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

1. Purpose

Since the Coast Guard is using the facility's potential to impact sensitive areas as a factor in determining whether a facility could reasonably be expected to cause substantial harm or significant and substantial harm, it is necessary for facility owners or operators to be able to correctly identify sensitive areas. Sensitive areas will require more stringent protective measures than other areas in the event of a discharge. These guidelines will help facility owners or operators identify the areas that affect the classification of their facilities and the areas which require increased awareness during the planning process.

These guidelines will serve as interim guidelines until the area committees have identified sensitive areas in the Area Contingency Plans (ACP).

2. Identifying Sensitive Areas Potentially Impacted by a Worst Case Discharge From a Facility

Proximity to environmentally sensitive areas has been identified as a factor in the substantial harm evaluation. To assist owners or operators in identifying these areas, environmentally sensitive areas may include a variety of areas, such as: wetlands, National and State parks, critical habitats for endangered and threatened species, wilderness and natural areas, marine sanctuaries, conservation areas, preserves, wildlife areas, scenic and wild rivers, seashore and lakeshore recreational areas, and critical biological resource areas.

Other environmental areas that may be considered by the Coast Guard to determine whether a facility poses significant and substantial harm to the environment include: Federal and State lands that are research natural areas, heritage program areas, land trust areas, and historical and archeological sites and parks. These areas may also include unique habitats, such as: aquaculture sites, bird nesting areas, designated migratory routes, and designated seasonal habitats. The Coast Guard may determine, on a case-by-case basis, that additional areas that possess ecological significance are considered to be environmentally sensitive for the purposes of this regulation.

The Commandant in consultation with EPA's Regional Administrator may determine, on a case-by-case basis, that areas not contained in this appendix but that possess ecological value are considered to be sensitive environments for purposes of this regulation.

Dated: January 19, 1993.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 93–1708 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 155

[CGD 91–034]

RIN 2115–AD61

Vessel Response Plans

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is establishing regulations requiring response plans for certain vessels that carry oil in bulk as cargo and additional requirements for certain vessels operating in Prince William Sound, Alaska. 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 these requirements is to improve response capabilities and minimize the impact of oil spills from these vessels.

DATES: This rule is effective February 5, 1993, except for §§ 155.1110 through 155.1150 of subpart E. Sections 155.1110 through 155.1150 are effective August 18, 1993. The Director of the Federal Register approves as of February 5, 1993, the incorporation by reference of certain publications listed in the regulations. Comments on the interim final rule must be received by April 6, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–034), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

Comments on collection of information requirements must also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

When submitting comments, include your name and address, identify both this rulemaking (91–034) and the specific section of the rulemaking to which each comment applies, and give the reason for the comment. If you want acknowledgement of receipt of comments, enclosed a stamped, self-addressed postcard or envelope.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection and copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gary Greene, Project Manager, Oil Pollution Act of 1990 (OPA 90) Staff, (202) 267–6739. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for comments

The Coast Guard is soliciting comments on portions of the interim final rule where we have made major changes based on our review of comments received on the proposed rule (57 FR 27514, June 19, 1992). The Coast Guard encourages the submission of written data, views, or arguments on the following issues:

1. Section 155.1015: The new exemption, under certain circumstances, for foreign flag vessels transiting the exclusive economic zone and territorial seas.
2. Section 155.1020: Definition of Contract or other approved means. The new "other approved means" for ensuring the availability of response resources, and the new situations in which the owner or operator may obtain written consent from an oil spill removal organization to ensure the availability of response resources.
3. Section 155.1050(f)(6): The new requirements for owners or operators to plan for close-to-shore response activities in shallow water.
4. Section 155.1050(g): The revised response times for the Great Lakes area.
5. Section 155.1050(k): The revised requirements for owners or operators to ensure the availability of dispersants.
6. Section 155.1052: The new section which establishes response plan requirements and criteria for vessels carrying group V petroleum oil (specific gravity greater than 1) as a primary cargo.
7. Section 155.1054: The new section which establishes response plan requirements and criteria for vessels carrying non-petroleum oil as a primary cargo.
8. Section 155.1062: The new section which establishes requirements for the inspection and maintenance of certain response resources.
9. Section 155.1130: The revised requirements for on-water removal capability.
10. Appendix B, Table 6: The new caps for the Great Lakes area.

While comments are specifically requested on the above issues, all comments on any issues raised by this rulemaking will be considered.

Drafting Information

The principal persons involved in drafting this document are Commander Glenn Wiltshire, Project Manager, Lieutenant Commander Gary Greene, Project Manager, and Joan Tilghman, Project Counsel, OPA 90 Staff.

Background and Purpose

The Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1321(j)(5), requires the owner or operator of a tank vessel, as defined under 46 U.S.C. 2101, or a facility to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance. Worst case discharge is defined in section 311(a)(24) of the FWPCA as the loss of the entire cargo in adverse weather conditions.

Since the publication of the notice of proposed rulemaking, Congress passed the Coast Guard Authorization Act of 1992 (Pub. L. 102–587, November 4, 1992). Section 5209(b) of the Act provides that the following vessels are deemed not to be tank vessels for the purposes of any law:

(1) An offshore supply vessel.

(2) A fishing or fish tender vessel of not more than 750 gross tons that transfers without charge to a fishing vessel owned by the same person.

The result of the Reauthorization Act is that the vessels described are not tank vessels for the purposes of the FWPCA and the vessel response plan requirements. We have revised the applicability section of the interim final rule accordingly.

The vessel response plan requirements are applicable to all vessels certificated under 46 CFR subchapter D, vessels that have a Certificate of Compliance or Tank Vessel Examination Letter, other certificated vessels that are permitted to carry limited quantities of oil, and uninspected vessels that carry oil in bulk as cargo or cargo residue. The requirements are also applicable to vessels carrying oil in bulk as cargo or cargo residue pursuant to an International Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35, and dedicated response vessels carrying oil in bulk as cargo or cargo residue outside a response area.

For the purposes of the interim final rule, we are using the definition of oil that is contained in section 311(a)(1) of the FWPCA. Oil includes but is not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils. This definition includes animal and vegetable oils in addition to petroleum oil.

Section 311(j)(5)(C) of the FWPCA requires that response plans must: (1) Be consistent with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and Area Contingency Plans (ACPs); (2) identify the qualified individual with full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the oil spill removal organizations providing personnel and equipment; (3) identify and ensure the availability of, by contract or other approved means, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge and to mitigate or prevent a substantial threat of such a discharge; (4) describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel to be carried out under the plan to ensure the safety of the vessel and to mitigate or prevent the discharge, or the substantial threat of a discharge; and (5) be updated periodically and resubmitted for approval of each significant change.

A major objective of the OPA 90 amendments to section 311(j)(5) of the FWPCA is to create a system in which private parties supply the bulk of equipment and personnel needed for an oil spill response in a given area. A worst case discharge will likely require the use of both private and public resources. However, the vessel response plan (VRP) is required to identify private resources. The integration and coordination of public and private response resources will be addressed in the applicable Area Contingency Plans.

Section 311(j)(5)(D) of the FWPCA requires the President to promptly review vessel response plans, require amendments to any plan that does not meet the requirements of section 311(j)(5), and approve any plan that complies with section 311(j)(5). The President also must review each response plan periodically thereafter. The President delegated the authority to review and approve vessel response plans to the Secretary of the Department of Transportation (DOT) on October 18, 1991 by Executive Order 12777 (56 FR 54757). The Secretary further delegated this authority to the Commandant of the Coast Guard on March 3, 1992 in 46 CFR 1.46(m) (57 FR 8581).

Section 311(j)(5) of the FWPCA and section 4202(b)(4) of OPA 90 set the implementation schedule for these provisions. After February 18, 1993, a vessel required to prepare and submit a response plan may not handle, store, or transport oil unless a plan has been submitted for approval. After August 18, 1993, a vessel required to prepare and submit a response plan may not perform any of these functions unless it is operating in compliance with that plan.

