, facilities that handle, store, or transport these oils, and meet the requirements of § 154.1015(b), are required to prepare and submit response plans. If the facility meets the criteria in § 154.1015(c) for a facility that could cause significant and substantial harm, the response plan must be approved by the Coast Guard.

Because there is insufficient data to support a finding that a spill of a large quantity of animal fats or vegetable oils or other non-petroleum oils will have less adverse impact on the environment than a spill of other kinds of oil, the Coast Guard does not believe that a facility that handles, stores, or transports these oils should have reduced response requirements from those provided in the IFR. However, the Coast Guard does acknowledge that animal fats and vegetable oils or other non-petroleum oils may behave differently from petroleum or

petroleum-based oils and has created new subparts H and I to address response plan requirements for these oils. For further information see the discussions of subparts H and I in this preamble.

The Coast Guard received one comment which requested the suspension of the IFR's implementation until hearings can be held on amending the rule to exclude animal and vegetable fats from these regulations. The Coast Guard disagrees. Animal fats and vegetable oils are considered to be oils under the FWPCA. They are specifically defined as non-petroleum oils in the final rule and may result in serious harm to the environment in the event of a discharge to navigable waters. For additional information on this issue, see response to similar comments in § 154.1015.

#### *Section 154.1050 Training*

The Coast Guard received 15 comments on this section. The comments were not in agreement about whether the Coast Guard should include more specific training requirements in the final rule. Three comments stated they wanted more detailed standards to define the frequency of refresher courses and the minimum level of Occupational Safety and Health Administration (OSHA) training required. One comment suggested making training requirements compatible with EPA standards. Five comments were against developing any additional training requirements.

The Coast Guard has not modified the training requirement of this section in the final rule; however, a new appendix D entitled "Training Elements for Oil Spill Response Plans" has been added to subpart 154 to provide guidelines to facility owners or operators for the development of the training portions of their response plans. Additionally, training guidelines for facility response plans, including refresher training, are defined in OSHA standards for emergency response operations in 29 CFR part 1910, appendix D. As indicated in appendix D to part 154, the specifics of the training program should be determined by the facility owner or operator. On the job training and experience may cover parts or all of the training requirements, as appropriate.

Many comments remarked that the responsibility of a facility owner or operator to ensure adequate training of all private response personnel in § 154.1050(d) is inappropriate, costly, and possibly duplicative when an OSRO also is required to demonstrate training. One comment argued that the Coast Guard should require OSROs rather than the owners or operators to be

responsible for training employees and maintaining proper records. The Coast Guard disagrees. While the owner or operator of the facility may shift training requirements to an OSRO through contract or agreement, the owner or operator of the facility remains responsible to ensure that adequate trained response resources are available.

One comment suggested specifying that OSHA retains enforcement authority for working conditions not addressed by Coast Guard standards. The Coast Guard agrees, but does not find it necessary to state that enforcement of the OSHA standards remains with that agency.

One comment mentioned that facilities handling only edible oils should be exempt from the training requirements. The Coast Guard believes training standards are necessary for MTR facilities regardless of the specific type of oil handled, stored, or transported. Therefore, the Coast Guard will not change the requirements.

One comment remarked that it was not practical to ensure that volunteers and casual laborers have OSHA training. In § 154.1050 (a), the Coast Guard requires only that a "method of training" be identified to comply with the requirements of 29 CFR 1910.120. Volunteers and casual laborers who are not trained or familiar with hazards associated from contact with oil must be trained to meet OSHA requirements.

#### *Section 154.1055 Exercises*

The Coast Guard has extensively revised § 154.1055 which was previously entitled "Drills" and is now entitled "Exercises." The changes make the terminology in the final rule consistent with the National Preparedness for Response Exercise Program (PREP). In response to the need to provide facility owners or operators with additional direction on conducting exercises, the Coast Guard has revised this section to specify that compliance with PREP fulfills all exercise requirements. However, participation in the PREP itself remains voluntary. If an owner or operator does not choose to participate in the PREP, they may develop their own program for compliance with the exercise requirements in this regulation.

The National Preparedness for Response Exercise Program (PREP) was developed through a joint effort of the Federal agencies implementing OPA 90 response plan regulations and other Federal representatives (e.g., natural resource trustees), state agencies, members of the regulated community, and OSROs. Four public workshops were announced in the Federal Register

and were conducted in Washington, DC, and Tampa, FL. These efforts resulted in the creation of unified requirements that reduce the possibility of owners and operators having to participate in numerous duplicative exercises. Following the PREP guidelines has been determined to be an acceptable means to satisfy the OPA 90 requirements.

*Equipment.* The Coast Guard received 16 comments on § 154.1055(a)(3), equipment deployment drills. One comment argued that facility owners and operators should not be penalized when response resources are not available due to a real emergency. The Coast Guard recognizes that actual availability of response resources may be limited by unforeseeable events such as multiple simultaneous oil spills.

Three comments requested additional information on equipment deployment. Another wanted specific information on equipment deployment drills for facilities that have no equipment of their own. One comment stated that the Coast Guard should remove mandatory equipment deployment for the entire plan drill. Two comments remarked that it would be better to require one major equipment deployment exercise in each COTP zone every 3 years. Another comment suggested that full scale drills should determine only the response time of contractors and test only strategic personnel, and not require equipment deployment. The Coast Guard's position is that equipment deployment exercises are vital for maintaining readiness and for testing the effectiveness of a facility's response plan. The revised § 154.1055 continues to require semiannual equipment deployment exercises for facility owned or operated equipment and annual equipment deployment exercises for OSRO equipment. These standards are in accord with the requirements of the PREP program.

*Frequency.* Several comments remarked that the costs of drills were excessive. Many suggested that the frequency of various drills should be decreased. Two comments requested additional details on frequency of drills and credit provisions for separate drill elements. Two comments also suggested that the number of drills required should be decreased over time because they lose effectiveness. As indicated earlier, the Coast Guard has revised the exercises section of the final rule to be in accordance with PREP. It has adjusted the frequency of some exercises. Qualified individual notification exercises are required quarterly instead of monthly and whole plan exercises may now be carried out in parts rather than all at once. The

Coast Guard believes exercises continue to be effective over time as equipment and personnel change.

A significant number of comments suggested that credit be given for equipment and personnel drill requirements when other drills provide adequate practice. The different kinds of required exercises test different aspects of a response plan. However, if an exercise includes components which fulfill the requirements for some other type of required exercise (e.g., an equipment deployment exercise that includes a qualified individual notification) then both requirements may be fulfilled by the single exercise.

Two comments suggested that an actual response situation should credit some drills. In this final rule, the Coast Guard has made participation in the PREP program satisfy all exercise requirements. Under PREP, facilities which have an actual response situation may get exercise credit. For more detailed guidance the PREP guidelines should be consulted.

Six comments remarked that participation in one drill by a spill management team (SMT) should meet the requirements for all facilities using that team. The PREP guidelines address this concern in detail; PREP allows multiple facilities using the same SMT to receive credit for a single exercise of that SMT as long as the specified criteria are met.

Seven comments wanted other Federal, state, or local drills to credit Coast Guard drills where appropriate. The Coast Guard has no control over whether other agencies give credit for Coast Guard exercises.

One comment suggested that the Coast Guard coordinate nationally to determine that credit be given only for personnel and equipment which actually participated in drills. The Coast Guard requires that the facility maintain records of exercises; and that these records be made available to the COTP upon request. A facility that lists an OSRO located outside the facility's COTP zone must still satisfy the facility's own COTP that the listed OSRO has fulfilled the applicable exercise requirements. Any facility which does not satisfy the applicable COTP that it has fulfilled its exercise requirements is subject to enforcement action by the COTP under this regulation. The Coast Guard believes that the existing requirements are sufficient to ensure that all personnel and equipment listed in facility response plans are exercised at the appropriate intervals.

*Details of plan.* The Coast Guard received 6 comments suggesting

wording changes. One general comment was received discussing the need for more detailed guidance. Due to extensive revisions of this section, these changes would not be applicable and, therefore, will not be incorporated into the text.

*Unannounced drills.* Some comments requested that the Coast Guard decrease the number of unannounced drills required by § 154.1055(b) to one drill every 1, 2, or 5 years. Many argued that unannounced drills were too costly and should either be limited due to economic concerns or not required at all. Some also remarked that such drills were unnecessary due to the need for other drills. Some comments asserted that operations should not be disrupted by unannounced drills. Others wanted facility owners and operators to be compensated for the cost associated with unannounced drills. Two comments suggested that OSROs and SMTs should only be activated if experience and available resources were believed to be inadequate, two others remarked that only the SMT should be activated. One comment suggested focusing on the initial callout only. A few comments asked that the unannounced drills be limited in scope, kept short and only required after 24-hour notification. One comment suggested requiring notification of the Coast Guard during an unannounced drill and having the Coast Guard observe the drill rather than requesting their own drills separately. Finally, one comment questioned whether customers would be expected to participate in unannounced drills and wondered who would be liable for the costs incurred. The Coast Guard finds that unannounced exercises serve an important purpose in maintaining response resource readiness. The final rule states that annually one of the required exercises (spill management team tabletop, equipment deployment, or emergency procedures) must be conducted unannounced. Unannounced means that the personnel participating in the exercise must not be advised in advance of the exact date, time and scenario of the exercise. Additionally, the facility owner or operator may be required by the COTP to conduct an unannounced exercise at the facility. These COTP initiated exercises will be limited to average most probable discharge exercises as outlined in the facility's response plan. Such exercises involve notifications and equipment deployment. Each COTP will limit the number of COTP initiated unannounced exercises to no more than 4 per year. If a facility owner or operator participates

in an unannounced exercise initiated by the COTP, the facility will be exempt from participating in a COTP initiated unannounced exercise for at least 3 years.

*Records.* The Coast Guard received 5 comments on § 154.1055(d), stating that the facility owner or operator should bear the responsibility for keeping and maintaining the records at the facility along with the plan. The comments asserted that it would suffice to have the records signed by an authorized federal representative at the drill site, rather than having the records sent to the Coast Guard. The Coast Guard has changed § 154.1055 to reflect this comment. The section now requires records to be maintained at the facility for 3 years and be made available to the Coast Guard upon request.

#### *Section 154.1060 Submission and Approval Procedures*

The Coast Guard received 9 comments addressing the proposed requirement for a maximum validation period of up to 5 years. Three comments did not support having a plan expiration date at all, suggesting that the Coast Guard would not have sufficient time to approve the new plans. Four comments suggested that substantive changes as a result of major NCP or ACP revisions should not require plans to be resubmitted until the 5-year term is complete. Several comments did not want facility owners or operators to be required to resubmit plans when no substantive changes were made. One comment asked for clarification as to whether plans must be resubmitted to the Coast Guard 5 years from the date of COTP approval or every 5 years, regardless of whether there have been revisions.

OPA 90 requires a facility owner or operator to resubmit response plans to the Coast Guard for information or approval, as appropriate. In the IFR, the Coast Guard required that response plans must be resubmitted every 5 years regardless of whether any revisions have been made. In his memorandum of April 21, 1995, President Clinton directed agencies to reduce by one-half the frequency of regularly scheduled reports that the public is required to provide to the Government. An exception to this requirement is provided when the agency head determines that such action would not adequately protect the environment or would impede the effective administration of the agency's program. The Coast Guard has reviewed the need for resubmission of response plans at 5-year intervals, and has concluded that extending this to 10 years would not

ensure that plans were still viable and would not meet the goal of OPA 90, to improve the response to spills of oil. Changes in technology and in available response resources over a 5-year period may make a response plan fall below acceptable standards. To effectively administer an oversight program and ensure that the maximum practicable response capability is being utilized, review of response plans at 5-year intervals is considered to be an appropriate balance between program needs and reporting burden. The Secretary of Transportation has approved retaining the requirement to submit response plans at a maximum interval of 5 years.

Although the plans need not be resubmitted until the end of the 5-year term, major revisions to a response plan as set out in § 154.1065(b) must be sent to the COTP within 30 days; and deficiencies in an originally submitted plan or a 5-year resubmission of a plan, must be corrected within the time specified by the COTP. NCP or ACP changes will not require resubmission of the plan until the 5-year term is complete. The requirements for plan resubmission after the 5-year term are set out in § 154.1060 of the final rule. The COTP will notify the facility owner or operator in writing of the status of the plan.

Another two comments requested 60 days rather than 30 days to forward major plan corrections to the COTP in response to COTP noted deficiencies in the originally submitted plan, or a 5-year plan resubmission. Several comments proposed that the COTP determine the time period for sending such plan corrections, but that the period be not less than 30 days. As a result of the comments on the 30-day time limit for sending plan corrections to the COTP in response to COTP noted deficiencies, the Coast Guard has changed this provision and now requires that a facility owner or operator correct noted deficiencies within the time period provided by the COTP. This adjustment allows for greater flexibility in determining an appropriate time period based on the corrections needed.

Two comments expressed concern over the number of copies needed to review the facility response plan, and asserted that only one copy was needed by the COTP. The comment also argued that the COTP need not return the approved plan, but instead, that an approval notice would be sufficient. The Coast Guard has changed § 154.1060 of the final rule to require only one copy of the plan to be submitted to the COTP. Additionally, one copy of the plan must be maintained at the facility in a

position where the plan is readily available to persons in charge of conducting transfer operations.

Two comments suggested that a copy of the plan should be forwarded to the state water pollution control agency and the emergency response organization's and be available to the local response organizations upon request. Any state agency which desires a copy of the response plan should request one from the facility owner or operator directly. The Coast Guard cannot involve itself in matters which would be largely governed by state statute. In order to fulfill the requirements for exercises under § 154.1055, OSROs must be familiar with any response plans in which they are listed. The Coast Guard leaves to the owners or operators and their OSROs the specific method by which the OSROs will gain the needed familiarity with the plan.

One comment stated that there should be an appeals process, allowing the facility owner or operator to contest the COTP decision. Both the IFR and the final rule already contain an appeal process located in § 154.1075 and entitled "Appeal process."

#### *Section 154.1065 Plan Review and Revision Procedures*

The Coast Guard received 6 comments on the revision of plans. Four comments requested that the facility owner or operator be given at least 6 months to incorporate major revisions into the plan. One comment suggested that the rule needed a better definition of which facilities are required to revise plans. Another comment requested clarification of which revisions to facility plans require notification of the Coast Guard.

Section 154.1065 requires all facilities to review their plans annually and to send any revisions to the COTP for information or approval; or if no revisions are made during the course that year, the facility owner or operator must certify by letter to the COTP that the plan remains valid with no revisions. Revisions which must be submitted to the COTP for approval or inclusion in the plan are listed in § 154.1065(b). Requirements for 5-year plan resubmission have been removed from § 154.1065(b)(7) and now are specified in § 154.1060(e) of the final rule.

The Coast Guard received two comments recommending that plan revisions be sent to the COTP before planned actions occur, to ensure COTP approval. A 30-day period for approving a plan was also suggested. In order to meet the statutory requirements of OPA 90, facilities must operate in full

compliance with their submitted response plan. The Coast Guard concludes that a 30-day period is appropriate for COTP action on submitted revisions(s); and as an effective date for submitted revision(s). This final rule provides that when revision(s) to a plan are necessary, the facility owner or operator must submit the proposed revision(s) to the COTP. The COTP will review the proposed revision(s) and will provide any necessary feedback to the facility owner or operator within 30 days. The revisions will become effective not later than 30 days from their submission to the COTP, unless the COTP indicates otherwise.

Another comment argued that requiring annual certification by facility owners and operators was too administratively burdensome to the Coast Guard. Five comments suggested that it should only be necessary to notify the Coast Guard of significant changes to the plan. Two comments requested that facilities be allowed to file a letter at the facility instead of placing it with the plan itself to avoid unnecessary paper buildup. The Coast Guard has reviewed this requirement in light of these comments and the President's directive to reduce reporting requirements and has eliminated the requirement to submit an annual certification that the owner or operator has reviewed the facility response plan. The regulation has been modified to reflect that the owner or operator is still required to annually review the plan and notify the Coast Guard of changes; however, no report is required if changes are not needed.

#### *Section 154.1070 Deficiencies*

The Coast Guard received 6 comments addressing this section. One comment stressed that the Coast Guard should allow 30 days, rather than 7, to appeal a deficiency notice from the COTP. Another comment argued that 60 days minimum should be allowed to correct deficiencies. Other comments stated that the revised plan should be submitted within a time period provided by the COTP, after a minimum of 30 days. It has been the Coast Guard's experience that the 7 day appeal limit allows adequate time for a facility owner or operator to make an initial appeal of a COTP issued deficiency and it is not expected that a shorter time frame would be imposed unless a significant hazard exists. However, because these time requirements are relatively new, the Coast Guard will continue to monitor this time frame as well as other time limits contained in

the FRP appeal process and may modify the time limits in the future.

One comment urged the Coast Guard to provide more detail on enforcement mechanisms. The Coast Guard has provided guidance directly to the COTPs responsible for enforcing these regulations. This guidance will be updated as the Coast Guard gains more experience in the review and usefulness of response plans.

#### *Section 154.1075 Appeal Process*

The Coast Guard received 6 comments concerning the appeal process. Four comments wanted the scope of appealable issues more clearly defined. Another comment stated that the Coast Guard should allow a time period to determine whether a facility is a substantial harm, or significant and substantial harm facility. The comment continued by arguing that notification to a facility owner or operator of reclassification should occur within 60 days. If no response is received within this time frame, then the facility owner or operator can assume that reclassification is accepted. The comment continued by stating that 30 days should be allowed to appeal the COTP's decision to the District Commander. Another comment agreed and stressed that facility owners and operators should be able to appeal the COTP's decision that a plan is not adequate. A facility owner or operator may appeal any initial determination made by a COTP regarding that facility's plan. This includes but is not limited to, classification decisions, reclassification decisions and deficiency decisions. The Coast Guard believes the present procedures give owners or operators sufficient time and opportunity to appeal a decision.

Subpart G—Additional Response Plan Requirements for a Trans-Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska

#### *Section 154.1120 Operating Restrictions and Interim Operating Authorization*

The Coast Guard received one comment recommending that it establish a 4-day time limit in which a 200,000 barrel spill must be removed. The comment also suggested changing the wording in this section by replacing "provided, through an oil spill removal organization required by § 154.1125" with "ensured, by contract or other approved means." The Coast Guard concludes that the required response times are appropriate and will ensure that adequate response is made in

Prince William Sound. A set 4-day time limit would be too inflexible and would not take into account varying conditions. Section 154.1110 of subpart G requires a TAPAA facility owner or operator to meet all requirements of subpart F in addition to the requirements of subpart G itself. Because subpart F includes requirements for ensuring by contract or other approved means any OSRO, a restatement of the requirement in subpart G is unnecessarily repetitive.