After submission of a plan, but prior to its approval, a vessel may continue operations for up to 2 years if the owner or operator of the vessel certifies the availability of private personnel and equipment sufficient to respond to a worst case discharge and the owner or operator has received written authorization for continued operations from the Coast Guard. Written authorization is required because section 311(j)(5) of the FWPCA states that a vessel permitted to continue operations for up to two years as described above must be authorized to do so.

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

Section 5005 of OPA 90 sets oil spill removal requirements for Prince William Sound (PWS), Alaska in addition to those in section 311(j)(5) of the FWPCA. When Congress passed OPA 90, section 5005 applied to all vessels operating in Prince William Sound. However, Congress amended section 5005 of OPA 90 on October 5, 1992, by changing which vessels are subject to the additional requirements for PWS. The only vessels to which section 5005 of OPA 90, as amended by section 354 of the DOT Appropriations Act (Pub. L. 102–388, October 5, 1993) now applies are tankers loading cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. 1651 *et seq.*).

Section 5005 provides an even greater margin of safety for PWS by requiring vessel response plans to provide for: Propositioning response equipment; establishing an oil spill removal organization with trained personnel to protect property and economic interests; special training for residents in PWS; performing periodic testing and certification of response equipment; and exercising required trained personnel and spill removal equipment.

This rulemaking does not address the requirements of section 311(j)(6) of the FWPCA for the carriage and inspection of discharge-removal equipment. The Coast Guard published a notice of proposed rulemaking (NPRM) on "Requirements for Vessels to Carry Discharge-Removal Equipment" in the **Federal Register** on September 29, 1992 (57 FR 44912). The requirements for facility response plans are contained in a separate interim final rule published elsewhere in this issue of the **Federal Register**.

Regulatory History

The Coast Guard published an advance notice of proposed rulemaking (ANPRM) on this project in the August 30, 1991, **Federal Register** (56 FR 43534). The ANPRM discussed the background and requirements of section 311(j) of the FWPCA and possible regulatory approaches. The ANPRM raised 59 questions for public comment, and the Coast Guard received 172 comments which were considered in developing the NPRM.

In addition to accepting written comments concerning the development of proposed regulations for vessel response plans, a public workshop was held in Washington, DC on November 14, 1991. A total of 196 persons participated in the workshop. During the workshop, the Coast Guard summarized the written comments received in response to the ANPRM and solicited additional input on specific issues.

Because of the need for additional information to assist with the development of the proposed rule, the Coast Guard published a Notice of Intent to Form a Negotiated Rulemaking Committee on November 18, 1991 (56 FR 58202). Based on the comments received on that notice, the Coast Guard established the Oil Spill Response Plan Negotiated Rulemaking Committee (the Committee). A notice announcing the establishment of the Committee was published in the **Federal Register** on January 10, 1992 (57 FR 1139). Twenty-six organizations participated on the Committee. The Coast Guard was a member of the Committee.

Committee sessions were held between January 8 and March 27, 1992. The Committee was charged with considering five issues: (1) Definition of "maximum extent practicable;" (2) definition of "adverse weather" for purposes of determining recovery capacity of removal equipment; (3) applicability of requirements to various categories of vessels that carry oil in bulk as cargo; (4) contractor certification; and (5) carriage of discharge removal equipment. The Committee considered a number of options and alternatives during its discussions that were not included in their recommendations. The consensus recommendations included in the final report of the Committee reflect the agreement of all Committee members and were used when drafting the proposed rule. The Coast Guard expects to issue guidance on contractor classification and has published an NPRM on discharge-removal equipment carriage (57 FR 44912, September 29, 1992). Copies of the final Committee report and all documents considered by the Committee during its meetings are available in the public docket for this rulemaking.

On June 19, 1992, the Coast Guard published an NPRM entitled Vessel Response Plans in the **Federal Register** (57 FR 27514). A correction notice concerning portions of the NPRM was published on July 1, 1992 in the **Federal Register** (57 FR 29354). By the close of the comment period on August 3, 1992, the Coast Guard received 246 letters commenting on the proposal, all of which it considered in developing this interim final rule. Additional comments have been received since the close of the comment period, and they have been considered to the extent possible in developing this interim final rule.

One letter requested that the Coast Guard conduct a public hearing on this proposed rule. A public hearing was not held because the Coast Guard determined that there was sufficient opportunity to make oral presentations during the public workshop and the Committee meetings.

The Committee reconvened August 18–20, 1992, after the close of the public comment period on the NPRM, to review the comments received on their recommendations. The Committee did not reach consensus on any additional recommendations during the final meeting and made no amendments to the final Committee report. However, the Committee meeting did create a forum for some members and the public to discuss unresolved issues and provide additional information on the Committee's earlier recommendations. All documents considered by the Committee during the final meeting are available in the public docket for this rulemaking.

Given the statutory deadline for the submission of response plans by vessel owners or operators, the Coast Guard released NVIC No. 8–92 on September 23, 1992. Change 1 to NVIC No. 8–92 was released on December 4, 1992. The NVIC and Change 1 to the NVIC provided guidance to the marine industry for preparing response plans for certain vessels, as required by the OPA 90 amendments to the FWPCA. The Coast Guard will accept a response plan based on the NVIC to meet the February 18, 1993 deadline, as well as a response plan meeting this interim final rule. The owner or operator who submits a response plan for a vessel based on the NVIC must so indicate that in a letter accompanying the plan submission. This plan will be reviewed for approval based on the provisions contained in the Navigation and Inspection Circular (NVIC). Any response plan submitted after February 18, 1993 must meet the requirements of this interim final rule. After August 18, 1993, all vessels must be operating in compliance with an approved plan or be authorized in writing by the Coast Guard to operate pending approval of a submitted plan.

To receive this interim authorization from the Coast Guard, a vessel owner or operator must certify to the Coast Guard that he or she has ensured by contract or other approved means, the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

Discussion of Comments and Changes

Discussion of General Issues

Many comments were concerned with the possible application of the planning criteria included in the proposed rule as performance standards in a post-response enforcement action or litigation. As indicated in both the preamble and §§ 155.1010 and 155.1110 of the proposed rule, this rulemaking establishes planning criteria to be used by vessel owners or operators to develop their Federal response plans. The criteria were derived from a number of assumptions that may not be applicable when a spill occurs. The Coast Guard does not intend to use these criteria to measure performance during a spill response. However, these are requirements in the interim final rule (e.g., training and drills) where the Coast Guard does expect the vessel owner or operator to ensure performance. See the "Federalism" section of this preamble for further discussion on this issue.

Many comments expressed concern that the requirements in the proposed rule were inconsistent with and went well beyond the requirements of MARPOL Annex I, Regulation 26. Regulation 26 requires certain vessels to have shipboard emergency plans that address at least four areas: Procedures

for reporting oil pollution incidents; a listing of authorities to be notified; a detailed description of immediate actions to be taken by the vessel's crew to reduce or control an oil discharge; and procedures for coordinating shipboard activities with national and local authorities. The requirements of section 311(j)(5) of the FWPCA exceed those of Regulation 26, but the Coast Guard has minimized inconsistencies to the maximum extent practicable.

In a response plan, section 311(j)(5) of the FWPCA requires vessel owners or operators to also: Identify and ensure, through contract or other approved means, the availability of necessary private response resources; describe training and drills; identify a qualified individual with specific authority and responsibilities; and address periodic plan updates. Under the FWPCA, the Coast Guard cannot allow vessels that meet only Regulation 26 standards to handle, store, or transport oil in waters subject to U.S. jurisdiction.

OPA 90 requires owners or operators to submit response plans by February 18, 1993. However, MARPOL Annex I, Regulation 26 is not fully effective until April 4, 1995. To minimize the burden on foreign flag vessel owners or operators who must prepare both an IMO shipboard emergency plan and a U.S. response plan, the Coast Guard has revised the response plan format provisions to allow greater flexibility in combining these two plans into one document.