The comment also recommended that the Coast Guard include a statement telling facility owners or operators that plan approval for Prince William Sound facilities is valid only as long as the Prince William Sound Regional Citizens Advisory Council is funded in accordance with OPA 90. The Coast Guard agrees with the comment and has added language to § 154.1120 to that effect.

#### *Section 154.1125 Additional Response Plan Requirements*

The Coast Guard received one comment on this section stating that additional communities should be included for training. The communities suggested are Seward, Seldovia, Homer, and Kodiak, Alaska. The comment also argued that a minimum of 2,000 trained personnel should be required to remove a 200,000 barrel discharge. The Coast Guard finds that the existing list of communities is currently sufficient and is not adding the communities suggested in the comment. However, should circumstances change, a COTP may recommend adding ports if the spill training requirements are deemed appropriate. This change would be subject to a notice and comment rulemaking project. There were no specific details included in this comment as to the basis for requiring 2,000 personnel for a spill of 200,000 barrels. The COTP has a great deal of experience in this type of operation, and he or she is the one who makes the determination as to the number of personnel necessary for the cleanup of a spill.

#### *Section 154.1130 Requirements for Requisitioned Response Equipment*

The Coast Guard received one comment on this section of the IFR. The comment agreed that an independent inspection or certification entity was a good idea. The comment also stated that the section should be revised to include the standard for response capabilities which is currently 200,000 barrels per day in the Prince William Sound to reflect the true maximum extent practicable. Maximum extent

practicable is based upon the planned capability to respond to a worst case discharge in adverse weather. The standards set forth in the IFR, and continued in the final rule, include a daily recovery rate of 30,000 barrels per day on scene within 2 hours, and a daily recovery rate of 40,000 barrels on scene within 18 hours. In addition, § 154.1130 also requires on-water storage capability of 100,000 barrels to be on scene within 2 hours, and on-water storage capability of 300,000 barrels to be on scene within 12 hours. The Coast Guard concludes that the standards set forth are sufficient to protect Prince William Sound and meet OPA 90's requirement of a response to the maximum extent practicable.

#### *Section 154.1140 TAPAA Facility Contracting With a Vessel*

The Coast Guard received one comment that the section on TAPAA facility contracting with a vessel was unclear because it referred to subpart G of the VRP IFR, which does not exist. The Coast Guard has corrected the cross reference in this section of the FRP final rule to refer to subpart E of the VRP final rule.

#### *Subpart H—Response Plan Requirements for Facilities That Handle, Store, or Transport Animal Fats and Vegetable Oils*

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. It requires such facilities to also meet the applicable requirements set forth in subpart F of this part. This subpart, and subpart I, were created to address concerns that some of the criteria proposed in subpart F of this part were not applicable to animal fats and vegetable oils, and other non-petroleum oils. The specific comments on non-petroleum oils which the Coast Guard received are addressed in this preamble under § 154.1049 which was the non-petroleum oils section of the IFR.

In the preamble to the VRP IFR, the Coast Guard stated that it had been unable to verify that the evaporation and emulsification factors in appendix B of the VRP IFR were applicable to both petroleum oils and non-petroleum oils. As a result of that determination, non-petroleum oils were divided from petroleum oils in both the Vessel and MTR Facility Response Plan regulations.

In response to the comments to the IFR on this issue, the Coast Guard is creating two new subparts and further subdividing non-petroleum oils into three categories. Subpart H covers

animal fats and vegetable oils, and subpart I covers other non-petroleum oils.

These new subparts and categories are intended to form the foundation of possible future rulemaking efforts in this area. The Coast Guard welcomes information that may be useful in determining the types and quantities of response equipment necessary to respond to a discharge of these oils, and information on new or innovative response techniques that will be appropriate for these oils. This information would be helpful in deciding whether additional rulemaking is appropriate.

Section 154.1225 requires owners or operators of MTR facilities that handle, store, or transport animal fats and vegetable oils to identify the procedures and equipment necessary to respond to a worst case discharge of these oils to the maximum extent practicable. Animal fats include lard, tallow and other oils of animal origin. Vegetable oils include oils from seeds, nuts, kernels or fruits of plants such as corn oil, safflower oil, jojoba oil, coconut oil or palm oil. Subpart H allows the owner or operator of the facility to propose the amount of equipment needed to respond to a worst case discharge of animal fats or vegetable oils to the maximum extent practicable. It does not include specific requirements for identifying the amount of response resources. The Coast Guard will evaluate the information submitted by the owner or operator of the facility to determine if the resources identified are consistent with the volume of animal fats or vegetable oils that may be spilled as a result of the worst case discharge. This procedure was the same in the IFR.

As with petroleum oils, the owner or operator must ensure the availability of removal equipment through contract or other approved means. At a minimum, the owner or operator of the facility must obtain a letter from an oil spill removal organization stating that it will respond to a worst case discharge from the facility. It is not intended that this letter imply a formal contractual agreement between the parties but that the owner or operator has identified specific response resources and that those resources will respond to a worst case discharge from the facility.

Section 154.1225 also requires the owner or operator of an MTR facility that handles, stores, or transports animal fats and vegetable oils to contract for firefighting resources should the facility not have access to sufficient local firefighting resources. For further discussion of firefighting

resources see the preamble discussion of § 154.1045(j).

The Coast Guard has included in subpart H, for animal fats and vegetable oils, § 154.1225(f) on the use of dispersants, and other similar, new, or unconventional spill mitigation techniques including mechanical dispersal. Response plans for facilities located in environments with year-round preapproval for use of chemical dispersants will be allowed to receive credit up to 25 percent of the plan's required worst case planning volume. In all cases, the identified response measures must comply with the NCP and the applicable ACP.

The Coast Guard has included in appendix C a new paragraph 2.8 covering non-petroleum oils including animal fats and vegetable oils.

#### Subpart I—Response Plan Requirements for Facilities That Handle, Store, or Transport Other Non-petroleum Oils

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports non-petroleum oils other than animal fats and vegetable oils. It requires such facilities to also meet the applicable requirements set forth in subpart F of this part. This subpart was created to address industry concerns with grouping animal fats and vegetable oils together with other non-petroleum oils. This separation of animal fats and vegetable oils from other non-petroleum oils recognizes that while animal fats and vegetable oils have harmful effects, they are not toxic to the marine environment as maybe other non-petroleum oils. The specific comments on non-petroleum oils which the Coast Guard received are addressed in this preamble under § 154.1049 which was the non-petroleum oils section of the IFR.

Section 154.1325 requires owners or operators of MTR facilities that handle, store, or transport other non-petroleum oils to identify the procedures and equipment necessary to respond to a worst case discharge of these oils to the maximum extent practicable. Other non-petroleum oils include those that are not animal fats or vegetable oils such as essential oils, turpentine and tung oil.

Section 154.1325 allows the owner or operator of the facility to propose the amount of equipment needed to respond to a worst case discharge of other non-petroleum oils to the maximum extent practicable. It does not include specific requirements for identifying the amount of response resources. The Coast Guard will evaluate the information submitted

by the owner or operator of the facility to determine if the resources identified are consistent with the volume of other non-petroleum oils that may be spilled as a result of the worst case discharge. This procedure was the same in the IFR.

As with petroleum oils, § 154.1325 requires that the owner or operator must ensure the availability of removal equipment through contract or other approved means. At a minimum, the owner or operator of the facility must obtain a letter from an oil spill removal organization stating that it will respond to a worst case discharge from the facility. It is not intended that this letter imply a formal contractual agreement between the parties but that the owner or operator has identified specific response resources and that those resources will respond to a worst case discharge from the facility.

Subpart I also requires the owner or operator of an MTR facility that handles, stores, or transports other non-petroleum oils to contract for firefighting resources should the facility not have access to sufficient local firefighting resources. For further discussion of firefighting resources see the preamble discussion of § 154.1045(j).

Under subpart I, a response plan may propose, for other non-petroleum oils, the use of other spill mitigation techniques provided that the identified response measures comply with the NCP and the applicable ACP.

The Coast Guard has included in appendix C a new paragraph 2.8 covering the evaluation of response plans for non-petroleum oils including other non-petroleum oils.

#### Appendix C of Part 154. Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

The Coast Guard received one comment recommending that special allowance be made for harbors since they often have conditions similar to rivers and canals. The comment also recommended that such special allowance not be limited only to waterways having depths of 12 feet or less. The Coast Guard disagrees. The term harbor is a broad term and can be applied to a sheltered part of a body of water deep enough to provide anchorage for ships. In reality, a harbor may range from small embayments to large bodies of water. Under the final rule, a harbor could be considered as either being in a rivers and canals operating environment or an inland operating environment. The 12 feet project depth was selected as part of the rivers and canals operating environment to assist

in establishing the ability of response resources to operate in specific water depths. The Coast Guard finds that the depth of 12 feet remains relevant in establishing the rivers and canals environment or the inland operating environment.

#### 1. Purpose

The Coast Guard did not receive comments to this section but has revised appendix C to reference the newly created subparts H and I and indicate the portions of appendix C which are applicable.

#### 2. Equipment Operability and Readiness

2.5 The Coast Guard received 2 comments on this paragraph. Both comments asked whether Table 1 adverse weather conditions can be reduced or increased if the Area Committee determines that the conditions listed in the table are not appropriate. Both comments also recommended that the local COTP be allowed to determine the applicable weather conditions until the ACP is finalized. The comments also requested a mechanism for input by the regulated community to the Area Committee before that committee's determinations are completed.

The COTP may reclassify a specific body of water or location within the COTP zone. Section 154.1045 provides details on COTP reclassification to more or less stringent operating environments. The Coast Guard has issued guidance that strongly encourages Area Committees to solicit advice, guidance, and expertise from all appropriate sources including facility owners or operators, OSROs, environmental groups, members of academia, and concerned citizens.

2.6 The Coast Guard received one comment on this paragraph. The comment noted that currently the Coast Guard, EPA and RSPA each have a different planning speed and recommended that a single standardized speed be adopted. The Coast Guard agrees and the Coast Guard, EPA, and RSPA will use the same planning speeds.

2.7 The Coast Guard received one comment on this paragraph. The comment recommended that each type of boom only be required to have compatible connectors with the same type of boom because, for example, there would be no reason to connect high seas boom to harbor or river boom. This statement in the appendix is there only to remind facility owners or operators to ensure that the equipment on which they are going to rely in the event of an oil spill will be capable of

carrying out the function for which it is intended. If boom of varying types will never be used together, the need for compatible connectors is moot.

2.8 The Coast Guard has added paragraph 2.8 covering the newly created subparts H and I.

### *3. Determining Response Resources Required for the Average Most Probable Discharge*

3.1 The Coast Guard received one comment on this paragraph. The comment expressed concern that under the IFR's current language small facilities would be required to purchase booms and boats rather than contracting for them. It recommended that the language be amended to require only a "means of initiating deployment." The Coast Guard disagrees. Section 154.1045(c) provides for the use of contracted response resources for an average most probable discharge provided that the responders can meet the stated response times.

3.2.1 The Coast Guard received one comment on this paragraph. The comment proposed that the Coast Guard amend the language on required boom length to read: "two times the length of the largest vessel \* \* \* or the amount needed to contain a 50 barrel discharge during a transfer operation." The Coast Guard disagrees. Requiring an amount of boom to contain only a "50 barrel discharge" could result in many variations between facilities. Requiring a minimum of 1,000 feet creates a more uniform standard.

3.2.2 The Coast Guard received one comment on this paragraph. The comment said that the Coast Guard should require a minimum level of sorbent material to support other recovery equipment. The Coast Guard disagrees. While sorbents are effective in certain circumstances, they are not considered major spill response equipment. They are expendable resources and may be used during routine facility operations. It is the responsibility of the owner or operator of the facility to make sure that adequate amounts of sorbent materials are available.

### *5. Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable*

5.5 The Coast Guard received one comment on this paragraph. This comment recommended that the paragraph be amended by adding language which restricts the definition of shallow water resources to vessels with a fully loaded draft of not more than six feet. The Coast Guard concludes that the response plan must

demonstrate that sufficient resources are available to operate in shallow water. It may be necessary to operate vessels at less than their fully loaded draft. In that event, it may be necessary for the response plan to identify additional resources due to vessels not being able to operate at their fully loaded draft. However, ideally only those vessels which can be utilized in a full range of loading conditions in waters of 6 feet or less depth should be listed for use in close-to-shore response activities (10% of those to be used in the offshore areas and 20% of those to be used in the nearshore inland, Great Lakes, and rivers and canals).

5.6 The Coast Guard received one comment on this paragraph. The comment suggested that a more specific planning standard be adopted for determining the required length of boom in order to avoid wide variations in interpretation. The Coast Guard disagrees. Environmental conditions vary at each recovery site and each fish and wildlife and sensitive environment that must be protected. The Coast Guard contends that there is sufficient guidance, "rules of thumb", and practical experience to be used in determining the quantities of boom necessary to contain oil or provide protective booming for fish and wildlife and sensitive environments. In addition, ACPs address the strategies to protect these areas.

### *7. Calculating Worst Case Discharge Planning Volumes*

7.2.2 The Coast Guard received one comment on this paragraph. The comment addressed the requirement that facilities which handle, store, or transport oils from different petroleum groups assume, for planning purposes, that the oil groups resulting in the largest on-water recovery volume will be stored in the tank or tanks identified as constituting the worst case discharge. The comment recommended that the oil groups resulting in the largest on-water recovery volume should apply only if the largest tank does, in fact, store the largest oil volume. The comment stated that if the product changed in a way that required more planning then the plan could be amended accordingly at that time. The marine transportation-related (MTR) facility pertains to the piping that conveys the oils between the vessel and the non-transportation-related storage tanks. The MTR facility does not generally include the storage tanks and therefore the comment applies to the non-transportation related portion which is regulated by the EPA, not the Coast Guard. The EPA has addressed

this comment in their final rule issued on July 1, 1994 (59 FR 34071).

### *8. Determining the Availability of Alternative Response Methods*

8.6 The Coast Guard received one comment on this paragraph. The comment encouraged the Coast Guard to credit a portion of the required on-water recovery capacity for in-situ burning similar to the credit allowed for dispersants. The comment asserted that in-situ burning is most effective early in a spill response and in order to use it as early as possible authority to use in-situ burning must be authorized ahead of time. The Coast Guard will not permit an owner or operator of a facility to use in-situ burning as a planning response strategy in the final rule. The use of in-situ burning is still being studied. As the effectiveness and environmental effects of non-mechanical methods of pollution recovery are studied, they may be included as alternate response strategies. The Coast Guard will evaluate in-situ burning as a permissible response strategy for capability increases in 1998.

### *9. Additional Equipment Necessary to Sustain Response Operations*

9.1 The Coast Guard received 1 comment on this paragraph. The comment expressed concern that the language of the IFR regarding additional equipment and personnel allows for varying interpretations. It recommended adoption of a planning standard using a "systems" approach to clarify the final rule. The Coast Guard agrees and concludes that the section reflects a "systems" approach to spill response. The equipment must be suitable for use with the primary equipment identified in the response plan. Section 2.4 of appendix C and § 154.1045 require that equipment must be capable of operating in the applicable operating environment.

9.2 The Coast Guard received 1 comment on this paragraph. The comment recommended using a 10-hour operating day in determining the level of adequate temporary storage capacity. The comment also asked for guidance from the Coast Guard in determining the time needed for transferring recovered oil to a temporary storage facility. The suggested guidance included pumping capacity, number of oil discharge stations, and any other pertinent factors. The Coast Guard disagrees and determines that the storage capacity should be based on the types and quantities of oil recovery identified in the plan. Pump capacities are variable and discharge stations are dependent on local factors. The owner or operator is

best equipped to estimate and certify the availability of these resources.

Appendix C of Part 154. Tables 1-5

*Table 1 Response Resource Operating Criteria*

The Coast Guard received two comments stating that Tables 1, 2 and 3 are oversimplified because they do not take into account variables such as temperature and flow rate, which the comments claim affect dissipation and emulsification rates. Another comment recommended referencing the factors used to calculate the figures in the tables. That comment asked for clarification because it stated that the 3-day quick mobilization mentioned in the explanatory note is incompatible with the 3, 4, or 6-day sustainability requirements in Table 2. The comment also claimed that the 3-day quick mobilization is inconsistent with the tiering of response equipment which is required to be on-scene within 60 hours.

The Coast Guard disagrees with these comments. Table 1 is based on information for equipment selection in the *1991 World Catalog of Oil Spill Response Products* [Schulze, Robert, ed., 1991]. The American Society of Testing and Material (ASTM) used this resource as the starting point for its oil recovery equipment standard. The values in Table 2 were drawn from the deliberations among the Negotiated Rulemaking Committee. They are based on the general behavior of oil that has been observed during actual discharges. The variances in values reflect the amount of oil most likely to be available for recovery.

The three days referred to by the comment appears in the preamble to the IFR. This reflects a desire for the planned mobilization of response resources within the first 3 days of the response. It should not be confused with the equipment sustainability listed in Table 2.

*Table 2 Removal Capacity Planning Table*

The Coast Guard received one comment remarking that the values in Table 2 should not total over 100 percent. As was explained in the IFR, the Coast Guard recognizes that the percentages exceed 100 percent in the inland, nearshore, Great Lakes, and offshore areas. This reflects a desire to increase the quantity of response that are planned for mobilization within the first 3 days of a response.

*Table 3 Emulsification Factors for Petroleum Oil Groups*

The Coast Guard received four comments on Table 3. One comment

asserted that the entire amount of oil spilled will not emulsify because emulsification occurs over time, and therefore, the IFR's rapid spill response requirements will not allow the impact to be as extensive as suggested. The comment stated that emulsification factors are only appropriate for open ocean spills from vessels; and that the factors should not apply to the total worst case discharge in river/nearshore areas. The comment also recommended that the regulations not use emulsification factors at all. Another comment pointed out that emulsification is already accounted for in the derating of recovery devices in paragraph 6.2 of appendix C. Two comments stated that Table 3 is overly simple because it does not take into account other variables which affect emulsification such as flow rate and temperature. One comment recommended that the emulsification factor for Group III oil should be changed to 3.0 to better reflect the level of Alaskan crude oil.

Emulsification factors vary considerably within an oil group and are dependent on many factors, such as temperature and weather conditions. The proposed Table 3 values were derived from ITOPF data and reflected the maximum amount of emulsification that could occur over a prolonged period of time in environmental conditions that favor the emulsification process. No other factors were proposed. The Coast Guard does not require that the entire amount of oil be emulsified. Rather the oil to be emulsified depends on the percentage of recovered floating oil taken from Table 2.

The Coast Guard disagrees with the comment that the emulsification is accounted for in the derating of recovery devices. The emulsification factors listed in Table 3 are to account for actual emulsification that occurs to the oils prior to being encountered by the skimming equipment. The derating factor included, among other things, consideration of the actual skimming device to remove oily material from water, the two issues are unrelated.

The emulsification factors in this final rule are the same as those in the VRP IFR. The factors in the VRP IFR were revised from the factors in the VRP NPRM. The factors were revised down because the Coast Guard was convinced that the original factors were too high.

*Table 5 Response Capability Caps by Operating Area*

The Coast Guard received one comment on Table 5. The comment suggested that the 1998 caps be changed to "To Be Determined" because

practical experience may demonstrate that the 1993 values may not need to be increased. The Coast Guard disagrees. The caps provided in Table 5 reflect a 25 percent increase in response resources from 1993 to 1998. Prior to these caps becoming effective, the Coast Guard will initiate a review of the cap increases. This review will determine if the scheduled increases for 1998 remain practicable and will also establish a specific cap for 2003.

Appendix D of Part 154. Interim Guidelines for Determining Economically Important and Environmentally Sensitive Areas for Facility Response Plans

The Coast Guard received 12 comments to Appendix D—Guidelines for Determining Economically Important and Environmentally Sensitive Areas for Facility Response Plans. The Coast Guard reviewed the comments and provided them to the National Oceanic and Atmospheric Administration (NOAA). NOAA used the comments in drafting its Federal Register notice entitled "Guidance for Facility and Vessel Response Plans Fish and Wildlife and Sensitive Environments."

The Coast Guard has adopted EPA's terminology in this final rule and therefore the term "Environmentally Sensitive Areas" has been changed to "Fish and Wildlife and Sensitive Environments." The Coast Guard determined that Appendix D on sensitive areas is unnecessary because fish and wildlife and sensitive environments are identified in the Area Contingency Plans (ACPs) and all coastal ACPs are now complete. Since the ACPs identify fish and wildlife and sensitive environments for each area, there is no longer a need for the Coast Guard to provide the guidance that was contained in appendix D to the IFR. Therefore, the Coast Guard has removed appendix D on sensitive areas from the final rule and has replaced it with a new Appendix D entitled "Training Elements for Oil Spill Response Plans."

Appendix D to Part 154—Training Elements for Oil Spill Response Plans

This appendix was added to the final rule to provide guidelines to facility owners and operators for the development of the training portions of their response plans. These guidelines were developed in the same manner as PREP, which is addressed in the preamble discussion on the revisions to § 154.1055.

Assessment

This final rule is a significant regulatory action under section 3(f) of

Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB) under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040, February 26, 1979). An Assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. Seven public comments addressed the Regulatory Evaluation section of the IFR. The comments are discussed in the appropriate section of this discussion.

### 1. Facility Response Plan Costs and Benefits

In the aggregate, the requirement for facility response plans will result in substantial costs to the facilities affected. If all the costs for MTR facilities affected by this rule are attributed to the Coast Guard's regulations, the present value cost of this regulation for the first 10 years is estimated at \$305.9 million. In the first year, most of this cost is attributable to conducting training and exercise evaluations and arranging for or providing adequate response capability. In subsequent years, the majority of the cost is attributable to conducting exercising and retaining the response capability. The incremental cost of the entire regulation was \$63 million for 1992, but declined to \$40 million annually in subsequent years. However, since many of these facilities are complexes which are being jointly regulated by the Coast Guard and the EPA and the total costs are already accounted for under EPA's facility response plan regulation (59 FR 34097, July 1, 1994), these costs could be reduced to reflect this fact. Thus, total present value costs for Coast Guard facility response plans will be \$90 million and incremental costs will be \$18.7 million for the first full year and \$11.9 million for subsequent years.

Four comments argued that the costs of this regulation are excessive and have not been thoroughly examined in the IFR. The Coast Guard disagrees with these comments. The Coast Guard has reexamined its cost data and concludes that costs are not excessive. Two comments argued that the \$25,000 cost estimate for large facilities is much too low and does not take into consideration expenditures such as equipment purchases, costs of training, costs of exercises, and retainer fees. With regard to exercises, two comments argued that the costs would be prohibitive. The Coast Guard disagrees

with these comments. The Regulatory Impact Analysis did take into consideration equipment purchases, costs of training, costs of exercises, and retainer fees. Facility owners or operators are already required to comply with existing pollution regulations which require them to prepare operations manuals and Spill Prevention Control and Countermeasures (SPCC) plans that address some elements of the facility response plan regulations. The Coast Guard assumed in its analysis that facility owners or operators would not be redundant when complying with requirements. The Coast Guard's analysis indicated that the requirements set forth are the most practical and least burdensome which give acceptable levels of planning for spill response.

The benefit analysis indicates an incremental volume of 230,848 discounted barrels of spilled oil (using a 7 percent discount rate) that will be recovered due to compliance with this regulation. The cost effectiveness ratio (costs divided by benefits) is \$1,325 per barrel of oil recovered.

A Regulatory Impact Analysis (RIA) is available in the docket for inspection or copying, as indicated under **ADDRESSES**. The RIA prepared for the IFR was reviewed based upon comments received and no changes made in the final rule caused a great enough impact on costs to require redrafting the RIA. It has also been placed in a separate docket (CGD 91-047) established to facilitate review of the programmatic RIA for titles IV and V of OPA 90.

One comment expressed concern that the RIA for the final rule would be different from the RIA on which the IFR was based and that an opportunity for comment would not be permitted before the rule would be finalized. While the costs and benefits in the RIA have changed from the IFR to the final rule, the change is the result of lowering the discount rate from 10 to 7 percent, reflecting a change in OMB guidance between publication of the IFR and publication of the final rule.

### 2. Additional Response Plans Requirements for Trans-Alaska Pipeline Authorization Act (TAPAA) Facilities Operating in Prince William Sound, Alaska

At present, there is only one Trans-Alaska Pipeline (TAPAA) facility operating in Prince William Sound. This facility is the Valdez Marine Terminal which is operated by Alyeska Pipeline Service Company. This facility transfers approximately 700 million barrels annually to approximately 900 tank vessels.

The increase in unit cost of handling, storing, and transporting crude oil to comply with section 5005 of OPA 90 is relatively small. This can easily be absorbed by the Alyeska Pipeline Service Company.

Overall industry costs for complying with additional response planning requirements were previously discussed in the Draft Regulatory Evaluation for Prince William Sound, Alaska referenced in the VRP NPRM published in the Federal Register on June 19, 1992 (57 FR 27514). While this specifically addressed requirements for certain vessels in Prince William Sound, Alaska, it also included the costs and benefits incurred by the sole TAPAA facility located in Prince William Sound. The costs of complying with section 5005 of OPA 90 are estimated to be \$232 million for the 10-year period, 1993 through 2002. The benefits include the quick recovery of spilled oil from the environment and subsequent reduction in net impact of the spill. The regulations for Prince William Sound are estimated to increase the volume of recovered oil by 25 percent for crude oil.

A copy of the Assessment for Prince William Sound is available in the docket for inspection or copying, as indicated under "ADDRESSES."

### Small Entities

The Coast Guard has examined the impact of this rule on small entities. Its analysis indicates that the majority of small businesses subject to this regulation should be able to absorb the estimated compliance costs without experiencing significant adverse economic effects. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

The Coast Guard received one comment to the IFR concerning the impact of the Facility Response Plan regulation on small businesses. The comment argued that smaller operators may not have the resources to comply with regulations as the Coast Guard has envisioned. The Coast Guard disagrees. The regulation may have a significant impact on a very few small facility operators. The impact on small entities of the changes in this final rule are not substantial.

### Collection of Information

This rule contains collection-of-information requirements. The Coast Guard previously submitted the requirements to the Office of Management and Budget (OMB) for

review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB approved them. The Coast Guard has submitted revised requirements to OMB for renewed approval under the current OMB Control Number 2115-0595. For subpart F, the section numbers are §§ 154.1025, 154.1030, 154.1050, 154.1055, 154.1060, and 154.1065, and the corresponding OMB approval number is OMB Control Number 2115-0595. For subpart G, the section numbers are §§ 154.1120 and 154.1125, and the corresponding OMB approval number is OMB Control Number 2115-0595. Subparts H and I refer to subpart F for all collection-of-information requirements. Accordingly, additional OMB approval is not needed.

The Coast Guard received one comment responding to this portion of the IFR, which contended that the estimated recordkeeping burden of 4.5 hours annually is much too low. The Coast Guard disagrees. The Coast Guard has reexamined its recordkeeping analysis and has concluded that its estimate is accurate.

#### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 (October 26, 1987) and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12612 and the FWPCA emphasize the President's and Congress' intent to preserve state authority to address matters of pollution prevention and response. Executive Order 12612 directs a Federal executive branch agency (which includes the Coast Guard) to encourage states to develop their own policies to achieve program objectives. Consequently, a Federalism Assessment would be necessary only if the facility response plan rule unduly impinged on a state's authority to establish its own regulatory structure, or imposed undue costs on a state.

The FWPCA provides convincing evidence of Congress' intent that, within 3 miles of shore, the protection of the marine environment should be a collaborative Federal and state effort. *Chevron v. Governor, State of Alaska*, 726 F.2d 483 (9th Cir. 1984), *cert. denied*, 471 U.S. 1140 (1985). For example, section 402 of the FWPCA (33 U.S.C. 1342) establishes the National Pollutant Discharge Elimination System, a regulatory program for regulating the discharge of pollutants into U.S. navigable waters. Minimum Federal standards apply to the discharge of certain pollutants, but the States have

authority to establish and administer their own permit systems and to set standards stricter than the Federal ones (33 U.S.C. 1342(b) and 1370). Further, in the Declaration of Goals and Policy contained in section 101 of the FWPCA (33 U.S.C. 1251), Congress states that it is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution of land and water resources.

United States courts have long recognized the rights of States to make both U.S.-flag and foreign-flag vessels conform to "reasonable, nondiscriminatory conservation and environmental protection measures \* \* \* imposed by a State." *Ray v. Atlantic Richfield*, 435 U.S. 151, 164 (1973). Also section 311(o)(3) of the FWPCA (33 U.S.C. 1321(o)(3)) contains express nonpreemption language. Therefore, a State standard setting more stringent planning requirements for facilities owners and operators in the regulating State's water is encouraged under the FWPCA and is valid as long as the State requirement does not preclude compliance with the Federal requirements. Similarly, if a State chose to establish performance requirements for response to an oil spill, the Federal facility response plan rules would not preclude that option. The Federal facility response plan rules preempt State rules only to the extent that State rules may make it impossible to comply with Federal requirements. *Florida Lime and Avocado Growers v. Paul*, 373 U.S. 132 (1963).

#### Environment

The Coast Guard considered the environmental impact of this final rule and prepared an Environmental Assessment (EA) under section 311(j) of the FWPCA (33 U.S.C. 1321(j)), and a separate EA for Prince William Sound under section 5005 of OPA 90. These documents were prepared in accordance with the Council on Environmental Quality regulations (40 CFR parts 1500-1508) and Commandant Instruction M16475.1B implementing the provisions of the National Environmental Policy Act (NEPA).

The EA prepared for section 311(j) requirements was amended when section 5209(b) of the Coast Guard Authorization Act of 1992 (Pub. L. 102-587) declared offshore supply vessels and certain fishing vessels not to be "tank vessels" for purposes of implementing the VRP rule. The Prince William Sound EA was entirely revised when section 352 of the Department of Transportation Appropriations Act effectively made section 5005 of OPA 90

inapplicable to non-TAPS-trade vessels. The original language of section 5005 created special response plan provisions applicable to all tank vessels operating in Prince Williams Sound, including non-TAPS vessels. The Coast Guard received no comments on the EAs.

The Coast Guard has identified and studies the relevant environmental issues and alternatives, and based on its assessment, does not expect this final rule to result in a significant impact on the quality of the human environment. Therefore, Findings of No Significant Impact (FONSIs) have been prepared. The revised and amended EAs and the FONSIs are available in the public docket where indicated under **ADDRESSES**.

#### List of Subjects

##### 33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

##### 33 CFR 154

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

For the reasons set out in the preamble, the interim rule amending 33 CFR parts 150 and 154 which was published at 58 FR 7330 on February 5, 1993, is adopted as final except for changes to part 154 which are set forth below:

#### **PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK**

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321 (j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

2. Subpart F of part 154 is revised to read as follows:

#### **Subpart F—Response Plans for Oil Facilities**

Sec.  
154.1010 Purpose.  
154.1015 Applicability.  
154.1016 Facility Classification by COTP.  
154.1017 Response plan submission requirements.  
154.1020 Definitions.  
154.1025 Operating restrictions and interim operating authorization.  
154.1026 Qualified individual and alternate qualified individual.  
154.1028 Methods of ensuring the availability of response resources by contract or other approved means.  
154.1029 Worst case discharge.

- 154.1030 General response plan contents.
- 154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.
- 154.1040 Specific requirements for facilities that could reasonably be expected to cause substantial harm to the environment.
- 154.1041 Specific response information to be maintained on mobile MTR facilities.
- 154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.
- 154.1047 Response plan development and evaluation criteria for facilities that handle, store, or transport Group V petroleum oils.
- 154.1050 Training.
- 154.1055 Exercises.
- 154.1057 Inspection and maintenance of response resources.
- 154.1060 Submission and approval procedures.
- 154.1065 Plan review and revision procedures.
- 154.1070 Deficiencies.
- 154.1075 Appeal process.

## Subpart F—Response Plans for Oil Facilities

### § 154.1010 Purpose.

This subpart establishes oil spill response plan requirements for all marine transportation-related (MTR) facilities (hereafter also referred to as facilities) that could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone. The development of a response plan prepares the facility owner or operator to respond to an oil spill. These requirements specify criteria to be used during the planning process to determine the appropriate response resources. The specific criteria for response resources and their arrival times are not performance standards. The criteria are based on a set of assumptions that may not exist during an actual oil spill incident.

### § 154.1015 Applicability.

(a) This subpart applies to all MTR facilities that because of their location could reasonably be expected to cause at least substantial harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone.

(b) The following MTR facilities that handle, store, or transport oil, in bulk, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines and are

classified as substantial harm MTR facilities:

- (1) Fixed MTR onshore facilities capable of transferring oil to or from a vessel with a capacity of 250 barrels or more and deepwater ports;
- (2) Mobile MTR facilities used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more; and
- (3) Those MTR facilities specifically designated as substantial harm facilities by the COTP under § 154.1016.

(c) The following MTR facilities that handle, store, or transport oil in bulk could not only reasonably be expected to cause substantial harm, but also significant and substantial harm, to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone and are classified as significant and substantial harm MTR facilities:

- (1) Deepwater ports, and fixed MTR onshore facilities capable of transferring oil to or from a vessel with a capacity of 250 barrels or more except for facilities that are part of a non-transportation-related fixed onshore facility with a storage capacity of less than 42,000 gallons; and
- (2) Those MTR facilities specifically designated as significant and substantial harm facilities by the COTP under § 154.1016.
- (d) An MTR facility owner or operator who believes the facility is improperly classified may request review and reclassification in accordance with § 154.1075.

### § 154.1016 Facility classification by COTP.

- (a) The COTP may upgrade the classification of:
- (1) An MTR facility not specified in § 154.1015 (b) or (c) to a facility that could reasonably be expected to cause substantial harm to the environment; or
  - (2) An MTR facility specified in § 154.1015(b) to a facility that could reasonably be expected to cause significant and substantial harm to the environment.
- (b) The COTP may downgrade, the classification of:
- (1) An MTR facility specified in § 154.1015(c) to a facility that could reasonably be expected to cause substantial harm to the environment; or
  - (2) An MTR facility specified in § 154.1015(b) to a facility that could not reasonably be expected to cause substantial, or significant and substantial harm to the environment.
  - (3) The COTP will consider downgrading an MTR facility's classification only upon receiving a written request for a downgrade of classification from the facility's owner or operator.

(c) When changing a facility classification the COTP may, as appropriate, consider all relevant factors including, but not limited to: Type and quantity of oils handled in bulk; facility spill history; age of facility; proximity to public and commercial water supply intakes; proximity to navigable waters based on the definition of navigable waters in 33 CFR 2.05–25; and proximity to fish and wildlife and sensitive environments.

### 154.1017 Response plan submission requirements.

(a) The owner or operator of an MTR facility identified only in § 154.1015(b), or designated by the COTP as a substantial harm facility, shall prepare and submit to the cognizant COTP a response plan that meets the requirements of §§ 154.1030, 154.1040, 154.1045, or § 154.1047, as appropriate. This applies to:

- (1) A mobile MTR facility used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more; and
- (2) A fixed MTR facility specifically designated as a substantial harm facility by the COTP under § 154.1016.

(b) The owner or operator of an MTR facility identified in § 154.1015(c) or designated by the COTP as a significant and substantial harm facility shall prepare and submit for review and approval of the cognizant COTP a response plan that meets the requirements of §§ 154.1030, 154.1035, 154.1045, or 154.1047, as appropriate. This applies to:

- (1) A fixed MTR facility capable of transferring oil, in bulk, to or from a vessel with a capacity of 250 barrels or more; and
- (2) An MTR facility specifically designated as a significant and substantial harm facility by the COTP under § 154.1016.

(c) In addition to the requirements in paragraphs (a) and (b) of this section, the response plan for a mobile MTR facility must meet the requirements of § 154.1041 subpart F.

### § 154.1020 Definition.

Except as otherwise defined in this section, the definition in 33 CFR 154.105 apply to this subpart and subparts H and I.

*Adverse weather* means the weather conditions that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include, but are not limited to, significant wave height as specified in §§ 154.1045, 154.1047, 154.1225, or 154.1325, as appropriate;

ice conditions, temperatures, weather-related visibility, and currents within the COTP zone in which the systems or equipment are intended to function.

*Animal fat* means a non-petroleum oil, fat, or grease derived from animals, and not specifically identified elsewhere in this part.

*Average most probable discharge* means a discharge of the lesser of 50 barrels or 1 percent of the volume of the worst case discharge.

*Captain of the Port (COTP) Zone* means a zone specified in 33 CFR part 3 and, where applicable, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ).

*Complex* means a facility possessing a combination of marine-transportation related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.

*Exclusive economic zone (EEZ)* means the zone contiguous to the territorial sea of the United States extending to a distance up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

*Facility that could reasonably be expected to cause significant and substantial harm* means any MTR facility (including piping and any structures that are used for the transfer of oil between a vessel and a facility) classified as a "significant and substantial harm" facility under § 154.1015(c) including a facility specifically designated by the COTP under § 154.1016(a).