Numerous comments noted that the proposed rule requires them to plan for a potential discharge of fuel or bunker in addition to oil carried in bulk as cargo, and that this exceeds the requirements of OPA 90. For U.S. flag vessels, the Coast Guard intended the vessel response plan required by OPA 90 to satisfy the requirements of IMO Regulation 26 and reduce the overall burden on the owner or operator. After further consideration, the Coast Guard has determined that this may place an undue burden on those U.S. vessels that do not have to comply with IMO Regulation 26. Therefore, the Coast Guard has amended § 155.1030 of the interim final rule to allow an owner or operator to address the additional provisions of Regulation 26 if desired. The requirement for an owner or operator to plan for the discharge of fuel has been eliminated from the interim final rule. Any U.S. vessel owner or operator who wants to have the 311(j) plan considered for compliance with IMO Regulation 26 should inform the Coast Guard of this fact in writing at the time of plan submission. Although the Coast Guard has not determined how IMO Regulation 26 will be implemented for all vessels, we anticipate that a plan prepared following the guidance contained in § 155.1030(j) will meet the minimum requirements of Regulation 26. When the Coast Guard issues a letter approving a response plan, the letter will indicate whether it complies with Regulation 26, for entry into port states, if the owner or operator has included in the plan the expanded provisions of § 155.1030(j).

Many comments stated that it was impossible for owners or operators to meet the statutory deadlines for submitting and complying with vessel response plans because the Coast Guard would not have published the regulations by August 18, 1992. OPA 90 requires owners or operators to submit vessel response plans by February 18, 1993; the Coast Guard has no discretion to change that date.

As discussed in "Regulatory History," the Coast Guard promulgated NVIC No. 8–92 dated September 15, 1992, and Change 1 to NVIC No. 8–92 dated December 4, 1992, to provide guidance to the marine industry for preparing response plans. The submission by February 18, 1993, of a response plan based on the NVIC will be accepted by the Coast Guard for the initial vessel response plan submission.

The additional OPA 90 section 5005 requirements for Prince William Sound have no statutory deadlines. Therefore, the Coast Guard has determined that it is appropriate to delay the implementation of these requirements until 180 days after the effective date of the interim final rule.

Many comments expressed concern that an owner or operator could not submit a vessel response plan until the NCP is revised and the ACPs are completed, as required by OPA 90. The Coast Guard recognizes that the NCP and the ACPs will not be revised or completed prior to the initial submission of vessel response plans on February 18, 1993. In NVIC No. 8–92, the Coast Guard announced that it will evaluate whether a response plan is consistent with the NCP by using the existing NCP published in 40 CFR part 300. Because the ACPs are in various stages of development, we will use the local oil and hazardous substances contingency plans (LCPs) in effect on August 18, 1992 to evaluate whether a response plan submitted to meet the February 18, 1993 deadline is consistent with the ACP. Copies of the LCPs are available from the cognizant COTP.

The Coast Guard expects all ACPs to be completed within the next year. A vessel response plan submitted after the NCP is revised or the applicable ACP has been completed must eventually be consistent with these documents. We have revised § 155.1030 to allow an owner or operator submitting a response plan for approval or reapproval to be consistent with the applicable plan (NCP/ACP) in effect 6 months prior to the response plan submission date. The 6-month period provides sufficient time for owners or operators to prepare their response plans before submitting them to the Coast Guard. This provision would not prevent an owner or operator from voluntarily conforming to a more recent NCP or ACP if one existed.

The interim final rule does not require an owner or operator to immediately resubmit their response plan if the NCP or applicable ACP is updated. The owner or operator would include any new information required in the NCP or ACP only when submitting the plan for reapproval. Likewise, an update would not be required as the result of the annual review which the owner or operator is required to conduct.

In the NPRM, we solicited public comment on whether the requirements for manned vessels carrying oil as primary cargo, unmanned tank barges, and vessels carrying oil as secondary cargo should be contained in separate sections or one section of the rule. Seven comments stated that combining the response plan requirements for all vessel types in one section would make it difficult for owners or operators to locate the requirements for their vessel type. These comments also argued that separate sections would allow the requirements for one vessel type to change without affecting the requirements for other vessels. The Coast Guard agrees that separate sections for each vessel type will make the rule easier to read and facilitate compliance with the requirements and has retained that format in the interim final rule.

Some comments argued that we have exceeded our statutory authority under the FWPCA in setting requirements for the average most probable discharge (AMPD) and maximum most probable discharge (MMPD) because section 311(j)(5) of the FWPCA requires planning for the worst case discharge only.

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. Because the Committee recommended that the NPRM address operational discharges as well as the worst case discharge, we are using our authority to require planning for spills other than a worst case discharge.

A number of comments were concerned that the requirements of this interim final rule are not appropriate for remote areas such as the Aleutian Islands and other areas of Alaska, Guam, American Samoa, and other remote areas in the Pacific. The Coast Guard has considered these comments but has not revised the interim final rule because OPA 90 sets requirements for vessels and not for specific operating areas. Further, this interim final rule establishes national criteria to ensure that response planning is not tied to specific locations or ports with existing response capability but would result in the ability to respond to discharges anywhere in U.S. waters and the exclusive economic zone (EEZ).

In any event, a vessel owner or operator can address the specifics of response capabilities in remote areas through the existing exemption process included in 33 CFR 155.130. This section allows a vessel owner or operator to submit a written request to the Commandant in those situations where compliance with a regulation is economically or physically impractical, no alternative procedures or methods for compliance exist, and the likelihood of a discharge occurring as a result of the exemption is minimal.

In its request, the vessel owner or operator should identify what resources would be available to respond to discharges in remote areas, response times for those resources, and any other appropriate information. The owner or operator should also identify the location and estimated response time of all resources necessary to meet the applicable resource requirements of the interim final rule. This listing will likely include resources that cannot meet the various response time requirements.

One comment recommended that "planned" vessel routing should be the criteria for determining required resources, and that an owner or operator should not have to plan for every eventuality. This comment expressed specific concern that the master of a vessel would not be permitted to deviate from the planned route for the safety of the vessel or crew, due to weather or some other unplanned condition if the vessel response plan did not cover the geographic area into which the master chose to deviate.

"Planned" routing is already the underlying criteria of the vessel response plan. The Coast Guard disagrees that a master would be prohibited from diverting into an area with a higher planning standard when required for the safety of his vessel or crew.

During the course of this rulemaking, the Coast Guard has received a number of comments stating that the vessel response plan interim final rule should not—under any circumstances—apply to vessels which carry oil as a secondary cargo. Most of the comments advance various reasons why secondary carriers do not meet the definition of "tank vessel." The Coast Guard disagrees. OPA 90 states that the response plan requirements apply to a "tank vessel" as that term is defined in 46 U.S.C. 2101. According to section 2101, a tank vessel is a vessel that, among other things, carriers oil in bulk as cargo. Section 2101 does not differentiate between primary and secondary uses of the vessel.

Some comments stated that the Coast Guard does not treat secondary carriers as "tank vessels" in regulations issued under 46 U.S.C. chapter 37. This comment is true. However, statutory exemptions in title 46 United States Code that exclude some tank vessels from regulations issued under that authority do not apply to regulations issued under the FWPCA.

At least one comment stated that it is not clear whether Congress intended to capture secondary carriers within the vessel response plan requirements, and that the Coast Guard has authority under the FWPCA to exempt secondary carriers from the definition of "tank vessel." The Coast Guard believes that the statutory language is clear. Congress could have referred to another definition to limit the scope of these requirements, but it chose the broad definition in 46 U.S.C. 2101. This is an unambiguous statement, and we see nothing in the statute or the legislative history to support a contrary conclusion.

Some comments stated that the Coast Guard could exempt secondary carriers from the interim final rule by defining the terms "bulk" and "cargo" to exclude a minimum amount of oil. The Coast Guard believes that, consistent with the purposes of OPA 90, it has no discretion to exempt a carrier by defining terms to exclude tank vessels carrying a minimum amount of oil from the requirement to comply with the vessel response plan rules. Further, there is little justification for distinguishing between specific quantities of oil which may be in tanks, all posing pollution risks, from time to time. The statute requires a tank vessel to have a plan even if it carries only oil residue—a minimum amount.