*Facility that could reasonably be expected to cause substantial harm* means any MTR facility classified as a "substantial harm" facility under § 154.1015(b) including a facility specifically designated by the COTP under § 154.1016(a).

*Fish and Wildlife and Sensitive Environment* means areas that may be identified by either their legal designation or by Area Committees in the applicable Area Contingency Plan (ACP) (for planning) or by members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include: Wetlands, national and state parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, areas of economic importance, recreational areas, national forests, Federal and state lands that are research areas, heritage program areas, land trust

areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

*Great Lakes* means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

*Higher volume port area* means the following ports:

- (1) Boston, MA.
- (2) New York, NY.
- (3) Delaware Bay and River to Philadelphia, PA.
- (4) St. Croix, VI.
- (5) Pascagoula, MS.
- (6) Mississippi River from Southwest Pass, LA. to Baton Rouge, LA.
- (7) Louisiana Offshore Oil Port (LOOP), LA.
- (8) Lake Charles, LA.
- (9) Sabine-Neches River, TX.
- (10) Galveston Bay and Houston Ship Channel, TX.
- (11) Corpus Christi, TX.
- (12) Los Angeles/Long Beach harbor, CA.
- (13) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA.
- (14) Straits of Juan De Fuca from Port Angeles, WA, to and including Puget Sound, WA.
- (15) Prince William Sound, AK.

*Inland area* means the area shoreward of the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) defined in §§ 80.740 through 80.850 of this chapter. The inland area does not include the Great Lakes.

*Marine transportation-related facility* (MTR facility) means any onshore facility or segment of a complex regulated under section 311(j) of the Federal Water Pollution Control Act (FWPCA) by two or more Federal agencies, including piping and any structure used or intended to be used to transfer oil to or from a vessel, subject to regulation under this part and any deepwater port subject to regulation under part 150 of this chapter. For a facility or segment of a complex regulated by two or more Federal agencies under section 311(j) of the FWPCA, the MTR portion of the complex extends from the facility oil transfer system's connection with the vessel to the first valve inside the secondary containment surrounding tanks in the non-transportation-related

portion of the facility or, in the absence of secondary containment, to the valve or manifold adjacent to the tanks comprising the non-transportation-related portion of the facility, unless another location has otherwise been agreed to by the COTP and the appropriate Federal official.

*Maximum extent practicable* means the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the criteria in this subpart or in a specific plan approved by the cognizant COTP.

*Maximum most probable discharge* means a discharge of the lesser of 1,200 barrels or 10 percent of the volume of a worst case discharge.

*Nearshore area* means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area extending seaward 12 miles from the line of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter.

*Non-persistent or Group I oil* means a petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions—

- (1) At least 50 percent of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and
- (2) At least 95 percent of which by volume, distill at a temperature of 370 degrees C (700 degrees F).

*Ocean* means the offshore area and nearshore area as defined in this subpart.

*Offshore area* means the area beyond 12 nautical miles measured from the boundary lines defined in 46 CFR part 7 extending seaward to 50 nautical miles, except in the Gulf of Mexico. In the Gulf of Mexico, it is the area beyond 12 nautical miles of the line of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter extending seaward to 50 nautical miles.

*Oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes other than dredge spoil.

*Oil spill removal organization (OSRO)* means an entity that provides response resources.

*On-Scene Coordinator (OSC)* means the definition in the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).

*Operating area* means Rivers and Canals, Inland, Nearshore, Great Lakes, or Offshore geographic location(s) in which a facility is handling, storing, or transporting oil.

*Operating environment* means Rivers and Canals, Inland, Great Lakes, or Ocean. These terms are used to define the conditions in which response equipment is designed to function.

*Operating in compliance with the plan* means operating in compliance with the provisions of this subpart including, ensuring the availability of the response resources by contract or other approved means, and conducting the necessary training and drills.

*Other non-petroleum oil* means a non-petroleum oil of any kind that is not generally an animal fat or vegetable oil.

*Persistent oil* means a petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. For the purposes of this subpart, persistent oils are further classified based on specific gravity as follows:

- (1) Group II—specific gravity of less than .85.
- (2) Group III—specific gravity equal to or greater than .85 and less than .95.
- (3) Group IV—specific gravity equal to or greater than .95 and less than or equal to 1.0.
- (4) Group V—specific gravity greater than 1.0.

*Qualified individual and alternate qualified individual* means a person located in the United States who meets the requirements of § 154.1026.

*Response activities* means the containment and removal of oil from the land, water, and shorelines, the temporary storage and disposal of recovered oil, or the taking of other actions as necessary to minimize or mitigate damage to the public health or welfare or the environment.

*Response resources* means the personnel, equipment, supplies, and other capability necessary to perform the response activities identified in a response plan.

*Rivers and canals* means a body of water confined within the inland area, including the Intracoastal Waterways and other waterways artificially created for navigation, that has a project depth of 12 feet or less.

*Specific gravity* means the ratio of the mass of a given volume of liquid at 15°C (60°F) to the mass of an equal volume of pure water at the same temperature.

*Spill management team* means the personnel identified to staff the organizational structure identified in a response plan to manage response plan implementation.

*Substantial threat of a discharge* means any incident or condition involving a facility that may create a risk of discharge of oil. Such incidents include, but are not limited to storage tank or piping failures, above ground or underground leaks, fires, explosions,

flooding, spills contained within the facility, or other similar occurrences.

*Tier* means the combination of required response resources and the times within which the resources must arrive on scene.

[Note: Tiers are applied in three categories:

- (1) Higher Volume Port Areas,
- (2) Great Lakes, and

(3) All other operating environments, including rivers and canals, inland, nearshore, and offshore areas.

Appendix C, Table 4 of this part, provides specific guidance on calculating response resources. Sections 154.1045(f) and 154.1135, set forth the required times within which the response resources must arrive on-scene.]

*Vegetable oil* means a non-petroleum oil or fat derived from plant seeds, nuts, kernels or fruits, and not specifically identified elsewhere in this part.

*Worst case discharge* means in the case of an onshore facility and deepwater port, the largest foreseeable discharge in adverse weather conditions meeting the requirements of § 154.1029.

#### § 154.1025 Operating restrictions and interim operating authorization.

(a) The owner or operator of an MTR facility who submitted a response plan prior to May 29, 1996, may elect to comply with any of the provisions of this final rule by revising the appropriate section of the previously submitted plan in accordance with § 154.1065. An owner or operator of an MTR facility who elects to comply with all sections of this final rule must resubmit the plan in accordance with § 154.1060 of this part.

(b) No facility subject to this subpart may handle, store, or transport oil unless it is operating in full compliance with a submitted response plan. No facility categorized under § 154.1015(c) as a significant and substantial harm facility may handle, store, or transport oil unless the submitted response plan has been approved by the COTP. The owner or operator of each new facility to which this subpart applies must submit a response plan meeting the requirements listed in § 154.1017 not less than 60 days prior to handling, storing, or transporting oil. Where applicable, the response plan shall be submitted along with the letter of intent required under § 154.110.

(c) Notwithstanding the requirements of paragraph (b) of this section, a facility categorized under § 154.1015(c) as a significant and substantial harm facility may continue to handle, store, or transport oil for 2 years after the date of submission of a response plan, pending approval of that plan. To continue to handle, store, or transport oil without a plan approved by the COTP, the facility

owner or operator shall certify in writing to the COTP that the owner or operator has ensured, by contract or other approved means as described in § 154.1028(a), the availability of the necessary private personnel and equipment to respond, to the maximum extent practicable to a worst case discharge or substantial threat of such a discharge from the facility. Provided that the COTP is satisfied with the certification of response resources provided by the owner or operator of the facility, the COTP will provide written authorization for the facility to handle, store, or transport oil while the submitted response plan is being reviewed. Pending approval of the submitted response plan, deficiencies noted by the COTP must be corrected in accordance with § 154.1070.

(d) A facility may not continue to handle, store, or transport oil if—

- (1) The COTP determines that the response resources identified in the facility certification statement or reference response plan do not substantially meet the requirements of this subpart;
- (2) The contracts or agreements cited in the facility's certification statement or referenced response plans are no longer valid;
- (3) The facility is not operating in compliance with the submitted plan;
- (4) The response plan has not been resubmitted or approved within the last 5 years; or
- (5) The period of the authorization under paragraph (c) of this section has expired.

#### § 154.1026 Qualified individual and alternate qualified individual.

(a) The response plan must identify a qualified individual and at least one alternate who meet the requirements of this section. The qualified individual or alternate must be available on a 24-hour basis and be able to arrive at the facility in a reasonable time.

(b) The qualified individual and alternate must:

- (1) Be located in the United States;
- (2) Speak fluent English;
- (3) Be familiar with the implementation of the facility response plan; and
- (4) Be trained in the responsibilities of the qualified individual under the response plan.

(c) The owner or operator shall provide each qualified individual and alternate qualified individual identified in the plan with a document designating them as a qualified individual and specifying their full authority to:

- (1) Activate and engage in contracting with oil spill removal organization(s);

(2) Act as a liaison with the predesignated Federal On-Scene Coordinator (OSC); and

(3) Obligate funds required to carry out response activities.

(d) The owner or operator of a facility may designate an organization to fulfill the role of the qualified individual and the alternate qualified individual. The organization must then identify a qualified individual and at least one alternate qualified individual who meet the requirements of this section. The facility owner or operator is required to list in the response plan the organization, the person identified as the qualified individual, and the person or person(s) identified as the alternate qualified individual(s).

(e) The qualified individual is not responsible for—

(1) The adequacy of response plans prepared by the owner or operator; or

(2) Contracting or obligating funds for response resources beyond the authority contained in their designation from the owner or operator of the facility.

(f) The liability of a qualified individual is considered to be in accordance with the provisions of 33 USC 1321(c)(4).

**§ 154.1028 Methods of ensuring the availability of response resources by contract or other approved means.**

(a) When required in this subpart, the availability of response resources must be ensured by the following methods:

(1) A written contractual agreement with an oil spill removal organization. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the specified geographic areas;

(2) Certification by the facility owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the facility owner or operator, and are available within stipulated response times in the specified geographic areas;

(3) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment required under this subpart that are available to respond to a discharge within stipulated response times in the specified geographic areas;

(4) A document which—

(i) Identifies the personnel, equipment, and services capable of being provided by the oil spill removal organization within stipulated response times in the specified geographic areas;

(ii) Sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and drills; and

(iv) Is referenced in the response plan; or

(5) The identification of an oil spill removal organization with specified equipment and personnel available within stipulated response times in specified geographic areas. The organization must provide written consent to being identified in the plan.

(b) The contracts and documents required in paragraph (a) of this section must be retained at the facility and must be produced for review upon request by the COTP.

**§ 154.1029 Worst case discharge.**

(a) The response plan must use the appropriate criteria in this section to develop the worst case discharge.

(b) For the MTR segment of a facility, not less than—

(1) Where applicable, the loss of the entire capacity of all in-line and break out tank(s) needed for the continuous operation of the pipelines used for the purposes of handling or transporting oil, in bulk, to or from a vessel regardless of the presence of secondary containment; plus

(2) The discharge from all piping carrying oil between the marine transfer manifold and the non-transportation-related portion of the facility. The discharge from each pipe is calculated as follows: The maximum time to discover the release from the pipe in hours, plus the maximum time to shut down flow from the pipe in hours (based on historic discharge data or the best estimate in the absence of historic discharge data for the facility) multiplied by the maximum flow rate expressed in barrels per hour (based on the maximum relief valve setting or maximum system pressure when relief valves are not provided) plus the total line drainage volume expressed in barrels for the pipe between the marine manifold and the non-transportation-related portion of the facility; and

(c) For a mobile facility it means the loss of the entire contents of the container in which the oil is stored or transported.

**§ 154.1030 General response plan contents.**

(a) The plan must be written in English.

(b) A response plan must be divided into the sections listed in this paragraph and formatted in the order specified herein unless noted otherwise. It must also have some easily found marker identifying each section listed below.

The following are the sections and subsections of a facility response plan:

(1) Introduction and plan contents.

(2) Emergency response action plan:

(i) Notification procedures.

(ii) Facility's spill mitigation procedures.

(iii) Facility's response activities.

(iv) Fish and wildlife and sensitive environments.

(v) Disposal plan.

(3) Training and Exercises:

(i) Training procedures.

(ii) Exercise procedures.

(4) Plan review and update procedures.

(5) Appendices.

(i) Facility-specific information.

(ii) List of contacts.

(iii) Equipment lists and records.

(iv) Communications plan.

(v) Site-specific safety and health plan.

(vi) List of acronyms and definitions.

(vii) A geographic-specific appendix for each zone in which a mobile facility operates.

(c) The required contents for each section and subsection of the plan are contained in §§ 154.1035, 154.1040, and 154.1041, as appropriate.

(d) The sections and subsections of response plans submitted to the COTP must contain at a minimum all the information required in §§ 154.1035, 154.1040, and 154.1041, as appropriate. It may contain other appropriate sections, subsections, or information that are required by other Federal, State, and local agencies.

(e) For initial and subsequent submission, a plan that does not follow the format specified in paragraph (b) of this section must be supplemented with a detailed cross-reference section to identify the location of the applicable sections required by this subpart.

(f) The information contained in a response plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) covering the area in which the facility operates.

Facility owners or operators shall ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). Facility owners or operators are not required to, but may at their option, conform to an ACP which is less than 6 months old at the time of plan submission.

**§ 154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.**

(a) *Introduction and plan content.*  
This section of the plan must include facility and plan information as follows:

(1) The facility's name, street address, city, county, state, ZIP code, facility telephone number, and telefacsimile number, if so equipped. Include mailing address if different from street address.

(2) The facility's location described in a manner that could aid both a reviewer and a responder in locating the specific facility covered by the plan, such as, river mile or location from a known landmark that would appear on a map or chart.

(3) The name, address, and procedures for contacting the facility's owner or operator on a 24-hour basis.

(4) A table of contents.

(5) During the period that the submitted plan does not have to conform to the format contained in this subpart, a cross index, if appropriate.

(6) A record of change(s) to record information on plan updates.

(b) *Emergency Response Action Plan.*  
This section of the plan must be organized in the subsections described in this paragraph:

(1) *Notification procedures.* (i) This subsection must contain a prioritized list identifying the person(s), including name, telephone number, and their role in the plan, to be notified of a discharge or substantial threat of a discharge of oil. The telephone number need not be provided if it is listed separately in the list of contacts required in the plan. This Notification Procedures listing must include—

(A) Facility response personnel, the spill management team, oil spill

removal organizations, and the qualified individual(s) and the designated alternate(s); and

(B) Federal, State, or local agencies, as required.

(ii) This subsection must include a form, such as that depicted in Figure 1, which contains information to be provided in the initial and follow-up notifications to Federal, State, and local agencies. The form shall include notification of the National Response Center as required in part 153 of this chapter. Copies of the form also must be placed at the location(s) from which notification may be made. The initial notification form must include space for the information contained in Figure 1. The form must contain a prominent statement that initial notification must not be delayed pending collection of all information.

FIGURE 1.—INFORMATION ON DISCHARGE \*  
[Involved Parties]

(A) Reporting party	(B) Suspected responsible party
Name	Name
Phones ( ) -	Phones ( ) -
Company	Company
Position	Organization Type:
Address	Private citizen
Address	Private enterprise
	Public utility
	Local government
	State government
	Federal government
City	City
State	State
Zip	Zip

\* It is not necessary to wait for all information before calling NRC. National Response Center—1-800-424-8802.

Were materials Discharged (Y/N)?  
Calling for Responsible Party (Y/N)

**Incident Description**

Source and/or Cause of Incident

Date - - Time:  
Cause

Incident Address/Location      Nearest City  
Distance from City  
Storage Tank Container Type—Above ground (Y/N)      Below ground (Y/N)      Unknown

**Facility Capacity**

Tank Capacity  
Latitude Degrees  
Longitude Degrees  
Mile Post or River Mile

**Materials**

Discharge Unit of Quantity      Measure      Discharged Material      Quantity in Water

## Response Action

Actions Taken to Correct or Mitigate Incident

## Impact

Number of Injuries	Number of Fatalities
Were there Evacuations (Y/N/U)?	Number Evacuated
Was there any Damage (Y/N/U)?	Damage in Dollars

## Additional Information

Any information about the Incident not recorded elsewhere in the report

## Caller Notifications

USCG	EPA	State	Other
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*(2) Facility's spill mitigation*

*procedures.* (i) This subsection must describe the volume(s) and oil groups that would be involved in the—

(A) Average most probable discharge from the MTR facility;

(B) Maximum most probable discharge from the MTR facility;

(C) Worst case discharge from the MTR facility; and

(D) Where applicable, the worst case discharge from the non-transportation-related facility. This must be the same volume provided in the response plan for the non-transportation-related facility.

(ii) This subsection must contain prioritized procedures for facility personnel to mitigate or prevent any discharge or substantial threat of a discharge of oil resulting from operational activities associated with internal or external facility transfers including specific procedures to shut down affected operations. Facility personnel responsible for performing specified procedures to mitigate or prevent any discharge or potential discharge shall be identified by job title. A copy of these procedures shall be maintained at the facility operations center. These procedures must address actions to be taken by facility personnel in the event of a discharge, potential discharge, or emergency involving the following equipment and scenarios:

(A) Failure of manifold, mechanical loading arm, other transfer equipment, or hoses, as appropriate;

(B) Tank overfill;

(C) Tank failure;

(D) Piping rupture;

(E) Piping leak, both under pressure and not under pressure, if applicable;

(F) Explosion or fire; and

(G) Equipment failure (e.g. pumping system failure, relief valve failure, or other general equipment relevant to operational activities associated with internal or external facility transfers.)

(iii) This subsection must contain a listing of equipment and the responsibilities of facility personnel to mitigate an average most probable discharge.

(3) *Facility's response activities.* (i) This subsection must contain a description of the facility personnel's responsibilities to initiate a response and supervise response resources pending the arrival of the qualified individual.

(ii) This subsection must contain a description of the responsibilities and authority of the qualified individual and alternate as required in § 154.1026.

(iii) This subsection must describe the organizational structure that will be used to manage the response actions. This structure must include the following functional areas.

(A) Command and control;

(B) Public information;

(C) Safety;

(D) Liaison with government agencies;

(E) Spill Operations;

(F) Planning;

(G) Logistics support; and

(H) Finance.