Some comments stated that requiring a secondary carrier to have a response plan will create inconsistencies with existing regulations. As we stated earlier, some secondary carriers would fall outside of regulations issued under 46 U.S.C. chapter 37, but within the scope of the FWPCA which is codified in 33 United States Code. Each statute requires a separate regulatory scheme, and the response plan rules simply do not affect rules issued under title 46.

Although we recognize that OPA 90 includes secondary carriers, the Coast Guard believes that the relative risk from these kinds of vessels is less than the risk from tank vessels carrying oil as primary cargo. We have exercised what discretion we do have to establish reduced requirements for secondary carriers, to reflect this lesser risk.

The Coast Guard received a number of comments arguing that services such as firefighting and salvage typically are provided by public entities, and that vessel owners and operators should be able to identify these public resources in their plans, reasoning that spill response essentially is a private and public partnership. Section 311(j)(5)(C)(iii) of the FWPCA states that a response plan must identify and ensure the availability of private personnel and equipment to respond to a spill. Although the Coast Guard agrees that both private and public resources likely will be used in the event of an actual spill, we think the statute is unambiguous in requiring the vessel response plans to address and develop private spill response resource capability.

Numerous comments recommended that the Coast Guard and not vessel owners or operators be responsible for certifying or approving shore-based spill response contractors. The Coast Guard is not requiring owners or operators to "certify" shore-based spill response contractors. However, section 311(j)(5) of the FWPCA requires an owner or operator of a tank vessel to prepare and submit plans which, among other things, identify, and ensure by contract or other means approved by the President, the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge.

Numerous comments also noted that the requirement to list all of the required response equipment in the geographic-specific appendix will be a considerable paperwork burden. To facilitate the preparation and review of vessel response plans, the Coast Guard intends to provide guidance on a voluntary process for classifying oil spill removal organizations by their estimated capacity to contain and remove oil from the water and to protect shorelines. Vessel owners or operators who must prepare and submit response plans may identify a Coast Guard-

classified oil spill removal organization with the capacity to meet the owner's or operator's planning volumes, instead of listing each item of equipment.

Section 155.140 Incorporation by Reference

The NPRM proposed incorporating by reference six documents from the American Society for Testing and Materials (ASTM), International Maritime Organization (IMO), and the Oil Companies International Marine Forum (OCIMF). The Coast Guard has decided not to incorporate by reference IMO Resolution A.648(16), "General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances, and/or Marine Pollutants," because we have revised the notification procedures in §§ 155.1035 and 155.1045 to include all of the relevant information recommended by IMO.

Nine comments were received related to the incorporation by reference section. One comment recommended incorporation of ASTM standards to the extent possible. The Coast Guard retained in the interim final rule the ASTM standards applicable to boom and oil recovery devices.

Several comments recommended that the Coast Guard incorporate additional publications by reference. Three comments recommended that the "International Safety Guide for Oil Tankers and Terminals" published by the International Chamber of Shipping (ICS) and OCIMF be incorporated by reference for safety and cargo information. One comment recommended that the OCIMF document "Peril at Sea and Salvage—A Guide for Masters" be incorporated as a reference for emergency towing procedures. One comment recommended that the OCIMF booklets "Effective Mooring Guidelines" and "Safe Mooring of Large Ships at Piers and Sea Islands" be incorporated for vessel operations. One comment recommended that the "Incident Command System" manual published by Fire Protection Publications be incorporated to address response organization and incident management, and multiple comments recommended that use of this system be required.

The Coast Guard believes that all of the referenced documents may be useful for a vessel owner or operator preparing a response plan. However, we are not going to incorporate these documents by reference because they are intended to be guides, not required standards. We believe that owners or operators should have maximum flexibility in structuring the incident command system and developing procedures for salvage, mooring, and towing. Because the interim final rule already covers subject matter addressed in the international safety guide, we are not incorporating it by reference.

One comment recommended that International Maritime Organization (IMO) Resolution A.648(16) and the OCIMF Ship-to-Ship Transfer Guide not apply to "cargo vessels" operating on the outer continental shelf. As previously discussed, we are no longer incorporating the IMO Resolution by reference. The OCIMF Ship-to-Ship Transfer Guide would apply only to primary cargo carriers as defined in the interim final rule. Most "cargo vessels" would be classified as secondary carriers for purposes of this interim final rule, therefore the Guide would not apply.

Two comments questioned whether the OCIMF Ship-to-Ship Transfer Guide should apply to barge transfers, with another comment specifically noting that the Guide did not address barge transfers. The Coast Guard agrees and has removed the specific requirement in § 155.1040(d)(5)(i) for unmanned tank barge lightering plans to be consistent with the Guide.

One comment recommended incorporating ASTM Standard F 625-92, "Standard Practice for Describing Environmental Conditions Relevant to Spill Control Systems," submitted for reapproval in 1992, in place of Table 1 of appendix B. The Coast Guard agrees that this proposed ASTM standard contains similar information, but will defer determining whether to incorporate the standard by reference until it becomes a consensus standard.

Section 155.1010 Purpose

This section describes the purpose of the vessel response plan rules and notes that the requirements for response resources and the arrival times for these resources, as set forth in the interim final rule, are for planning purposes only.

Several comments suggested that the purpose statement be clarified to ensure that the response planning criteria do not become performance criteria, but one comment stated that the rule was already clear in this regard. Another comment wanted the rule changed to become a performance standard.

Due to the many variables that often occur during spills, the Coast Guard does not agree that performance criteria are appropriate. No one can predict what will happen during an actual spill. So that the interim final rule more clearly states that the specific criteria for response resources and their arrival times are not performance standards, the Coast Guard has deleted the phrase "meant to be" in the purpose statement.

Several comments were concerned that not meeting the planning criteria during an actual spill response may subject them to unlimited liability under 33 U.S.C. 2704(c)(1)(B). The response plans themselves are intended to be planning documents and not to prescribe specific performance criteria. However, circumstances may arise in which the violation of the interim final rule would appropriately lead to a denial of an entitlement to limit liability under 33 U.S.C. 2704(c)(1)(B). Because the facts associated with such circumstances may vary greatly, it would not be possible to describe them in meaningful detail in the purpose statement.

Section 155.1015 Applicability

As discussed in the "Background and Purpose" section of the preamble, offshore supply vessels and certain fishing and fish tender vessels are no longer subject to the requirements of the interim final rule. Section 155.1015 has been revised accordingly.

The Coast Guard has made minor revisions to this section of the interim final rule to make it consistent with the definition of tank vessel in 46 U.S.C. 2101. The changes are for consistency only and do not change the substance of this section.

The Coast Guard has amended paragraph 155.1015(b) to make its text consistent with applicability statements for lightering operations in other Coast Guard regulations.

A number of comments stated that the Coast Guard cannot extend the applicability to vessels on innocent passage through the territorial waters of the United States. Insofar as the concept of "territorial waters" includes the internal waters, the principle of innocent passage does not apply to such waters. Concerning the territorial sea, paragraph 4 of Article 211 of the 1982 United Nations Convention on the Law of the Sea, which reflects customary international law, provides:

> Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction, and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.

To avoid the possibility of hampering foreign flag vessels exercising innocent passage in the territorial sea, we have

revised the applicability provision of the interim final rule to exempt these vessels.

A number of comments challenged the Coast Guard's authority to require vessel response plans for foreign flag vessels conducting lightering operations in the EEZ. OPA 90 amended 46 U.S.C. 3715 to assure that the delivering vessel in a lightering operation in the marine environment comply with section 311(j) of the FWPCA, including response plan requirements. As amended, 46 U.S.C. 3715(a)(4) allows oil which has been transferred in such a lightering to be then transferred in a port or place subject to the jurisdiction of the United States only if, at the time of the first transfer, both the delivering vessel and receiving vessel had on board evidence of compliance with section 311(j) of the FWPCA.

Under 46 U.S.C. 2101, the "marine environment" means, among other things, the waters and fishery resources of an area over which the United States asserts exclusive fishery management authority. Before 1986, the "fishery conservation zone" was the area in which the U.S. asserted the major portion of this jurisdiction, and the outer boundary was a line drawn in such a manner that each point on it (was) 200 nautical miles from the baseline from which the territorial sea is measured (16 U.S.C.A. 1811). The U.S. Code was amended in 1986 (Pub. L. 99–659) to incorporate the "exclusive economic zone" (EEZ) as the measurement for the area subject to this portion of the exclusive fishery management authority. The seaward boundary of the EEZ in turn is defined in Presidential Proclamation 5030 to extend out to 200 nautical miles (3 CFR, 1983 Comp., p. 22, 48 FR 10605, March 10, 1983).

One comment stated that these regulations should apply to all large vessels (not just tank vessels) because the amount of fuel they carry also poses a significant threat to the environment. The Coast Guard agrees that vessels other than tank vessels pose a threat to the environment and vessel owners or operators should plan for a response action in the event of a casualty or discharge. However, OPA 90 addresses only the greater threat posed by tank vessels, as defined under 46 U.S.C. 2101. Other vessels subject to MARPOL Regulation 26, including vessels carrying oil as cargo and fuel, will be subject to a separate Coast Guard rulemaking to implement MARPOL Regulation 26 requirements.

The Regulation 26 requirements will not be fully implemented until April 4, 1995. The Coast Guard decided not to combine these two rulemakings because of the differences in required plan content and implementation dates. However, as noted in the general discussion, the owner or operator of a U.S. flag tank vessel may address the provisions of Regulation 26 in the plan submitted to comply with this interim final rule. Although determinations on the implementation of Regulation 26 have not been made, the Coast Guard anticipates that a plan prepared following the guidance contained in § 155.1030 will meet the OPA 90 and the minimum MARPOL Regulation 26 requirements.

One comment stated that the proposed rule as constructed would not apply to foreign flag vessels. The interim final rule applies to certain defined tank vessels, certain vessels operating on the navigable waters of the U.S., vessels transferring oil in bulk as cargo in a port or place subject to the jurisdiction of the U.S., and vessels conducting bulk oil lightering operations in the marine environment where the oil is destined to a port or place subject to U.S. jurisdiction. Therefore, a foreign flag vessel engaged in these activities is subject to this interim final rule.

Another comment requested clarification on whether a tanker discharging cargo, loading ballast, and cleaning tanks outside the 200 mile EEZ would be exempt from the requirements. If in the above scenario the vessel handles, stores, or transports oil in bulk as cargo or cargo residue on the navigable waters of the United States, the vessel would be subject to the interim final rule. A vessel placed in ballast after discharging bulk oil will most likely have cargo residue remaining aboard.

Some comments were concerned about the impact on Canadian ships transiting the boundary waters between the United States and Canada (particularly the Great Lakes and the Strait of Juan de Fuca). These comments argued that requiring vessels in those waters to carry both a U.S. and a Canadian response plan for the same voyage imposes an unreasonable burden, and that it will restrict free access to Canadian ports.

Canada has yet to promulgate response plan requirements. Therefore, it is impossible to determine a number of important related questions, such as: (1) The degree to which compliance with Canadian rules may or may not be adequate to meet the U.S. statutory requirements; (2) how the Canadian rules will treat vessels navigating through Canadian waters enroute to U.S. ports; and (3) how great a burden would be placed on vessels that would have to comply with the requirements of both countries.

There is no authority for the Coast Guard to waive the vessel response requirements for vessels transiting the internal waters of the United States enroute to or from Canadian ports. However, we understand that, currently, the Canadian Government is developing vessel response plan requirements to provide protection to Canada's waters. The Coast Guard plans to work closely with appropriate Canadian officials in an attempt to reach a solution which will minimize the burdens of meeting both United States and Canadian requirements, while at the same time fully meeting statutory requirements, and providing protection to the waters, of each country.

A number of comments stated that the rule should apply only to traditional tank vessels that carry a minimum amount of oil. The comments suggested specifically excluding vessels such as dry cargo ships that carry oil in deep tanks, MARAD prepositioned ships, secondary carriers, and other vessels that are small and pose a minimum environmental threat. These comments stated that these vessels will be adequately covered under MARPOL Regulation 26. Many of the comments noted the disproportionate economic impact that this rule will have on small vessel owners and operators.

Although the Coast Guard solicited comments in the NPRM on whether oil should be considered as cargo only if a minimum quantity is carried, we have since determined that OPA 90 allows us no discretion to establish a specific minimum quantity to define cargo. Under 46 U.S.C. 2101(39), a tank vessel is a vessel that, among other things, carries oil in bulk as cargo or as cargo residue. Because cargo residue is include in this definition, it is inappropriate to establish a minimum amount of oil that would be consistent with this definition. The Coast Guard has revised the definition of cargo. The new definition makes it clear that oil carried solely for use aboard the vessel or by the vessel's machinery, boats, helicopters, or towed vessel is not cargo. Also, oil transferred between a towing vessel and a vessel in its tow is not cargo. See the previous preamble discussion on vessels carrying oil as a secondary cargo under "Discussion of general issues."

Two comments stated that vessels carrying oil-based drilling muds should be exempted from the rule. The FWPCA includes oil-based drilling mud in the definition of oil. As previously discussed, if the vessel is an offshore

supply vessel (OSV) it is no longer considered a "tank vessel" and would therefore not be subject to the requirements of this interim final rule. Further, oil-based drilling mud on board Mobile Offshore Drilling Units (MODUs) is not considered cargo because it is for use by the drilling machinery carried aboard the vessel.

One comment stated that public vessels and private vessels pose similar risks to the environment, and therefore, public vessels should be included in the scope of this rule. The exemption for public vessels is statutory and the Coast Guard cannot make them subject to the interim final rule.

One comment expressed concern that certain vessels moored at an offshore facility may be required to simultaneously possess a vessel response plan prepared under the interim final rule and an oil spill response plan prepared under the rules issued by the Minerals Management Service (MMS). The Coast Guard intends to continue to work closely with MMS to minimize any duplication between the two Agencies' response plan requirements.

A number of comments addressed various issues pertaining to "dedicated response vessels." Most supported classifying dedicated response vessels as secondary carriers although many wanted the status of dedicated response vessels more clearly stated in the rule.

Section 155.1015 exempts dedicated response vessels in response areas from preparing a vessel response plan. The definition of a vessel carrying oil as a secondary cargo has been amended to specifically include dedicated response vessels transporting oil outside of a response area.

Three comments suggested that we amend § 155.1015(d) to state more clearly when certain U.S. vessels, not operating in U.S. waters, are exempt from certain portions of the rule. The Coast Guard agrees and has amended that section of the interim final rule as suggested. As discussed in the guidelines for implementing IMO Regulation 26, the roles of national authorities may vary widely from port State to port State, as may the responsibility for discharge response. We have therefore determined that requiring a U.S. based qualified individual and a shore based spill management team for certain U.S. vessels operating beyond the exclusive economic zone of the U.S. was not appropriate and have revised this section of the interim final rule accordingly.

Section 155.1020 Definitions

There were a number of comments received on the proposed definitions. Most of these comments agreed or did not take issue with the definitions proposed in the NPRM. The following text addresses only those definitions which were the subject of substantive comment and definitions which the Coast Guard changed or added.

One comment suggested that we define "contingency and response plans." Because this interim final rule specifies what a response plan must contain, the Coast Guard has determined that defining a "response plan" is unnecessary. A response plan differs from a contingency plan because the former contains vessel-specific information. Area Committees will develop contingency plans, and the contingency plans will include planning requirements for a variety of spill scenarios and responders.

Average most probable discharge. The Coast Guard received three comments questioning the use of 50 barrels (bbls) for the planning volume for this type of spill. One comment specifically addressed reducing the volume for the Great Lakes area, citing 5 bbls as the average spill for the area.