(iv) This subsection must identify the oil spill removal organizations and the spill management team to:

(A) Be capable of providing the following response resources:

(1) Equipment and supplies to meet the requirements of §§ 154.1045, 154.1047 or subparts H or I of this part, as appropriate; and

(2) Trained personnel necessary to continue operation of the equipment and staff of the oil spill removal organization and spill management team for the first 7 days of the response.

(B) This section must include job descriptions for each spill management team member within the organizational structure described in paragraph (b)(3)(iii) of this section. These job descriptions should include the responsibilities and duties of each spill

management team member in a response action.

(v) For mobile facilities that operate in more than one COTP zone, the plan must identify the oil spill removal organization and the spill management team in the applicable geographic-specific appendix. The oil spill removal organization(s) and the spill management team discussed in paragraph (b)(3)(iv)(A) of this section must be included for each COTP zone in which the facility will handle, store, or transport oil in bulk.

(4) *Fish and wildlife and sensitive environments.* (i) This section of the plan must identify areas of economic importance and environmental sensitivity, as identified in the ACP, which are potentially impacted by a worst case discharge. ACPs are required under section 311(j)(4) of the FWPCA to identify fish and wildlife and sensitive environments. The applicable ACP shall be used to designate fish and wildlife and sensitive environments in the plan. Changes to the ACP regarding fish and wildlife and sensitive environments shall be included in the annual update of the response plan, when available.

(ii) For a worst case discharge from the facility, this section of the plan must—

(A) List all fish and wildlife and sensitive environments identified in the ACP which are potentially impacted by a discharge of persistent oils, non-persistent oils, or non-petroleum oils.

(B) Describe all the response actions that the facility anticipates taking to protect these fish and wildlife and sensitive environments.

(C) Contain a map or chart showing the location of those fish and wildlife and sensitive environments which are potentially impacted. The map or chart shall also depict each response action that the facility anticipates taking to protect these areas. A legend of

activities must be included on the map page.

(iii) For a worst case discharge, this section must identify appropriate equipment and required personnel, available by contract or other approved means as described in § 154.1028, to protect fish and wildlife and sensitive environments which fall within the distances calculated using the methods outlined in this paragraph as follows:

(A) Identify the appropriate equipment and required personnel to protect all fish and wildlife and sensitive environments in the ACP for the distances, as calculated in paragraph (b)(4)(iii)(B) of this section, that the persistent oils, non-persistent oils, or non-petroleum oils are likely to travel in the noted geographic area(s) and number of days listed in Table 2 of appendix C of this part;

(B) Calculate the distances required by paragraph (b)(4)(iii)(A) of this section by selecting one of the methods described in this paragraph;

(1) Distances may be calculated as follows:

(i) For persistent oils and non-petroleum oils discharged into non-tidal waters, the distance from the facility reached in 48 hours at maximum current.

(ii) For persistent and non-petroleum oils discharged into tidal waters, 15 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 15 miles, whichever is less, during flood tide.

(iii) For non-persistent oils discharged into non-tidal waters, the distance from the facility reached in 24 hours at maximum current.

(iv) For non-persistent oils discharged into tidal waters, 5 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 5 miles, whichever is less, during flood tide.

(2) A spill trajectory or model may be substituted for the distances calculated under paragraph (b)(4)(iii)(B)(i) of this section. The spill trajectory or model must be acceptable to the COTP.

(3) The procedures contained in the Environmental Protection Agency's regulations on oil pollution prevention for non-transportation-related onshore facilities at 40 CFR part 112, appendix C, Attachment C-III may be substituted for the distances listed in non-tidal and tidal waters; and

(C) Based on historical information or a spill trajectory or model, the COTP may require the additional fish and wildlife and sensitive environments also be protected.

(5) *Disposal Plan*. This subsection must describe any actions to be taken or

procedures to be used to ensure that all recovered oil and oil contaminated debris produced as a result of any discharge are disposed according to Federal, state, or local requirements.

(c) *Training and exercises*. This section must be divided into the following two subsections:

(1) *Training procedures*. This subsection must describe the training procedures and programs of the facility owner or operator to meet the requirements in § 154.1050.

(2) *Exercise procedures*. This subsection must describe the exercise program to be carried out by the facility owner or operator to meet the requirements in § 154.1055.

(d) *Plan review and update procedures*. This section must address the procedures to be followed by the facility owner or operator to meet the requirements of § 154.1065 and the procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(e) *Appendices*. This section of the response plan must include the appendices described in this paragraph.

(1) *Facility-specific information*. This appendix must contain a description of the facility's principal characteristics.

(i) There must be a physical description of the facility including a plan of the facility showing the mooring areas, transfer locations, control stations, locations of safety equipment, and the location and capacities of all piping and storage tanks.

(ii) The appendix must identify the sizes, types, and number of vessels that the facility can transfer oil to or from simultaneously.

(iii) The appendix must identify the first valve(s) on facility piping separating the transportation-related portion of the facility from the non-transportation-related portion of the facility, if any. For piping leading to a manifold located on a dock serving tank vessels, this valve is the first valve inside the secondary containment required by 40 CFR part 112.

(iv) The appendix must contain information on the oil(s) and hazardous material handled, stored, or transported at the facility in bulk. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, 33 CFR 154.310(a)(5) or an equivalent will meet this requirement. This information can be maintained separately providing it is readily available and the appendix identifies its location. This information must include—

(A) The generic or chemical name;

(B) A description of the appearance and odor;

(C) The physical and chemical characteristics;

(D) The hazards involved in handling the oil(s) and hazardous materials. This shall include hazards likely to be encountered if the oil(s) and hazardous materials come in contact as a result of a discharge; and

(E) A list of firefighting procedures and extinguishing agents effective with fires involving the oil(s) and hazardous materials.

(v) The appendix may contain any other information which the facility owner or operator determines to be pertinent to an oil spill response.

(2) *List of contacts*. This appendix must include information on 24-hour contact of key individuals and organizations. If more appropriate, this information may be specified in a geographic-specific appendix. The list must include—

(i) The primary and alternate qualified individual(s) for the facility;

(ii) The contact(s) identified under paragraph (b)(3)(iv) of this section for activation of the response resources; and

(iii) Appropriate Federal, State, and local officials.

(3) *Equipment list and records*. This appendix must include the information specified in this paragraph.

(i) The appendix must contain a list of equipment and facility personnel required to respond to an average most probable discharge, as defined in § 154.1020. The appendix must also list the location of the equipment.

(ii) The appendix must contain a detailed listing of all the major equipment identified in the plan as belonging to an oil spill removal organization(s) that is available, by contract or other approved means as described in § 154.1028(a), to respond to a maximum most probable or worst case discharge, as defined in § 154.1020. The detailed listing of all major equipment may be located in a separate document referenced by the plan. Either the appendix or the separate document referenced in the plan must provide the location of the major response equipment.

(iii) It is not necessary to list response equipment from oil spill removal organization(s) when the organization has been classified by the Coast Guard and their capacity has been determined to equal or exceed the response capability needed by the facility. For oil spill removal organization(s) classification by the Coast Guard, the classified must be noted in this section of the plan. When it is necessary for the appendix to contain a listing of response equipment, it shall include all of the following items that are identified in the

response plan: Skimmers; booms; dispersant application, in-situ burning, bioremediation equipment and supplies, and other equipment used to apply other chemical agents on the NCP Product Schedule (if applicable); communications, firefighting, and beach cleaning equipment; boats and motors; disposal and storage equipment; and heavy equipment. The list must include for each piece of equipment—

(A) The type, make, model, and year of manufacture listed on the nameplate of the equipment;

(B) For oil recovery devices, the effective daily recovery rate, as determined using section 6 of Appendix C of this part;

(C) For containment boom, the overall boom height (draft and freeboard) and type of end connectors;

(D) The spill scenario in which the equipment will be used for or which it is contracted;

(E) The total daily capacity for storage and disposal of recovered oil;

(F) For communication equipment, the type and amount of equipment intended for use during response activities. Where applicable, the primary and secondary radio frequencies must be specified.

(G) Location of the equipment; and

(H) The date of the last inspection by the oil spill removal organization(s).

(4) *Communications plan.* This appendix must describe the primary and alternate method of communication during discharges, including communications at the facility and at remote locations within the areas covered by the response plan. The appendix may refer to additional communications packages provided by the oil spill removal organization. This may reference another existing plan or document.

(5) *Site-specific safety and health plan.* This appendix must describe the safety and health plan to be implemented for any response location(s). It must provide as much detailed information as is practicable in advance of an actual discharge. This appendix may reference another existing plan requiring under 29 CFR 1910.120.

(6) *List of acronyms and definitions.* This appendix must list all acronyms used in the response plan including any terms or acronyms used by Federal, State, or local governments and any operational terms commonly used at the facility. This appendix must include all definitions that are critical to understanding the response plan.

**§ 154.1040 Specific requirements for facilities that could reasonably be expected to cause substantial harm to the environment.**

(a) The owner or operator of a facility that, under § 154.1015, could reasonably be expected to cause substantial harm to the environment, shall submit a response plan that meets the requirements of § 154.1035, except as modified by this section.

(b) The facility's response activities section of the response plan need not list the facility or corporate organizational structure that will be used to manage the response, as required by § 154.1035(b)(3)(iii).

(c) The owner or operator of a facility must ensure the availability of response resources required to be identified in § 154.1035(b)(3)(iv) by contract or other approved means described in § 154.1028.

(d) A facility owner or operator must have at least 200 feet of containment boom and the means of deploying and anchoring the boom available at the spill site within 1 hour of the detection of a spill to respond to the average most probable discharge in lieu of the quantity of containment boom specified in § 154.1045(c)(1). Based on site-specific or facility-specific information, the COTP may specify that additional quantities of containment boom are available within one hour. In addition, there must be adequate sorbent material for initial response to an average most probable discharge. If the facility is a fixed facility, the containment boom and sorbent material must be located at the facility. If the facility is a mobile facility, the containment boom and sorbent must be available locally and be at the site of the discharge within 1 hour of its discovery.

**§ 154.1041 Specific response information to be maintained on mobile MTR facilities.**

(a) Each mobile MTR facility must carry the following information as contained in the response plan when performing transfer operations:

(1) A description of response activities for a discharge which may occur during transfer operations. This may be a narrative description or a list of procedures to be followed in the event of a discharge.

(2) Identity of response resources to respond to a discharge from the mobile MTR facility.

(3) List of the appropriate persons and agencies (including the telephone numbers) to be contacted in regard to a discharge and its handling, including the National Response Center.

(b) The owner or operator of the mobile facility must also retain the

information in this paragraph at the principal place of business.

**§ 154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.**

(a) The owner or operator of a facility that handles, stores, or transports Group I through Group IV petroleum oils shall use the criteria in this section to evaluate response resources identified in the response plan for the specified operating environment.

(1) The criteria in Table 1 of appendix C of this part are to be used solely for identification of appropriate equipment in a response plan. These criteria reflect conditions used for planning purposes to select mechanical response equipment and are not conditions that would limit response actions or affect normal facility operations.

(2) The response resources must be evaluated considering limitations for the COTP zones in which the facility operates, including but not limited to—

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges;

(iv) Weather-related visibility; and

(v) Other appropriate environmental conditions as determined by the COTP.

(3) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be identified by the COTP in the applicable ACP. Reclassifications may be to—

(i) A more stringent operating environment if the prevailing wave conditions exceed the significant wave height criteria during more than 35 percent of the year; or

(ii) A less stringent operating environment if the prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating environment during more than 35 percent of the year.

(b) Response equipment must—

(1) Meet or exceed the operating criteria listed in Table 1 of appendix C of this part;

(2) Function in the applicable operating environment; and

(3) Be appropriate for the petroleum oil carried.

(c) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means as described in § 154.1028(a)(1)(4), to respond to the facility's average most probable discharge. The response resources must include, at a minimum—

(1) 1,000 feet of containment boom or two times the length of the largest vessel

that regularly conducts petroleum oil transfers to or from the facility, whichever is greater, and the means of deploying and anchoring the boom available at the spill site within 1 hour of the detection of a spill; and

(2) Oil recovery devices and recovered oil storage capacity capable of being at the spill site within 2 hours of the discovery of a petroleum oil discharge from a facility.

(d) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means as described in § 154.1028(a)(1)(4), to respond to a discharge up to the facility's maximum most probable discharge volume.

(1) The response resources must include sufficient containment boom, oil recovery devices, and storage capacity for any recovery of up to the maximum most probable discharge planning volume, as contained in appendix C.

(2) The response resources must be appropriate for each group of petroleum oil identified in § 154.1020 that is handled, stored, or transported by the facility.

(3) These response resources must be positioned such that they can arrive at the scene of a discharge within the following specified times:

(i) The equipment identified in paragraphs (c)(1) and (c)(2) of this section or in § 154.1040(d) must arrive within the times specified in those paragraphs or that section, as appropriate.

(ii) In higher volume port areas and the Great Lakes, response resources must be capable of arriving on scene within 6 hours of the discovery of an petroleum oil discharge from a facility.

(iii) In all other locations, response resources must be capable of arriving on scene within 12 hours of the discovery of a petroleum oil discharge from a facility.

(4) The COTP may determine that mobilizing response resources to an area beyond the response times indicated in this paragraph invalidates the response plan. In this event, the COTP may impose additional operational restrictions (e.g., limitations on the number of transfers at a facility), or, at the COTP's discretion, the facility may operate with temporarily modified response plan development and evaluation criteria (e.g., modified response times, alternate response resources, etc.).

(e) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must

identify the response resources that are available, by contract or other approved means as described in

§ 154.1028(a)(1)(4), to respond to the worst case discharge volume of petroleum oil to the maximum extent practicable.

(1) The location of these response resources must be suitable to meet the response times identified in paragraph (f) of this section for the applicable geographic area(s) of operation and response tier.

(2) The response resources must be appropriate for—

(i) The volume of the facility's worst case discharge;

(ii) Group(s) of petroleum oil as identified in § 154.1020 that are handled, stored, or transported by the facility; and

(iii) The geographic area(s) in which the facility operates.

(3) The response resources must include sufficient boom, oil recovery devices, and storage capacity to recover the worst case discharge planning volumes.

(4) The guidelines in appendix C of this part must be used for calculating the quantity of response resources required to respond at each tier to the worst case discharge to the maximum extent practicable.

(5) When determining response resources necessary to meet the requirements of this section, a portion of those resources must be capable of use in close-to-shore response activities in shallow water. The following percentages of the response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth.

(i) Offshore—10 percent.  
(ii) Nearshore/inland/Great Lakes/ rivers and canals—20 percent.

(6) The COTP may determine that mobilizing response resources to an area beyond the response times indicated in this paragraph invalidates the response plan. In this event, the COTP may impose additional operational restrictions (e.g., limitations on the number of transfers at a facility), or, at the COTP's discretion, the facility may be permitted to operate with temporarily modified response plan development and evaluation criteria (e.g., modified response times, alternate response resources, etc.).

(f) Response equipment identified in a response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must be capable of arriving on scene within the times specified in this paragraph for the applicable response tier in a higher volume port area, Great Lakes, and in

other areas. Response times for these tiers from the time of discovery of a discharge are—

	Tier 1 (hrs.)	Tier 2 (hrs.)	Tier 3 (hrs.)
Higher volume port area (except for a TAPAA facility located in Prince William Sound, see § 154.1135) ....	6	30	54
Great Lakes .....	12	36	60
All other river and canal, inland, near-shore, and off-shore areas ...	12	36	60

(g) For the purposes of arranging for response resources for a facility that handles, stores, or transports Group I through Group IV petroleum oils, by contract or other approved means as described in § 154.1028(a)(1)–(4), response equipment identified for Tier 1 plan credit must be capable of being mobilized and en route to the scene of a discharge within 2 hours of notification. The notification procedures identified in the plan must provide for notification and authorization of mobilization of identified Tier 1 response resources—

(1) Either directly or through the qualified individual; and

(2) Within 30 minutes of a discovery of a discharge or substantial threat of discharge.

(h) Response resources identified for Tier 2 and Tier 3 plan credit must be capable of arriving on scene within the time specified for the applicable tier.

(i) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports Group II or III persistent petroleum oils may request a credit for up to 25 percent of the on-water recovery capability set forth by this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1028(a)(1)–(4), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit will be based on the volumes of the dispersant available to sustain operations at the manufacturers' recommend dosage rates. Resources identified for plan credit should be capable of being on scene within 12 hours of a discovery of a discharge. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use

during a spill response will be governed by the provisions of the NCP and the applicable ACP.

(j) A response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1028(a)(1)–(4), the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department for petroleum oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable time to respond to a worst case discharge. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

(k) The response plan for a facility that handles, stores, or transports Groups I through IV petroleum oils must identify equipment and required personnel available, by contract or other approved means as described in § 154.1028(a)(1)–(4), to protect fish and wildlife and sensitive environments.

(1) Except as set out in paragraph (k)(2) of this section, the identified response resources must include the quantities of boom sufficient to protect fish and wildlife and sensitive environments as required by § 154.1035(b)(4).

(2) The resources and response methods identified in a facility response plan must be consistent with the required resources and response methods to be used in fish and wildlife and sensitive environments, contained in the appropriate ACP. Facility owners or operators shall ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). Facility owners or operators are not required to, but may at their option, conform to an ACP which is less than 6 months old at the time of plan submission.

(l) The response plan for a facility that handles, stores, or transports Groups I through IV petroleum oils must identify an oil spill removal organization(s) with response resources that are available, by contract or other approved means as described in § 154.1028(a)(1)–(4), to effect a shoreline cleanup operation

commensurate with the quantity of emulsified petroleum oil to be planned for in shoreline cleanup operations.

(1) Except as required in paragraph (l)(2) of this section, the shoreline cleanup response resources required must be determined as described in appendix C of this part.

(2) The resources and response methods identified in a facility response plan must be consistent with the required shoreline cleanup resources and methods contained in the appropriate ACP. Facility owners or operators shall ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). Facility owners or operators are not required to, but may at their option, conform to an ACP which is less than 6 months old at the time of plan submission.

(m) Appendix C of this part describes the procedures to determine the maximum extent practicable quantity of response resources that must be identified and available, by contract or other approved means as described in § 154.1028(a)(1)–(4), for the maximum most probable discharge volume, and for each worst case discharge response tier.

(1) Included in appendix C of this part is a cap that recognizes the practical and technical limits of response capabilities that an individual facility owner or operator can be expected to contract for in advance.