The Committee used data from the Marine Safety Information System for the years 1984 to 1989, the most current data available, to establish the 50 bbl planning volume. The Coast Guard has determined that 50 bbls is a reasonable volume for planning for an average most probable discharge because it is based on national operational spill data and an evaluation of historical trends in smaller size spills.

The definition has been revised to make it clear that the average most probable discharge means a discharge from a vessel that occurs during oil transfer operations.

Bulk. Three comments stated that marine portable tanks should not be included in this definition because they carry mainly lube oil for the vessel. One questioned if oil recovered from a skimmer and stored in a portable floating tank would be considered "bulk oil." One other comment questioned if oil transported in over-the-road portable containers is considered bulk oil for the purposes of this interim final rule.

Oil carried in a marine portable tank or an over-the-road tank is considered "bulk" only if the oil is transferred into and out of the tank while it is on the vessel. That vessel would have to carry a response plan. Oil recovered from a skimmer and stored in a portable floating tank other than on the vessel also is not "bulk" for the purpose of this interim final rule because it is not an integral or independent tank onboard the vessel.

Captain of the Port (COTP) Zone. A number of comments requested that we clarify the geographic area covered by a COTP zone. The Coast Guard has defined "COTP zone" in this section as a zone specified in 33 CFR part 3 and, for coastal ports, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ). The boundaries of the seaward extension of some zones are not defined in 33 CFR part 3, but the Coast Guard will be revising this part. In the meantime, details on the location of the boundaries may be obtained by writing to the following address: Commandant (G–MEP–6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

Cargo. A number of comments suggested defining "cargo" as a minimum amount of oil carried by a vessel. Most suggested establishing 250 barrels as the minimum threshold because lesser amounts do not pose a significant threat to the environment. Other comments stated that lubricating oils, hydraulic fluids, and helicopter fuel should be exempt from this definition. Two comments suggested rewording the definition to exempt oil that is transferred between a towing vessel and its tow.

In the preamble discussion on "Applicability," we have addressed the question of whether a minimum quantity of oil should be excluded from the definition of cargo. The Coast Guard has revised the definition to make it clear that oil is not "cargo" if it is carried solely for use aboard the vessel; for use by the vessel's machinery or boats; or transferred between a vessel and a vessel in its tow. The Coast Guard agrees that limited quantities of fuel for use by helicopters carried onboard should be regulated in the same manner as fuel for use by small boats carried onboard. The Coast Guard amended the interim final rule to exclude from the definition of cargo, oil carried in integral tanks, marine portable tanks, or independent tanks for use by helicopters carried onboard and directly supporting the vessel's primary operations.

For vessels of opportunity, one comment suggested deleting the term "emergency" from the definition to make it clear that these vessels never carry cargo. The Coast Guard agrees, and has revised the definition accordingly.

This subpart does not apply to dedicated response vessels that are conducting response operations in a response area or to vessels of

opportunity. Consequently, it is not necessary to specifically exempt the oil transported by these vessels from the definition of cargo. We have revised the definition of cargo in the interim final rule by eliminating these two exemptions:

Contract or other approved means. The Coast Guard received 16 letters discussing aspects of this definition. Most comments said that the definition of "other approved means" was too restrictive, depriving vessel owners and operators of a chance to ensure that the required resources are available through means less rigid than a formal contract. However, there were a few comments suggesting that we should require contracts "or a more legally binding and fully detailed self-certification process' in every instance. In discussions at the last Committee session, most of the members suggested we should consider any means acceptable to "ensure" the availability of response resources if the owner or operator and the resource provider create a document that: (1) Clearly identifies the goods and services to be provided; (2) sets out the parties' acknowledgement that the resource provider intends to commit its resources in the event of a response; and (3) permits the Coast Guard to verify the response resources identified through tests, inspection, and exercise.

The Coast Guard agrees with the comments that "other means approved by the President" implies that there are permissible alternatives to contracts. We believe that a document which contains the three elements listed above provides acceptable assurance that the response resource provider has the capability to respond. We have required further that the owners or operator's agreement with the resource provider be referenced in the response plan.

The Coast Guard also revised the definition so that written consent of an oil spill removal organization, with specified equipment and personnel which are available within stipulated response times in the specified geographic areas, is "other approved means" for a vessel to meet the resource requirements in §§ 155.1052(c) and 155.1054(c).

Great Lakes. The definition of the Great Lakes has been changed to be consistent with 33 CFR 160.203.

Maximum Extent Practicable. The Coast Guard received 30 comments on the definition of "maximum extent practicable" (MEP). The greatest number of comments stated that the definition was too vague, and needed to be better defined. These comments did not say what the writers considered "vague," nor did they offer alternative definitions. The Coast Guard has revised the definition to clarify and better reflect the meaning of "maximum extent practicable."

Regarding a number of comments stating that the definition did not reflect the Committee consensus, the Coast Guard notes that its regulatory negotiation agreement committed the Coast Guard to capturing the substance and effect of the Committee's recommendations, and we believe we have in this instance.

Many comments on this definition addressed the question of whether the Coast Guard must consider costs as an essential element of the concept of "practicability." There were comments supporting and opposing the proposition. The Coast Guard believes that we have discretion to determine whether to include cost as an element of MEP, and we have used that discretion to factor costs into the definition. For example, in determining what is "practicable," the interim final rule sets caps on the amount of on-water response resources for which a vessel owner or operator must contract or ensure by other approved means.

The interim final rule also sets out less onerous planning requirements for secondary carriers as a recognition of the reduced risk of potential damage posed by these carriers, and indexes by volume of bulk oil carried the level of detail of the response plan and drill frequency. The interim final rules tier arrival times for response resources so that a vessel owner or operator does not have to plan for all required resources to be located in the area where the vessel is operating.

Some comments stated that MEP should not assume an instant release of the entire cargo. The Coast Guard did not assume an instant release, but a rapid one. At the same time, however, we did not include release rate as a separate factor in calculating planning volumes because the FWPCA requires vessel owners and operators to plan for a worst case discharge. Further, adding a release rate factor to the calculations would also add another level of complexity.

Nonpersistent or Group I oil. One comment stated that the rule must specify what oils fall within this definition. Three comments were opposed to classifying non-petroleum oils as non-persistent because OPA does not address these oils and the response for these oils would be different from petroleum oil or petroleum-based oils. In addition, one comment indicated that the specific gravity criteria for petroleum oils was not applicable to non-petroleum oils and suggested using distillation characteristics.

Because specific gravity criteria do not apply to non-petroleum oils, the Coast Guard agrees that non-petroleum oils should be excluded from the definition of "non-persistent" or "group I" oil. Therefore, we have deleted this portion of the definition. The Coast Guard disagrees that a list of all non-persistent oils should be included in the definition because the characteristics provided are sufficient guidelines to help owners or operators establish whether an oil is non-persistent.

Oil spill removal organization. This definition was amended to alleviate some concerns that it was too narrow, seeming to apply only to existing organizations in certain locations.

On-scene Coordinator. One comment suggested that we define this term to make the rule more clear. The Coast Guard has added a definition of on-scene coordinator that is consistent with the definition in 33 CFR V part 153.

Operating in compliance with the plan. The Coast Guard has added this definition to clarify what this term means.

Operator or vessel operator. Two comments supported the concept that the operator of a towing vessel is not the "operator" of the vessel being towed within the meaning of OPA 90. Two comments were opposed to the definition. One of those suggested deleting the language "but not limited to" because it is inconsistent with the definition of operator under the FWPCA.

The FWPCA does not define the term "operator." "Owner or operator" is the term defined in the FWPCA most nearly applicable to the vessel response plan definition of "operator or vessel operator." In the FWPCA, "owner or operator" is defined with respect to a vessel as "any person owning, operating, or chartering (a vessel) by demise." If we eliminate the words "but not limited to" from the definition of "operator or vessel operator," we may leave the impression that only an owner or demise charter could be an operator under the interim final rule, and that interpretation would be too narrow. For reasons stated in the NPRM, the Coast Guard continues to agree that a towing vessel operator should not fall within the definition. Therefore, we have not amended the definition.