(2) Table 5 in appendix C of this part lists the caps that apply in February 18, 1993, and February 18, 1998. Depending on the quantity and type of petroleum oil handled by the facility and the facility's geographic area of operations, the resource capability caps in this table may be reached. The owner or operator of a facility whose estimated recovery capacity exceeds the applicable contracting caps in Table 5 shall identify sources of additional equipment equal to twice the cap listed in Tiers 1, 2, and 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The identified resources must be capable of arriving on scene not later than the Tier 1, 2, and 3 response times in this section. No contract is required. While general listings of available response equipment may be used to identify additional sources, a response plan must identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing Coast Guard classified oil spill removal organization(s) which have

sufficient removal capacity to recover the volume above the response capability cap for the specific facility, as specified in Table 5 in appendix C of this part, it is not necessary to list specific quantities of equipment.

(n) The Coast Guard will initiate a review of cap increases and other requirements contained within this subpart that are scheduled to be phased in over time. Any changes in the requirements of this section will occur through a public notice and comment process.

(1) During this review, the Coast Guard will determine if the scheduled increase for February 1998 remains practicable, and will also establish a specific cap for 2003. The review will include but is not limited to—

- (i) Increase in skimming efficiencies and design technology;
- (ii) Oil tracking technology;
- (iii) High rate response techniques;
- (iv) Other applicable response technologies; and
- (v) Increases in the availability of private response resources.

(2) All scheduled future requirements will take effect unless the Coast Guard determines that they are not practicable. Scheduled changes will be effective in February 1998 and 2003 unless the review of the additional requirements has not been completed by the Coast Guard. If this occurs, the additional requirements will not be effective until 90 days after publication of a Federal Register notice with the results of the review.

**§ 154.1047 Response plan development and evaluation criteria for facilities that handle, store, or transport Group V petroleum oils.**

(a) An owner or operator of a facility that handles, stores, or transports Group V petroleum oils must provide information in his or her response plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of Group V petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports Group V petroleum oil must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in Table 1 of appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the ACPs for the COTP

zones in which the facility operates, including—

- (1) Ice conditions;
- (2) Debris;
- (3) Temperature ranges; and
- (4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports Group V petroleum oil must identify the response resources that are available by contract or other approved means as described in § 154.1028. The equipment identified in a response plan must include—

- (1) Sonar, sampling equipment, or other methods for locating the petroleum oil on the bottom or suspended in the water column;
- (2) Containment boom, sorbent boom, silt curtains, or other methods for containing the petroleum oil that may remain floating on the surface or to reduce spreading on the bottom;
- (3) Dredges, pumps, or other equipment necessary to recover petroleum oil from the bottom and shoreline;
- (4) Equipment necessary to assess the impact of such discharges; and
- (5) Other appropriate equipment necessary to respond to a discharge involving the type of petroleum oil handled, stored, or transported.

(d) Response resources identified in a response plan for a facility that handles, stores, or transports Group V petroleum oils under paragraph (c) of this section must be capable of being at the spill site within 24 hours of discovery of a discharge.

(e) A response plan for a facility that handles, stores, or transports Group V petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1028, the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department for petroleum oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

#### § 154.1050 Training.

(a) A response plan submitted to meet the requirements of §§ 154.1035 or

154.1040, as appropriate, must identify the training to be provided to each individual with responsibilities under the plan. A facility owner or operator must identify the method to be used for training any volunteers or casual laborers used during a response to comply with the requirements of 29 CFR 1910.120.

(b) A facility owner or operator shall ensure the maintenance of records sufficient to document training of facility personnel; and shall make them available for inspection upon request by the U.S. Coast Guard. Records for facility personnel must be maintained at the facility for 3 years.

(c) Where applicable, a facility owner or operator shall ensure that an oil spill removal organization identified in a response plan to meet the requirements of this subpart maintains records sufficient to document training for the organization's personnel and shall make them available for inspection upon request by the facility's management personnel, the qualified individual, and U.S. Coast Guard. Records must be maintained for 3 years following completion of training.

(d) The facility owner or operator remains responsible for ensuring that all private response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120.

#### § 154.1055 Exercises.

(a) A response plan submitted by an owner or operator of an MTR facility must include an exercise program containing both announced and unannounced exercises. The following are the minimum exercise requirements for facilities covered by this subpart:

- (1) Qualified individual notification exercises (quarterly).
- (2) Spill management team tabletop exercises (annually). In a 3-year period, at least one of these exercises must include a worst case discharge scenario.
- (3) Equipment deployment exercises:
  - (i) Semiannually for facility owned and operated equipment.
  - (ii) Annually for oil spill removal organization equipment.
- (4) Emergency procedures exercises (optional).

(5) Annually, at least one of the exercises listed in § 154.1055(a)(2) through (4) must be unannounced. Unannounced means the personnel participating in the exercise must not be advised in advance, of the exact date, time and scenario of the exercise.

(6) The facility owner or operator shall design the exercise program so that all components of the response plan are

exercised at least once every 3 years. All of the components do not have to be exercised at one time; they may be exercised over the 3-year period through the required exercises or through an Area exercise.

(b) A facility owner or operator shall participate in unannounced exercises, as directed by the COTP. The objectives of the unannounced exercises will be to test notifications and equipment deployment for response to the average most probable discharge. After participating in an unannounced exercise directed by a COTP, the owner or operator will not be required to participate in another COTP initiated unannounced exercise for at least 3 years from the date of the exercise.

(c) A facility owner or operator shall participate in Area exercises as directed by the applicable On-Scene Coordinator. The Area exercises will involve equipment deployment to respond to the spill scenario developed by the Exercise Design Team, of which the facility owner or operator will be a member. After participating in an Area exercise, a facility owner or operator will not be required to participate in another Area exercise for at least 6 years.

(d) The facility owner or operator shall ensure that adequate records of all required exercises are maintained at the facility for 3 years. Records shall be made available to the Coast Guard upon request.

(e) The response plan submitted to meet the requirements of this subpart must specify the planned exercise program. The plan must detail the exercise program, including the types of exercises, frequency, scope, objectives and the scheme for exercising the entire response plan every 3 years.

(f) Compliance with the National Preparedness for Response Exercise Program (PREP) Guidelines will satisfy the facility response plan exercise requirements.

#### § 154.1057 Inspection and maintenance of response resources.

(a) A facility owner or operator required to submit a response plan under this part must ensure that—

(1) Containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan are periodically inspected and maintained in good operating condition, in accordance with manufacturer's recommendations, and best commercial practices; and

(2) All inspection and maintenance is documented and that these records are maintained for 3 years.

(b) For equipment which must be inspected and maintained under this section the Coast Guard may—

- (1) Verify that the equipment inventories exist as represented;
- (2) Verify the existences of records required under this section;
- (3) Verify that the records of inspection and maintenance reflect the actual condition of any equipment listed or referenced; and
- (4) Inspect and require operational tests of equipment.

(c) This section does not apply to containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan and ensured available from an oil spill removal organization through the written consent required under § 154.1028(a)(5).

**§ 154.1060 Submission and approval procedures.**

(a) The owner or operator of a facility to which this subpart applies shall submit one copy of a facility response plan meeting the requirements of this subpart to the COTP for initial review and, if appropriate, approval.

(b) The owner or operator of a facility to which this subpart applies shall include a statement certifying that the plan meets the applicable requirements of subparts F, G, H, and I of this part, as appropriate.

(c) For an MTR facility that is located in the inland response zone where the EPA Regional Administrator is the predesignated Federal On-Scene Coordinator, the COTP may consult with the EPA Federal On-Scene Coordinator prior to any final approval.

(d) For an MTR facility identified in § 154.1015(c) of this subpart that is also required to prepare a response plan under 40 CFR part 112, if the COTP determines that the plan meets all applicable requirements and the EPA Regional Administrator raises no objection to the response plan contents, the COTP will notify the facility owner or operator in writing that the plan is approved.

(e) The plan will be valid for a period of up to 5 years. The facility owner or operator must resubmit an updated plan every 5 years as follows:

(1) For facilities identified in only § 154.1015(b) of this subpart, the 5-year period will commence on the date the plan is submitted to the COTP.

(2) For facilities identified in § 154.1015(c) of this subpart, the 5-year period will commence on the date the COTP approves the plan.

(3) All resubmitted response plans shall be accompanied by a cover letter containing a detailed listing of all revisions to the response plan.

(f) For an MTR facility identified in § 154.1015(c)(2) the COTP will notify the facility owner or operator in writing that the plan is approved.

(g) If a COTP determines that a plan does not meet the requirements of this subpart either upon initial submission or upon 5-year resubmission, the COTP will return the plan to the facility owner or operator along with an explanation of the response plan's deficiencies. The owner or operator must correct any deficiencies in accordance with § 154.1070 and return the plan to the COTP within the time specified by the COTP in the letter describing the deficiencies.

(h) The facility owner or operator and the qualified individual and the alternative qualified individual shall each maintain a copy of the most current response plan submitted to the COTP. One copy must be maintained at the facility in a position where the plan is readily available to persons in charge of conducting transfer operations.

**§ 154.1065 Plan review and revision procedures.**

(a) A facility owner or operator must review his or her response plan(s) annually. This review shall incorporate any revisions to the plan, including listings of fish and wildlife and sensitive environments identified in the ACP in effect 6 months prior to plan review.

(1) For an MTR facility identified in § 154.1015(c) of this subpart as a "significant and substantial harm facility," this review must occur within 1 month of the anniversary date of COTP approval of the plan. For an MTR facility identified in § 154.1015(b) of this subpart, as a "substantial harm facility" this review must occur within 1 month of the anniversary date of submission of the plan to the COTP.

(2) The facility owner or operator shall submit any revision(s) to the response plan to the COTP and all other holders of the response plan for information or approval, as appropriate.

(i) Along with the revisions, the facility owner or operator shall submit a cover letter containing a detailed listing of all revisions to the response plan.

(ii) If no revisions are required, the facility owner or operator shall indicate the completion of the annual review on the record of changes page.

(iii) The COTP will review the revision(s) submitted by the owner or operator and will give written notice to the owner or operator of any COTP objection(s) to the proposed revisions within 30 days of the date the revision(s) were submitted to the COTP.

The revisions shall become effective not later than 30 days from their submission to the COTP unless the COTP indicates otherwise in writing as provided in this paragraph. If the COTP indicates that the revision(s) need to be modified before implementation, the owner or operator will modify the revision(s) within the time period set by the COTP.

(3) Any required revisions must be entered in the plan and noted on the record of changes page.

(b) The facility owner or operator shall submit revisions to a previously submitted or approved plan to the COTP and all other holders of the response plan for information or approval within 30 days, whenever there is—

(1) A change in the facility's configuration that significantly affects the information included in the response plan;

(2) A change in the type of oil (petroleum oil group) handled, stored, or transported that affects the required response resources;

(3) A change in the name(s) or capabilities of the oil spill removal organization required by § 154.1045;

(4) A change in the facility's emergency response procedures;

(5) A change in the facility's operating area that includes ports or geographic area(s) not covered by the previously approved plan. A facility may not operate in an area not covered in a plan previously submitted or approved, as appropriate, unless the revised plan is approved or interim operating approval is received under § 154.1025; or

(6) Any other changes that significantly affect the implementation of the plan.

(c) Except as required in paragraph (b) of this section, revisions to personnel and telephone number lists included in the response plan do not require COTP approval. The COTP and all other holders of the response plan shall be advised of these revisions and provided a copy of the revisions as they occur.

(d) The COTP may require a facility owner or operator to revise a response plan at any time as a result of a compliance inspection if the COTP determines that the response plan does not meet the requirements of this subpart or as a result of inadequacies noted in the response plan during an actual pollution incident at the facility.

**§ 154.1070 Deficiencies.**

(a) The cognizant COTP will notify the facility owner or operator in writing of any deficiencies noted during review of a response plan, drills observed by the Coast Guard, or inspection of equipment or records maintained in connection with this subpart.

(b) Deficiencies shall be corrected within the time period specified in the written notice provided by the COTP. The facility owner or operator who disagrees with a deficiency issued by the COTP may appeal the deficiency to the cognizant COTP within 7 days or the time specified by the COTP to correct the deficiency, whichever is less. This time commences from the date of receipt of the COTP notice. The owner or operator may request a stay from the COTP decision pending appeal in accordance with § 154.1075.

(c) If the facility owner or operator fails to correct any deficiencies or submit a written appeal, the COTP may invoke the provisions of § 154.1025 prohibiting the facility from storing, handling, or transporting oil.

#### § 154.1075 Appeal process.

(a) Any owner or operator of a facility who desires to appeal the classification that a facility could reasonably be expected to cause substantial harm or significant and substantial harm to the environment, shall submit a written request to the cognizant COTP requesting review and reclassification by the COTP. The facility owner or operator shall identify those factors to be considered by the COTP. The factors to be considered by the COTP regarding reclassification of a facility include, but are not limited to, those listed in § 154.1016(b). After considering all relevant material presented by the facility owner or operator and any additional material available to the COTP, the COTP will notify the facility owner or operator of the decision on the reclassification of the facility.

(b) Any facility owner or operator directly affected by an initial determination or action of the COTP may submit a written request to the cognizant COTP requesting review and reconsideration of the COTP's decision or action. The facility owner or operator shall identify those factors to be considered by the COTP in making his or her decision on reconsideration.

(c) Within 10 days of the COTP's decision under paragraph (b) of this section, the facility owner or operator may appeal the decision of the COTP to the District Commander. This appeal shall be made in writing via the cognizant COTP to the District Commander of the district in which the office of the COTP is located.

(d) Within 30 days of the District Commander's decision, the facility owner or operator may formally appeal the decision of the District Commander. This appeal shall be submitted in writing to Commandant (G-MEP) via the District Commander.

(e) When considering an appeal, the COTP, District Commander, or Commandant may stay the effect of the decision or action being appealed pending the determination of the appeal.

3. Subpart G is revised to read as follows:

#### **Subpart G—Additional Response Plan Requirements for a Trans Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska**

§ 154.1110 Purpose and applicability.

154.1115 Definitions.

154.1120 Operating restrictions and interim operating authorization.

154.1125 Additional response plan requirements.

154.1130 Requirements for prepositioned response equipment.

154.1135 Response plan development and evaluation criteria.

154.1140 TAPAA facility contracting with a vessel.

#### **Subpart G—Additional Response Plan Requirements for a Trans-Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska**

##### **§ 154.1110 Purpose and applicability.**

(a) This subpart establishes oil spill response planning requirements for a facility permitted under the Tans-Alaska Pipeline Authorization Act (TAPAA), in addition to the requirements of subpart F of this part. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

(b) The information required by this subpart must be included in the Prince William Sound facility-specific appendix to the facility response plan required by subpart F of this part.

##### **§ 154.1115 Definitions.**

In addition to the definitions in this section, the definitions in §§ 154.105 and 154.1020 apply to this subpart. As used in this subpart—

*Crude oil* means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

*Non-crude oil* means any oil other than crude oil.

*Prince William Sound* means all State and Federal waters within Prince William Sound, Alaska, including the approach to Hinchinbrook Entrance out to and encompassing Seal Rocks.

##### **§ 154.1120 Operating restrictions and interim operating authorization.**

(a) The owner or operator of a TAPAA facility may not operate in Prince William Sound, Alaska, unless the requirements of this subpart as well as § 154.1025 have been met. The owner or operator of a TAPAA facility shall certify to the COTP that he or she has provided, through an oil spill removal organization required by § 154.1125, the necessary response resources to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater, in Prince William Sound.

(b) Coast Guard approval of a TAPAA facility response plan is effective only so long as the appropriate Regional Citizens Advisory Council(s) is funded pursuant to the requirements of section 5002(k) of the Oil Pollution Act of 1990 (Pub. L. 101-380; 104 Stat. 484, 550).

##### **§ 154.1125 Additional response plan requirements.**

(a) The owner or operator of a TAPAA facility shall include the following information in the Prince William Sound appendix to the response plan required by subpart F of this part:

(1) *Oil spill removal organization.* Identification of an oil spill removal organization that shall—

(i) Perform response activities;

(ii) Provide oil spill removal and containment training, including training in the operation of prepositioned equipment for personnel, including local residents and fishermen, from the following locations in Prince William Sound:

- (A) Valdez;
- (B) Tatitlek;
- (C) Cordova;
- (D) Whittier;
- (E) Chenega; and
- (F) Fish hatcheries located at Port San Juan, Main Bay, Esther Island, Cannery Creek, and Solomon Gulch.

(iii) Provide a plan for training, in addition to the personnel listed in paragraph (a)(1)(ii) of this section, sufficient numbers of trained personnel to remove, to the maximum extent practicable, a worst case discharge; and

(iv) Address the responsibilities required in § 154.1035(b)(3)(iii).

(2) *Exercises.* Identification of exercise procedures that must—

(i) Provide for two exercises of the oil spill removal organization each year that test the ability of the prepositioned equipment and trained personnel required under this subpart to perform effectively;

(ii) Consist of both announced and unannounced drills; and

(iii) Include design(s) for exercises that test either the entire appendix or individual components(s).

(3) *Testing, inspection, and certification.* Identification of a testing, inspecting, and certification program for the prepositioned response equipment required in § 154.1130 that must provide for—

(i) Annual testing and equipment inspection in accordance with the manufacturer's recommended procedures, to include—

(A) Start-up and running under load all electrical motors, pumps, power packs, air compressors, internal combustion engines, and oil recovery devices; and

(B) Removal for inspection of no less than one-third of required boom from storage annually, such that all boom will have been removed and inspected within a period of 3 years; and

(ii) Records of equipment tests and inspection.

(iii) Use of an independent entity to certify that the equipment is on-site and in good operating condition and that required tests and inspection have been preformed. The independent entity must have appropriate training and expertise to provide this certification.

(4) *Prepositioned response equipment.* Identification and location of the prepositioned response equipment required in § 154.1130 including the make, model, and effective daily recovery rate of each oil recovery resource.

(b) The owner or operator of a TAPAA facility shall submit to the COTP a schedule for the training and drills required by the geographic-specific appendix for Prince William Sound for the following calendar year.

(c) All records required by this section must be available for inspection by the COTP.

**§ 154.1130 Requirements for prepositioned response equipment.**

The owner or operator of a TAPAA facility shall provide the following prepositioned response equipment, located within Prince William Sound, in addition to that required by §§ 154.1035, 154.1045, or 154.1050:

(a) On-water recovery equipment with a minimum effective daily recovery rate of 30,000 barrels capable of being a scene within 2 hours of notification of a discharge.

(b) On-water storage capacity of 100,000 barrels for recovered oily material capable of being on scene within 2 hours of notification of a discharge.

(c) On-water recovery equipment with a minimum effective daily recovery rate

of 40,000 barrels capable of being on scene within 18 hours of notification of discharge.

(d) On-water storage capacity of 300,000 barrels for recovered oily material capable of being on scene within 12 hours of notification of a discharge.