Further, this definition and the definition of "owner or vessel owner" apply only in these vessel response plan regulations, and are inapplicable to any other regulation or statute.

Persistent oils. Four comments objected to the proposed three classes of

persistent oils because the Committee only recommended using persistent and non-persistent oils and because two categories of oil (persistent and non-persistent) are sufficient planning tools for selecting equipment and gauging dissipation. Three comments agreed with the proposal because it avoids penalizing vessels that carry less persistent oils and requires a different level of planning for heavier oils. Two comments added that non-petroleum edible oils should be in their own category because they are biodegradable and have no toxic residuals.

As discussed in the NPRM, the Committee originally recommended using two oil categories: Persistent and non-persistent. They also recommended that the Coast Guard consider the relative persistence of oils and emulsification. We divided persistent oil into four groups, based on a protocol developed by the International Tanker Owners Pollution Federation (ITOPF) to account for the differences in persistence. We have defined oil in five groups: Non-persistent and four other groups based on their specific gravity. Because specific gravity criteria does not apply to non-petroleum oils, non-petroleum oils have been deleted from this definition as suggested.

One comment stated that oil-based mud should not be classified as "oil" because it does not behave like an oil product, is difficult to recover from the water, and historically has not been spilled very much. Section 311 of the FWPCA defines "oil" to be oil of any kind or in any form, which includes oil-based mud. The Coast Guard does not have the authority to define "oil" differently for the purpose of that statute.

Qualified individual and alternate qualified individual. The Coast Guard has revised the definition of qualified individual to state that the qualified individual and alternate qualified individual means a shore-based representative of the vessel owner or operator who meets the requirements of § 155.1026. In the NPRM, we proposed requiring an owner or operator to designate an alternate qualified individual. The Coast Guard has retained this requirement in the interim final rule and has revised the definition to be consistent with this requirement. The designation of an alternate qualified individual is necessary to provide a reasonable assurance of 24-hour availability. Additionally, if an alternate qualified individual were not identified, the owner or operator would have to notify the Coast Guard every time the primary qualified individual went on vacation or was otherwise unavailable. The interim final rule does not limit the number of alternate qualified individuals whom an owner or operator may designate.

We have added a new § 155.1026, which includes the requirements for the qualified individual and alternate qualified individual that were previously listed in the proposed definition. The Coast Guard determined that the proposed definition contained substantive requirements that would be more appropriately placed in a separate section of the interim final rule.

Some comments stated that we should allow the qualified individuals for Canadian flag vessels to be based in Canada. The Coast Guard has determined that Canadian vessels may identify Canadian-based qualified individuals if these individuals meet the same requirements for U.S.-based individuals under § 155.1026(b). This provision only applies to Canadian flag vessels while they are operating on the Great Lakes, the Strait of Juan de Fuca, and Puget Sound, WA. In any other environment, the qualified individual must be based in the United States. The close proximity, reliable communication, and the common water boundary shared by the United States and Canada create a unique situation, which allows a Canadian-based qualified individual to be as effective as a U.S.-based qualified individual.

Several comments objected to the requirement for qualified individuals to have "unconditional" authority to implement the vessel response plan. These comments argued that vessel owners or operators will have difficulty identifying qualified individuals with unconditional authority without making them potentially liable for spill cleanup. The Coast Guard has revised new § 155.1026 of the interim final rule to better describe the authority and responsibilities of the qualified individual. The requirement for "unconditional authority" has been eliminated from § 155.1026.

Of the 44 comments the Coast Guard received on this definition, most asked us to clarify in the interim final rule that a "qualified individual" also is a person exempt from liability for response actions under section 311(c)(4) (33 U.S.C. 1321(c)(4)) of the FWPCA. These comments stated that the failure to identify the qualified individual as a person exempt from liability will hamper the efforts of vessel owners and operators to identify persons with the required qualifications.

A person does not become a responsible party under the FWPCA by being designated a qualified individual for response plan purposes. Under section 1321(c)(4), a person other than a responsible party is not liable for removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the NCP or as otherwise directed by the President. Notwithstanding, such a person whose acts or omissions are grossly negligent, or who engages in willful misconduct may, as a result, become liable for the resulting removal costs or damages. The qualified individual is not, however, responsible for the adequacy of response plans prepared by the owner or operator, nor is the qualified individual responsible for contracting response resources beyond the full authority delegated from the owner or operator.

The Coast Guard does not wish to restrain the appropriate activities of a qualified individual and an alternate qualified individual to hamper owners or operators in identifying such individuals. However, the Coast Guard has no authority to grant immunity to any person, including qualified individuals designated for response plan purposes.

To better define the responsibilities of the qualified individual, the Coast Guard has revised the proposed rule by adding to § 155.1026 a paragraph which states that the qualified individual is not responsible for the adequacy of the response plans, nor for contracting response resources beyond the authority delegated from the owner or operator.

A new section has also been added which allows the vessel's owner or operator to designate an organization to carry out the responsibilities of the qualified individual. However, the designated organization must have identified specific individuals to act as the qualified individual and the alternate. Finally, the proposed rule has been revised to require the qualified individual to be familiar with the implementation of the vessel response plan and to be trained in the responsibilities of the qualified individual under the response plan.

Response Activities. The Coast Guard has revised this definition in the interim final rule by adding the words "public health or welfare." This revision strengthens the definition and makes it consistent with the definition of "removal" contained in section 311(a) of the FWPCA.

Response Area. One comment stated that the proposed definition does not reflect the negotiated rulemaking agreement because the definition encompasses a much greater (or potentially much smaller) area than that contemplated by the Committee. That comment stated that the response area

should be determined on a case by case basis by the Federal on-scene coordinator (OSC) during an actual spill. Another comment suggested that the definition should make it clear that the "response area" may encompass more than one COTP zone.

The Committee recommended using "planning sectors" to define the areas in which dedicated response vessels could operate without a response plan, but the Committee did not suggest a definition. The Coast Guard has reconsidered the definition and agrees with the comment that a "response area" should be determined case by case, depending upon the exigencies of a spill. The Federal OSC is the person with the expertise and authority to make this determination. Therefore, we have revised this definition by stating that the Federal OSC determines what constitutes the response area. The revised definition allows a Federal OSC the flexibility to define the response area as necessary, based on the actual spill size and location.

Rivers and canals. Several comments opposed defining rivers and canals as 12 feet or less in depth because many rivers are greater than 12 feet in depth. One comment recommended that the depth should be increased to 30 feet. The Coast Guard proposed that rivers and canals be defined as 12 feet deep or less because we intended the definition to only cover narrow, inland bodies of water that are reasonably protected and typically have wave heights of one foot or less. It was also our intent to limit this definition to those areas where only shallow draft vessels would operate.

Creation of the limited definition for rivers and canals permitted the development of unique oil spill planning requirements for shallow draft vessels that transit these waters. The Coast Guard disagrees with the recommendation to increase the depth from 12 feet to 30 feet because it would change the characteristics of the operating environment upon which the planning requirements for rivers and canals was based.

Other comments requested that we clarify the term "controlled navigable depth," and one suggested using the "authorized depth." The Coast Guard has revised the definition by deleting the term "controlled navigable depth" and replacing it with "project depth." The project depth is indicated on most navigational charts and represents the design dredging depth of channels maintained by the U.S. Army Corps of Engineers. Unlike the "controlled navigable depth" that may change frequently due to shoaling, the "project depth" is a fixed design standard independent of the actual depth existing in the channel.

Spill management team. One comment requested that the Coast Guard make it clear whether this function can be fulfilled by an organization outside the COTP zone of the spill. The interim final rule does not prevent the spill management team from being located outside of the response area, as long as the plan remains functional for the area where the vessel is operating. Under § 155.1030, the plan must identify a team for each COTP zone, but the plan may identify the same team for all zones.