(e) On-water recovery devices and storage equipment located in communities at strategic locations.

(f) Equipment as identified below, for the locations identified in § 154.1125(a)(1)(ii) sufficient for the protection of the environment in these locations:

(1) Boom appropriate for the specific locations.

(2) Sufficient boats to deploy boom and sorbents.

(3) Sorbent materials.

(4) Personnel protective clothing and equipment.

(5) Survival equipment.

(6) First aid supplies.

(7) Buckets, shovels, and various other tools.

(8) Decontamination equipment.

(9) Shoreline cleanup equipment.

(10) Mooring equipment.

(11) Anchored buoys at appropriate locations to facilitate the positioning of defensive boom.

(12) Other appropriate removal equipment for the protection of the environment as identified by the COTP.

**§ 154.1135 Response plan development and evaluation criteria.**

The following response times must be used in determining the on scene arrival time in Prince William Sound for the response resources required by § 154.1045:

	Tier 1 (hrs.)	Tier 2 (hrs.)	tier 3 (hrs.)
Prince William Sound Area ...	12	24	36

**§ 154.1140 TAPAA facility contracting with a vessel.**

The owner or operator of a TAPAA facility may contract with a vessel owner or operator to meet some of all of the requirements of subpart G of part 155 of this chapter. The extent to which these requirements are met by the contractual arrangement will be determined by the COTP.

4. Subpart H, consisting of §§ 154.1210 through 154.1228, is added to read as follows:

**Subpart H—Response Plans for Animal Fats and Vegetable Oils Facilities**

Sec.

154.1210 Purpose and applicability.

154.1220 Response plan submission requirements.

154.1225 Response plan development and evaluation criteria for facilities that handle, store, or transport animal fats and vegetable oils.

154.1228 Methods of ensuring the availability of response resources by contract or other approved means.

**Subpart H—Response Plans for Animal Fats and Vegetable Oils Facilities**

**§ 154.1210 Purpose and applicability.**

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

**§ 154.1220 Response plan submission requirements.**

An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils shall submit a response plan in accordance with the requirements of this subpart, and with all sections of subpart F of this part, except §§ 154.1045 and 154.1047, which apply to petroleum oils.

**§ 154.1225 Response plan development and evaluation criteria for facilities that handle, store, or transport animal fats and vegetable oils.**

(a) An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must provide information in his or her plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of animal fats and vegetable oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in section 2 and Table 1 of appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the ACPs for the COTP zone in which the facility is located, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must identify the response resources that are available by contract or other means as described in § 154.1228(a). The equipment identified in a response plan must include—

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of animal fats or vegetable oils handled; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of commencing an effective on-scene response within the times specified in this paragraph for the applicable operating area:

	Tier 1 (hrs.)	Tier 2	Tier 3
Higher volume port area .....	6	N/A	N/A
Great Lakes .....	12	N/A	N/A
All other river and canal, inland, near-shore, and off-shore areas ...	12	N/A	N/A

(e) A response plan for a facility that handles, stores, or transports animal fats and vegetable oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1228(a), the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department on animal fats and vegetable oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

(f) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports animal fats and vegetable oils may request a credit for up to 25 percent of

the worst case planning volume set forth by subpart F of this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1228(a), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit for dispersants will be based on the volumes of the dispersant available to sustain operations at the manufacturers' recommended dosage rates. Other spill mitigation techniques, including mechanical dispersal, may be identified in the response plan provided they are in accordance with the NCP and the applicable ACP. Resources identified for plan credit should be capable of being on scene within 12 hours of a discovery of a discharge. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP.

**§ 154.1228 Methods of ensuring the availability of response resources by contract or other approved means.**

(a) When required in this subpart, the availability of response resources must be ensured by the following methods:

(1) The identification of an oil spill removal organization with specified equipment and personnel available within stipulated response times in specified geographic areas. The organization must provide written consent to being identified in the plan;

(2) A document which—

(i) Identifies the personnel, equipment, and services capable of being provided by the oil spill removal organization within stipulated response times in the specified geographic areas;

(ii) Sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and drills;

(iv) Is referenced in the response plan;

(3) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment required under this subpart that are available to respond to a discharge within stipulated response times in the specified geographic areas;

(4) Certification by the facility owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the facility owner or operator, and are available within stipulated

response times in the specified geographic areas; or

(5) A written contractual agreement with an oil spill removal organization. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the specified geographic areas.

(b) The contracts and documents required in paragraph (a) of this section must be retained at the facility and must be produced for review upon request by the COTP.

5. Subpart I, consisting of §§ 154.1310 through 154.1325, is added to read as follows:

**Subpart I—Response Plans for Other Non-Petroleum Oil Facilities**

Sec.

154.1310 Purpose and applicability.

154.1320 Response plan submission requirements.

154.1325 Response plan development and evaluation criteria for facilities that handle, store, or transport other non-petroleum oils.

**Subpart I—Response Plans for Other Non-Petroleum Oil Facilities**

**§ 154.1310 Purpose and applicability.**

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports other non-petroleum oils. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

**§ 154.1320 Response plan submission requirements.**

An owner or operator of a facility that handles, stores, or transports other non-petroleum oils shall submit a response plan in accordance with the requirements of this subpart, and with all sections of subpart F of this part, except §§ 154.1045 and 154.1047, which apply to petroleum oils.

**§ 154.1325 Response plan development and evaluation criteria for facilities that handle, store, or transport other non-petroleum oils.**

(a) An owner or operator of a facility that handles, stores, or transports other non-petroleum oils must provide information in his or her plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of other non-petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports other non-petroleum oils must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in Table 1 of appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the ACPs for the COTP zone in which the facility is located, including—

- (1) Ice conditions;
- (2) Debris;
- (3) Temperature ranges; and
- (4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports other non-petroleum oils must identify the response resources that are available by contract or other approved means as described in § 154.1028(a). The equipment identified in a response plan must include—

- (1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;
- (2) Oil recovery devices appropriate for the type of other non-petroleum oils handled; and
- (3) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of commencing an effective on-scene response within the times specified in this paragraph for the applicable operating area:

	Tier 1 (hrs.)	Tier 2	Tier 3
Higher volume port area	6	N/A	N/A
Great Lakes .....	12	N/A	N/A
All other river and canal, inland, near-shore, and offshore areas .....	12	N/A	N/A

(e) A response plan for a facility that handles, stores, or transports other non-petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that cannot rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1028(a), the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department

on other non-petroleum oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

(f) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports other non-petroleum oils may request a credit for up to 25 percent of the worst case planning volume set forth by subpart F of this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1028(a), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit will be based on the volumes of the dispersant available to sustain operations at the manufacturers' recommended dosage rates. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP.

6. Appendix C is revised to read as follows:

Appendix C—Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

1. Purpose

1.1 The purpose of this appendix is to describe the procedures for identifying response resources to meet the requirements of subpart F of this part. These guidelines will be used by the facility owner or operator in preparing the response plan and by the Captain of the Port (COTP) when reviewing them. Response resources identified in subparts H and I of this part should be selected using the guidelines in section 2 and Table 1 of this appendix.

2. Equipment Operability and Readiness

2.1 All equipment identified in a response plan must be designed to operate in the conditions expected in the facility's geographic area. These conditions vary widely based on location and season. Therefore, it is difficult to identify a single stockpile of response equipment that will function effectively in each geographic location.

2.2 Facilities handling, storing, or transporting oil in more than one operating environment as indicated in Table 1 of this appendix must identify equipment capable of successfully functioning in each operating environment.

2.3 When identifying equipment for response plan credit, a facility owner or

operator must consider the inherent limitations in the operability of equipment components and response systems. The criteria in Table 1 of this appendix should be used for evaluating the operability in a given environment. These criteria reflect the general conditions in certain operating areas.

2.3.1 The Coast Guard may require documentation that the boom identified in a response plan meets the criteria in Table 1. Absent acceptable documentation, the Coast Guard may require that the boom be tested to demonstrate that it meets the criteria in Table 1. Testing must be in accordance with ASTM F 715, ASTM F 989, or other tests approved by the Coast Guard.

2.4 Table 1 of this appendix lists criteria for oil recovery devices and boom. All other equipment necessary to sustain or support response operations in the specified operating environment must be designed to function in the same conditions. For example, boats which deploy or support skimmers or boom must be capable of being safely operated in the significant wave heights listed for the applicable operating environment.

2.5 A facility owner or operator must refer to the applicable local contingency plan or ACP, as appropriate, to determine if ice, debris, and weather-related visibility are significant factors in evaluating the operability of equipment. The local contingency plan or ACP will also identify the average temperature ranges expected in the facility's operating area. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 The requirements of subparts F, G, H and I of this part establish response resource mobilization and response times. The distance of the facility from the storage location of the response resources must be used to determine whether the resources can arrive on scene within the stated time. A facility owner or operator shall include the time for notification, mobilization, and travel time of response resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge response time requirements. For subparts F and G, tier 2 and 3 response resources must be notified and mobilized as necessary to meet the requirements for arrival on scene in accordance with §§ 154.1045 or 154.1047 of subpart F, or § 154.1135 of subpart G, as appropriate. An on water speed of 5 knots and a land speed of 35 miles per hour is assumed unless the facility owner or operator can demonstrate otherwise.

2.7 For subparts F and G, in identifying equipment, the facility owner or operator shall list the storage location, quantity, and manufacturer's make and model. For oil recovery devices, the effective daily recovery capacity, as determined using section 6 of this appendix must be included. For boom, the overall boom height (draft plus freeboard) should be included. A facility owner or operator is responsible for ensuring that identified boom has compatible connectors.

2.8 For subparts H and I, in identifying equipment, the facility owner or operator shall list the storage location, quantity, and manufacturer's make and model. For boom,

the overall boom height (draft plus freeboard) should be included. A facility owner or operator is responsible for ensuring that identified boom has compatible connectors.

### 3. Determining Response Resources Required for the Average Most Probable Discharge

3.1 A facility owner or operator shall identify sufficient response resources available, through contract or other approved means as described in § 154.1028(a), to respond to the average most probable discharge. The equipment must be designed to function in the operating environment at the point of expected use.

3.2 The response resources must include:

3.2.1 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater, and a means deploying it available at the spill site within 1 hour of the discovery of a spill.

3.2.2 Oil recovery devices with an effective daily recovery capacity equal to the amount of oil discharged in an average most probable discharge or greater available at the facility within 2 hours of the detection of an oil discharge.

3.2.3 Oil storage capacity for recovered oily material indicated in section 9.2 of this appendix.

### 4. Determining Response Resources Required for the Maximum Most Probable Discharge

4.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 154.1028(a), to respond to discharges up to the maximum most probable discharge volume for that facility. This will require response resources capable of containing and collecting up to 1,200 barrels of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

4.2 Oil recovery devices identified to meet the applicable maximum most probable discharge volume planning criteria must be located such that they arrive on scene within 6 hours in higher volume port areas (as defined in 154.1020) and the Great Lakes and within 12 hours in all other areas.

4.3 Because rapid control, containment, and removal of oil is critical to reduce spill impact, the effective daily recovery capacity for oil recovery devices must equal 50 percent of the planning volume applicable for the facility as determined in section 4.1 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.4 In addition to oil recovery capacity, the plan must identify sufficient quantities of containment boom available, by contract or other approved means as described in § 154.1028(a), to arrive within the required response times for oil collection and containment and for protection of fish and wildlife and sensitive environments. While the regulation does not set required quantities of boom for oil collection and containment, the response plan must identify

and ensure, by contract or other approved means as described in § 154.1028(a), the availability of the boom identified in the plan for this purpose.

4.5 The plan must indicate the availability of temporary storage capacity to meet the guidelines of section 9.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated to the limits of the available storage capacity.

4.6 The following is an example of a maximum most probable discharge volume planning calculation for equipment identification in a higher volume port area: The facility's worst case discharge volume is 20,000 barrels. Ten percent of this is 2,000 barrels. Since this is greater than 1,200 barrels, 1,200 barrels is used as the planning volume. The effective daily recovery capacity must be 50 percent of this, or 600 barrels per day. The ability of oil recovery devices to meet this capacity will be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on scene must equal twice the daily recovery rate as indicated in section 9 of this appendix, or 1,200 barrels per day. This is the information the facility owner or operator will use to identify and ensure the availability of, through contract or other approved means as described in § 154.1028(a), the required response resources. The facility owner will also need to identify how much boom is available for use.

### 5. Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A facility owner or operator shall identify and ensure availability of, by contract or other approved means, as described in § 154.1028(a), sufficient response resources to respond to the worst case discharge of oil to the maximum extent practicable. Section 7 of this appendix describes the method to determine the required response resources.

5.2 Oil spill response resources identified in the response plan and available through contract or other approved means, as described in § 154.1028(a), to meet the applicable worst case discharge planning volume must be located such that they can arrive at the scene of a discharge within the times specified for the applicable response tiers listed in § 154.1045.

5.3 The effective daily recovery capacity for oil recovery devices identified in a response plan must be determined using the criteria in section 6 of this appendix. A facility owner or operator shall identify the storage locations of all response resources that must be used to fulfill the requirements for each tier. The owner or operator of a facility whose required daily recovery capacity exceeds the applicable response capability caps in Table 5 of this appendix shall identify sources of additional equipment, their locations, and the arrangements made to obtain this equipment during a response. The owner or operator of a facility whose calculated planning volume exceeds the applicable contracting caps in

Table 5 shall identify sources of additional equipment equal to twice the cap listed in Tiers 1, 2, and 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The resources identified above the cap must be capable of arriving on scene not later than the Tiers 1, 2, and 3 response times in § 154.1045. No contract is required. While general listings of available response equipment may be used to identify additional sources, a response plan must identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing Coast Guard classified oil spill removal organization(s) which have sufficient removal capacity to recover the volume above the response capability cap for the specific facility, as specified in Table 5 of this appendix, it is not necessary to list specific quantities of equipment.

5.4 A facility owner or operator shall identify the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery capacity must be derated to the limits of the available storage capacity.

5.5 When selecting response resources necessary to meet the response plan requirements, the facility owner or operator must ensure that a portion of those resources are capable of being used in close-to-shore response activities in shallow water. The following percentages of the on-water response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth:

- (i) Offshore—10 percent
- (ii) Nearshore/inland/Great Lakes/rivers and canals—20 percent.

5.6 In addition to oil spill recovery devices, a facility owner or operator shall identify sufficient quantities of boom that are available, by contract or other approved means as described in § 154.1028(a), to arrive on scene within the required response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the specific recovery equipment and strategies employed. A facility owner or operator shall also identify sufficient quantities of oil containment boom to protect fish and wildlife and sensitive environments for the number of days and geographic areas specified in Table 2. Sections 154.1035(b)(4)(iii) and 154.1040(a), as appropriate, shall be used to determine the amount of containment boom required, through contract or other approved means as described in § 154.1028(a), to protect fish and wildlife and sensitive environments.

5.7 A facility owner or operator must also identify, through contract or other approved means as described in § 154.1028(a), the availability of an oil spill removal organization capable of responding to a shoreline cleanup operation involving the calculated volume of oil and emulsified oil that might impact the affected shoreline. The volume of oil that must be planned for is calculated through the application of factors contained in Tables 2 and 3. The volume

calculated from these tables is intended to assist the facility owner or operator in identifying a contractor with sufficient resources and expertise. This planning volume is not used explicitly to determine a required amount of equipment and personnel.

#### 6. Determining Effective Daily Recovery Capacity for Oil Recovery Devices

6.1 Oil recovery devices identified by a facility owner or operator must be identified by manufacturer, model, and effective daily recovery capacity. These rates must be used to determine whether there is sufficient capacity to meet the applicable planning criteria for the average most probable discharge, maximum most probable discharge, and worst case discharge to the maximum extent practicable.

6.2 For the purpose of determining the effective daily recovery capacity of oil recovery devices, the formula listed in section 6.2.1 of this appendix will be used. This method considers potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material. The Coast Guard may assign a lower efficiency factor to equipment listed in a response plan if it determines that such a reduction is warranted.

6.2.1 The following formula must be used to calculate the effective daily recovery capacity:

$$R=T \times 24 \text{ hours} \times E$$

R=Effective daily recovery capacity

T=Throughput rate in barrels per hour (nameplate capacity)

E=20 percent Efficiency factor (or lower factor as determined by Coast Guard)

6.2.2 For those devices in which the pump limits the throughput of liquid, throughput rate will be calculated using the pump capacity.

6.2.3 For belt or mop type devices, the throughput rate will be calculated using the speed of the belt or mop through the device, assumed thickness of oil adhering to or collected by the device, and surface area of the belt or mop. For purposes of this calculation, the assumed thickness of oil will be 1/4 inch.

6.2.4 Facility owners or operators including oil recovery devices whose throughput is not measurable using a pump capacity or belt/mop speed may provide information to support an alternative method of calculation. This information must be submitted following the procedures in paragraph 6.3.2 of this appendix.

6.3 As an alternative to 6.2, a facility owner or operator may submit adequate evidence that a different effective daily recovery capacity should be applied for a specific oil recovery device. Adequate evidence is actual verified performance data in spill conditions or tests using ASTM F 631, ASTM F 808, or an equivalent test approved by the Coast Guard.

6.3.1 The following formula must be used to calculate the effective daily recovery capacity under this alternative:

$$R=D \times U$$

R=Effective daily recovery capacity

D=Average Oil Recovery Rate in barrels per hour (Item 26 in ASTM F 808; Item 13.1.15 in ASTM F 631; or actual performance data)

U=Hours per day that a facility owner or operator can document capability to operate equipment under spill conditions. Ten hours per day must be used unless a facility owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

6.3.2 A facility owner or operator proposing a different effective daily recovery rate for use in a response plan shall provide data for the oil recovery devices listed. The following is an example of these calculations:

A weir skimmer identified in a response plan has a manufacturer's rated throughput at the pump of 267 gallons per minute (gpm).

$$267 \text{ gpm} = 381 \text{ barrels per hour}$$

$$R = 381 \times 24 \times .2 = 1829 \text{ barrels per day}$$

After testing using ASTM procedures, the skimmer's oil recovery rate is determined to be 220 gpm. The facility owner of operator identifies sufficient response resources available to support operations 12 hours per day.

$$220 \text{ gpm} = 314 \text{ barrels per hour}$$

$$R = 314 \times 12 = 3768 \text{ barrels per day}$$

The facility owner or operator will be able to use the higher rate if sufficient temporary oil storage capacity is available.

Determinations of alternative efficiency factors under paragraph 6.2 or alternative effective daily recovery capacities under paragraph 6.3 of this appendix will be made by Commandant, (G-MEP-6), Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Response contractors or equipment manufacturers may submit required information on behalf of multiple facility owners or operators directly in lieu of including the request with the response plan submission.

#### 7. Calculating the Worst Case Discharge Planning Volumes

7.1 The facility owner or operator shall plan for a response to a facility's worst case discharge. The planning for on-water recovery must take into account a loss of some oil to the environment due to evaporative and natural dissipation, potential increases in volume due to emulsification, and the potential for deposit of some oil on the shoreline.

7.2 The following procedures must be used to calculate the planning volume used by a facility owner or operator for determining required on water recovery capacity:

7.2.1 The following must be determined: The worst case discharge volume of oil in the facility; the appropriate group(s) for the type of oil handled, stored, or transported at the facility (non-persistent (Group I) or persistent (Groups II, III, or IV)); and the facility's specific operating area. Facilities which handle, store, or transport oil from different petroleum oil groups must calculate each group separately. This information is to be used with Table 2 of this appendix to determine the percentages of the total volume to be used for removal capacity planning.

This table divides the volume into three categories: Oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

7.2.2 The on-water oil recovery volume must be adjusted using the appropriate emulsification factor found in Table 3 of this appendix. Facilities which handle, store, or transport oil from different petroleum groups must assume that the oil group resulting in the largest on-water recovery volume will be stored in the tank or tanks identified as constituting the worst case discharge.

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization favor found in Table 4 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted for to arrive on-scene with the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they can arrive on scene within 6, 30, and 54 hours of the discovery of an oil discharge. For all other river, inland, nearshore, offshore areas, and the Great Lakes, these tiers are 12, 36, and 60 hours.

7.2.4 The resulting on-water recovery capacity in barrels per day for each tier must be used to identify response resources necessary to sustain operations in the applicable operating area. The equipment must be capable of sustaining operations for the time period specified in Table 2 of this appendix. The facility owner or operator must identify and ensure the availability, through contract or other approved means as described in § 154.1028(a), of sufficient oil spill recovery devices to provide the effective daily recovery oil recovery capacity required. If the required capacity exceeds the applicable cap specified in Table 5 of this appendix, then a facility owner or operator shall ensure, by contract or other approved means as described in § 154.1028(a), only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in § 154.1045(m). The owner or operator of a facility whose planning volume exceeds the cap for 1993 must make arrangements to identify and ensure the availability, through contract or other approved means as described in § 154.1028(a), of the additional capacity in 1998 or 2003, as appropriate. For a facility that handles, stores, or transports multiple groups of oil, the required effective daily recovery capacity for each group is calculated before applying the cap.

7.3 The following procedures must be used to calculate the planning volume for identifying shoreline cleanup capacity:

7.3.1 The following must be determined: The worst case discharge volume of oil for the facility; the appropriate group(s) for the type of oil handled, stored, or transported at the facility (non-persistent (Group I) or persistent (Groups II, III, or IV)); and the operating area(s) in which the facility operates. For a facility storing oil from different groups, each group must be calculated separately. Using this information, Table 2 of this appendix must be used to determine the percentages of the total

planning volume to be used for shoreline cleanup resource planning.

7.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 7.2.2.

7.3.3 The resulting volume will be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

7.3.4 The following is an example of the procedure described above: A facility receives oil from barges via a dock located on a bay and transported by piping to storage tanks. The facility handles Number 6 oil (specific gravity .96) and stores the oil in tanks where it is held prior to being burned in an electric generating plant. The MTR segment of the facility has six 18-inch diameter pipelines running one mile from the dock-side manifold to several storage tanks which are located in the non-transportation-related portion of the facility. Although the facility piping has a normal working pressure of 100 pounds per square inch, the piping has a maximum allowable working pressure (MAWP) of 150 pounds per square inch. At MAWP, the pumping system can move 10,000 barrels (bbls) of Number 6 oil every hour through each pipeline. The facility has a roving watchman who is required to drive the length of the piping every 2 hours when the facility is receiving oil from a barge. The facility operator estimates that it will take approximately 10 minutes to secure pumping operations when a discharge is discovered. Using the definition of worst case discharge provided in § 154.1029(b)(ii), the following calculation is provided:

	bbls.
2 hrs + 0.17 hour × 10,000 bbls per hour .....	21,700
Piping volume = 37,322 ft <sup>3</sup> ÷ 5.6 ft <sup>3</sup> /bbl .....	+6,664
Discharge volume per pipe .....	28,364
Number of pipelines .....	×6
Worst case discharge from MTR facility .....	170,184

To calculate the planning volumes for onshore recovery:

Worst case discharge: 170,184 bbls. Group IV oil  
 Emulsification factor (from Table 3): 1.4  
 Operating Area impacted: Inland  
 Planned percent oil onshore recovery (from Table 2): Inland 70%  
 Planning volumes for onshore recovery:  
 Inland 170,184 × .7 × 1.4 = 166,780 bbls.

Conclusion: The facility owner or operator must contract with a response resource capable of managing a 166,780 barrel shoreline cleanup.

To calculate the planning volumes for on-water recovery:

Worst case discharge: 170,184 bbls. Group IV oil  
 Emulsification factor (from Table 3): 1.4  
 Operating Area impacted: Inland  
 Planned percent oil on-water recovery (from Table 2): Inland 50%  
 Planning volumes for on-water recovery:  
 Inland 170,184 × .5 × 1.4 = 119,128 bbls.

To determine the required resources for on-water recovery for each tier, use the mobilization factors from Table 4:

	Tier 1	Tier 2	Tier 3
Inland = 119,128 bbls. ....	× .15	× .25	× .40
Barrels per day (bpd) .....	17,869	29,782	47,652

Conclusion: Since the requirements for all tiers for inland exceed the caps, the facility owner will only need to contract for 10,000 bpd for Tier 1, 20,000 bpd for Tier 2, and 40,000 bpd for Tier 3. Sources for the bpd on-water recovery resources above the caps for all three Tiers need only be identified in the response plan.

Twenty percent of the capability for Inland, for all tiers, must be capable of operating in water with a depth of 6 feet or less.

The facility owner or operator will also be required to identify or ensure, by contract or other approved means as described in § 154.1028(a), sufficient response resources required under §§ 154.1035(b)(4) and 154.1045(k) to protect fish and wildlife and sensitive environments identified in the response plan for the worst case discharge from the facility.

The COTP has the discretion to accept that a facility can operate only a limited number of the total pipelines at a dock at a time. In those circumstances, the worst case discharge must include the drainage volume from the piping normally not in use in addition to the drainage volume and volume of oil discharged during discovery and shut down of the oil discharge from the operating piping.

**8. Determining the Availability of Alternative Response Methods**

8.1 Response plans for facilities that handle, store, or transport Groups II or III persistent oils that operate in an area with year-round preapproval for dispersant use may receive credit for up to 25 percent of their required on-water recovery capacity for 1993 if the availability of these resources is ensured by contract or other approved means as described in § 154.1028(a). For response plan credit, these resources must be capable of being on-scene within 12 hours of a discharge.

8.2 To receive credit against any required on-water recover capacity a response plan must identify the locations of dispersant stockpiles, methods of shipping to a staging area, and appropriate aircraft, vessels, or facilities to apply the dispersant and monitor its effectiveness at the scene of an oil discharge.

8.2.1 Sufficient volumes of dispersants must be available to treat the oil at the dosage

rate recommended by the dispersant manufacturer. Dispersants identified in a response plan must be on the NCP Product Schedule that is maintained by the Environmental Protection Agency. (Some states have a list of approved dispersants and within state waters only they can be used.)

8.2.2 Dispersant application equipment identified in a response plan for credit must be located where it can be mobilized to shoreside staging areas to meet the time requirements in section 8.1 of this appendix. Sufficient equipment capacity and sources of appropriate dispersants should be identified to sustain dispersant application operations for at least 3 days.

8.2.3 Credit against on-water recovery capacity in preapproved areas will be based on the ability to treat oil at a rate equivalent to this credit. For example, a 2,500 barrel credit against the Tier 1 10,000 barrel on-water cap would require the facility owner or operator to demonstrate the ability to treat 2,500 barrel/day of oil at the manufacturers recommended dosage rate. Assuming a dosage rate of 10:1, the plan would need to show stockpiles and sources of 250 barrels of dispersants at a rate of 250 barrels per day and the ability to apply the dispersant at that daily rate for 3 days in the geographic area in which the facility is located. Similar data would need to be provided for any additional credit against Tier 2 and 3 resources.

8.3 In addition to the equipment and supplies required, a facility owner or operator shall identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable regional plans and ACPs.

8.4 Identification of the response resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable regional plan or ACP. A facility owner or operator who operates a facility in areas with year-round preapproval of dispersant can reduce the required on-water recovery capacity for 1993 up to 25 percent. A facility owner or operator may reduce the required on water recovery cap increase for 1998 and 2003 up to 50 percent by identifying pre-approved alternative response methods.

8.5 In addition to the credit identified above, a facility owner or operator that operates in a year-round area pre-approved for dispersant use may reduce their required on water recovery cap increase for 1998 and 2003 by up to 50 percent by identifying non-mechanical methods.

8.6 The use of in-situ burning as a non-mechanical response method is still being studied. Because limitations and uncertainties remain for the use of this method, it may not be used to reduce required oil recovery capacity in 1993.

**9. Additional Equipment Necessary to Sustain Response Operations**

9.1 A facility owner or operator is responsible for ensuring that sufficient numbers of trained personnel and boats, aerial spotting aircraft, containment boom, sorbent materials, boom anchoring materials, and other supplies are available to sustain

response operations to completion. All such equipment must be suitable for use with the primary equipment identified in the response plan. A facility owner or operator is not required to list these response resources, but shall certify their availability.

9.2 A facility owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from

equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery rate required on scene. This temporary storage capacity may be reduced if a facility owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant waste, or the availability of

alternative temporary storage or disposal locations will reduce the overall volume of oily material storage requirement.

9.3 A facility owner or operator shall ensure that his or her planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable ACP.

TABLE 1.—RESPONSE RESOURCE OPERATING CRITERIA OIL RECOVERY DEVICES

Operating environment	Significant wave height <sup>1</sup>	Sea State
Rivers and Canals .....	≤1 Foot .....	1
Inland .....	≤3 feet .....	2
Great Lakes .....	≤4 feet .....	2-3
Ocean .....	≤6 feet .....	3-4

**BOOM**

Boom property	Use			
	Rivers and canals	Inland	Great Lakes	Ocean
Significant Wave Height <sup>1</sup> .....	≤1	≤3	≤4	≤6
Sea State .....	1	2	2-3	3-4
Boom height—in. (draft plus freeboard) .....	6-18	18-42	18-42	≤42
Reserve Buoyancy to Weight Ratio .....	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength—lbs. ....	4,500	15-20,000	15-20,000	≤20,000
Skirt Fabric Tensile Strength—lbs .....	200	300	300	500
Skirt Fabric Tear Strength—lbs .....	100	100	100	125

<sup>1</sup> Oil recovery devices and boom must be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating environment.

TABLE 2.—REMOVAL CAPACITY PLANNING TABLE

Spill location	Rivers and canals			Nearshore/inland Great Lakes			Offshore		
Sustainability of on-water oil recovery	3 Days			4 Days			6 Days		
Oil group	% Natural dissipation	% Recovered floating oil	% Oil on shore	% Natural dissipation	% Recovered floating oil	% Oil on shore	% Natural dissipation	% Recovered floating oil	% Oil on shore
1 Non-persistent oils .....	80	10	10	80	20	10	95	5	/
2 Light crudes .....	40	15	45	50	50	30	75	25	5
3 Medium crudes and fuels .....	20	15	65	30	50	50	60	40	20
4 Heavy crudes and fuels .....	5	20	75	10	50	70	50	40	30

TABLE 3.—EMULSIFICATION FACTORS FOR PETROLEUM OIL GROUPS

Non-Persistent Oil:	
Group I .....	1.0
Persistent Oil:	
Group II .....	1.8
Group III .....	2.0
Group IV .....	1.4

TABLE 4.—ON WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS

Operating Area	Tier 1	Tier 2	Tier 3
Rivers & Canals .....	.30	.40	.60
Inland/Nearshore/Great Lakes .....	.15	.25	.40

TABLE 4.—ON WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS—Continued

Operating Area	Tier 1	Tier 2	Tier 3
Offshore .....	.10	.165	.21

Note: These mobilization factors are for total response resources mobilized, not incremental response resources.

TABLE 5.—Response Capability Caps by Operating Area

	Tier 1	Tier 2	Tier 3
February 18, 1993:			
All except rivers and canals, Great Lakes .....	10K bbls/day .....	20K bbls/day .....	40K bbls/day/
Great Lakes .....	5K bbls/day .....	10K bbls/day .....	20K bbls/day.
Rivers and canals .....	1,500 bbls/day .....	3,000 bbls/day .....	6,000 bbls/day.
February 18, 1998:			
All except rivers and canals, Great Lakes .....	12.5K bbls/day .....	25K bbls/day .....	50K bbls/day.

TABLE 5.—Response Capability Caps by Operating Area—Continued

	Tier 1	Tier 2	Tier 3
Great Lakes .....	6.35K bbls/day .....	12.3K bbls/day .....	25K bbls/day.
Rivers and canals .....	1,875 bbls/day .....	3,750 bbls/day .....	7,500 bbls/day.
February 18, 2003:			
All except rivers and canals, Great Lakes .....	TBD .....	TBD .....	TBD.
Great Lakes .....	TBD .....	TBD .....	TBD.
Rivers and canals .....	TBD .....	TBD .....	TBD.

Note: The caps show cumulative overall effective daily recovery capacity, not incremental increases. TBD= To be determined.

7. Appendix D is revised to read as follows:

Appendix D—Training Elements for Oil Spill Response Plans

1. General

1.1 The portion of the plan dealing with training is one of the key elements of a response plan. This concept is clearly expressed by the fact that Congress, in writing OPA 90, specifically included training as one of the sections required in a vessel or facility response plan. In reviewing submitted response plans, it has been noted that the plans often do not provide sufficient information in the training section of the plan for either the user or the reviewer of the plan. In some cases, plans simply state that the crew and others will be trained in their duties and responsibilities, with no other information being provided. In other plans, information is simply given that required parties will receive the necessary worker safety training (HAZWOPER).

1.2 The training section of the plan need not be a detailed course syllabus, but it must contain sufficient information to allow the user and reviewer (or evaluator) to have an understanding of those areas that are believed to be critical. Plans should identify key skill areas and the training that is required to ensure that the individual identified will be capable of performing the duties prescribed to them. It should also describe how the training will be delivered to the various personnel. Further, this section of the plan must work in harmony with those sections of the plan dealing with exercises, the spill management team, and the qualified individual.

1.3 The material in this appendix D is not all-inclusive and is provided for guidance only.

2. Elements To Be Addressed

2.1 To assist in the preparation of the training section of a facility response plan, some of the key elements that should be addressed are indicated in the following sections. Again, while it is not necessary that the comprehensive training program for the company be included in the response plan, it is necessary for the plan to convey the elements that define the program as appropriate.

2.2 An effective spill response training program should consider and address the following:

2.2.1 Notification requirements and procedures.

2.2.2 Communication system(s) used for the notifications.

2.2.3 Procedures to mitigate or prevent any discharge or a substantial threat of a discharge of oil resulting from failure of manifold, mechanical loading arm, or other transfer equipment or hoses, as appropriate;

- 2.2.3.1 Tank overflow;
- 2.2.3.2 Tank rupture;
- 2.2.3.3 Piping rupture;
- 2.2.3.4 Piping leak, both under pressure and not under pressure, if applicable;
- 2.2.3.5 Explosion or fire;
- 2.2.3.6 Equipment failure (e.g., pumping system failure, relief valve failure, or other general equipment relevant to operational activities associated with internal or external facility transfers).

2.2.4 Procedures for transferring responsibility for direction of response activities from facility personnel to the spill management team.

2.2.5 Familiarity with the operational capabilities of the contracted oil spill removal organizations and the procedures to notify the activate such organizations.

2.2.6 Familiarity with the contracting and ordering procedures to acquire oil spill removal organization resources.

2.2.7 Familiarity with the ACP(s).

2.2.8 Familiarity with the organizational structures that will be used to manage the response actions.

2.2.9 Responsibilities and duties of the spill management team members in accordance with designated job responsibilities.

2.2.10 Responsibilities and authority of the qualified individual as described in the facility response plan and company response organization.

2.2.11 Responsibilities of designated individuals to initiate a response and supervise response resources.

2.2.12 Actions to take, in accordance with designated job responsibilities, in the event of a transfer system leak, tank overflow, or suspected cargo tank or hull leak.

2.2.13 Information on the cargoes handled by the vessel or facility, including familiarity with—

- 2.2.13.1 Cargo material safety data sheets;
- 2.2.13.2 Chemical characteristic of the cargo;
- 2.2.13.3 Special handling procedures for the cargo;
- 2.2.13.4 Health and safety hazards associated with the cargo; and
- 2.2.13.5 Spill and firefighting procedures for cargo.

2.2.14 Occupational Safety and Health Administration requirements for worker health and safety (29 CFR 1910.120).

3. Further Considerations

In drafting the training section of the facility response plan, some further considerations are noted below (these points are raised simply as a reminder):

3.1 The training program should focus on training provided to facility personnel.

3.2 An organization is comprised of individuals, and a training program should be structured to recognize this fact by ensuring that training is tailored to the needs of the individuals involved in the program.

3.3 An owner or operator may identify equivalent work experience which fulfills specific training requirements.

3.4 The training program should include participation in periodic announced and unannounced exercises. This participation should approximate the actual roles and responsibilities of individual specified in the plan.

3.5 Training should be conducted periodically to reinforce the required knowledge and to ensure an adequate degree of preparedness by individuals with responsibilities under the facility response plan.

3.6 Training may be delivered via a number of different means; including classroom sessions, group discussions, video tapes, self-study workbooks, resident training courses, on-the-job training, or other means as deemed appropriate to ensure proper instruction.

3.7 New employees should complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

4. Conclusion

The information in this appendix is only intended to assist response plan preparers in reviewing the content of and in modifying the training section of their response plans. It may be more comprehensive than is needed for some facilities and not comprehensive enough for others. The Coast Guard expects that plan preparers have determined the training needs of their organizations created by the development of the response plans and the actions identified as necessary to increase the preparedness of the company and its personnel to respond to actual or threatened discharges of oil from their facilities.

Dated: February 15, 1996.

A.E. Henn,

*Vice Admiral, U.S. Coast Guard, Acting  
Commandant.*

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