Substantial threat of a discharge. Two comments objected to using "fuel" in the definition because OPA 90 does not specifically address fuel. MARPOL Regulation 26 recommends that certain vessels carrying oil as "fuel" or as "cargo" carry an approved oil pollution emergency plan. If the owner or operator intends the plan to satisfy the MARPOL Regulation 26 recommendations, the plan should address oil carried as fuel, as well as oil carried as cargo.

Tanker. The Coast Guard added the definition of tanker which is consistent with the definition in 46 U.S.C. 2101.

Vessels carrying oil as primary cargo. In response to comments, the Coast Guard has amended the definition to clarify that it includes only vessels carrying oil in bulk as cargo and has included cargo residue in the definition to make it consistent with § 155.1015.

Vessels carrying oil as secondary cargo. In response to comments, the Coast Guard has amended the definition to clarify that it includes only vessels carrying oil in bulk as cargo or cargo residue. This definition has also been amended to eliminate the possibility that a vessel carrying oil as primary cargo could simultaneously be considered a vessel carrying oil as a secondary cargo. For further discussion on these vessels, see "Discussion of general issues."

Vessel of opportunity. One comment stated that the preamble to the NPRM implied that a vessel of opportunity must carry a response plan if it operated outside of the response area. The Coast Guard agrees that the preamble is misleading, but § 155.1015 specifically exempts vessels of opportunity from the requirements of this subpart. The definition in the interim final rule is clear that these vessels must be engaged in response activities, but it does not limit vessel operations to the response area. The definition has been changed to clarify that a vessel carrying oil as a primary cargo is excluded from the definition.

Section 155.1025 Operating Restrictions and Interim Operating Authorization

The Coast Guard received twenty-one comments on this section. Two comments agreed with the NPRM, one requested clarification on single voyages, and the remainder suggested revisions. The following summarizes the suggestions and the Coast Guard's reasons for accepting or rejecting them. The Coast Guard made minor changes to the interim final rule for clarification.

The Coast Guard has amended paragraph 155.1025(a)(3) to make its text consistent with applicability statements for lightering operations in other Coast Guard regulations.

Three comments recommended that the Coast Guard and not vessel owners or operators be responsible for certifying or approving shore-based spill response contractors. The regulations do not require such a certification or approval. To avail themselves of the provision contained in § 155.1025(c), an owner or operator must simply certify to the Coast Guard that they have identified and ensured the availability of, through contract or other approved means, the response resource required by the interim final rule.

Several comments asked how an owner or operator could certify on February 18, 1993, that the required response resources would be in place on August 18, 1993, when they are not currently in place. If an owner or operator has made reasonable arrangements, such as a contract with an oil spill removal organization, for the necessary response capability to be available for use no later than August 18, 1993, the owner or operator may properly certify, on or before February 18, 1993, that it has identified and ensured the availability of the necessary private response resources. The certification should be submitted with the response plan. It is not necessary to list in the certification those resources that are not currently in place. However, all necessary response resources must be in place by August 18, 1993 for the vessel to continue to operate past that date.

As discussed in the NPRM, the certification can be submitted either at the time of plan submission or in a separate submittal. The Coast Guard encourages owners or operators to submit the certification with the plan. The vessel will not be permitted to continue to operate past August 18, 1993 unless the owner or operator has received written authorization from the Coast Guard to do so. By including the certification at the time of plan

submission, the owner or operator can assure receipt of the required written Coast Guard authorization in a timely manner.

The Coast Guard is still studying the issue of whether the two-year provision provided for in section 311(j)(5) of the FWPCA is for initial submissions only or if it will also apply to future plan revisions and required resubmissions. The Coast Guard intends to clarify this issue prior to publishing the final rule.

Five comments suggest an extension of the February 18, 1993 deadline for filing plans until the ACP and NCP are updated. The Coast Guard has no authority to extend the statutory deadline. Plans submitted by the February 18, 1993 deadline must be consistent with the local contingency plans (LCPs) and the NCP in effect on August 18, 1992. Vessel owners or operators will not have to modify their plans until the five-year review solely for the purpose of making their plans consistent with a subsequently issued ACP or an updated NCP.

The remaining comments deal with the single-voyage exemption. The proposed rule permits the COTP to authorize a vessel to make one voyage to transport or handle oil in a port or geographic area not covered by a response plan if the vessel owner or operator certifies that they have met certain criteria. After further consideration, the Coast Guard has determined that the term "geographic area" is not specific enough, and may lead to confusion over where and when this provision applies. The Coast Guard has revised the interim final rule by eliminating the words "or geographic area" from paragraph 155.1025(e). For the purposes of the single voyage exemption provision, the Coast Guard will consider an offshore lightering area to be a port.

One comment asks whether the exemption is an annual exemption; it is not. Each vessel owner or operator is allowed a total of one exemption for each port. An owner or operator may request single voyage exemptions for multiple ports. For example, a vessel owner or operator could request and receive a separate single voyage exemption for each of several ports contained within one COTP zone.

Another comment asks whether individual COTP's have the authority to allow inland barges without plans to enter ports unexpectedly. A vessel in distress is entitled to seek safe harbor, subject to appropriate controls imposed by the COTP which may be less than all requirements of these regulations. Otherwise, the requirements of the regulations, including response plan requirements, apply.

One comment suggested that single-voyage exemptions should not be granted. Another supported the exemption only for foreign vessels, if the Secretary of DOT reviewed and approved the vessel's manning, qualification, and watchstanding standards. The Coast Guard has determined that a single-voyage exemption is warranted because it will allow vessels a one-time opportunity to call on a port for which they have not submitted a geographic-specific appendix. However, these vessels must have a response plan that meets all of the VRP requirements (except for the applicable geographic-specific appendix) or have a plan approved by the flag state as meeting the requirements of MARPOL Regulation 26; and have designated a qualified individual and ensured the availability of response resources.

Two comments suggested that the exemption will be of little help to vessel owners and operators, because they are still required to ensure response resources. Section 311 of the FWPCA does not provide an exemption for vessels making a one-time call on a port. The Coast Guard has provided the maximum flexibility for these vessels to meet the statutory requirements to ensure the availability of response resources.

One comment suggested that vessels visiting ports infrequently should be subject to the same exemption as those making a single voyage. The Coast Guard disagrees. The exemption is intended for a truly unexpected diversion, for which it is unreasonable to require an owner or operator to plan in advance.

Another comment mentioned that it will be a significant administrative burden to maintain geographic-specific information aboard a vessel that visits numerous ports. The Coast Guard believes that it is appropriate to have all area specific information contained in one section of the plan and carried onboard. This will facilitate reference for the vessel crew during an emergency and assist the local COTP in reviewing the information during routine boardings.

One comment suggested that owners or operators of time-charter vessels in service before February 18, 1993, with an approved response plan should have 90 days to submit a new geographic-specific appendix if a vessel changes its regular port of call. The comment suggested that the vessel be allowed to operate during that 90 days. The Coast Guard disagrees. The interim final rule already permits the COTP to grant a single-voyage exemption in such cases.

Section 155.1026 Qualified Individual and Alternate Qualified Individual

The Coast Guard has added this section to set out the requirements for the qualified individual and the alternate qualified individual. To clarify the interim final rule, we have incorporated in this section the substantive information previously included in the definition of qualified individual.

Section 155.1030 General Response Plan Requirements

This section of the interim final rule outlines general response plan requirements for all vessels. Most comments on this section addressed the plan format and where the plan must be located.

A new section has been added to the interim final rule that describes the procedure that an owner or operator can follow to address the provisions of Regulation 26 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL). See "Discussion of general issues" for additional details.

One comment stated that copies of the plans should be kept at Coast Guard Marine Safety Offices and Coast Guard District offices to ensure that information is readily available to State and Federal agencies in case a spill occurs. The Coast Guard will retain a copy of the plans at one central location and believes that one copy is sufficient. Response plans must include procedures for coordinating with State and Federal agencies, but these plans are for the vessel owner or operator and its agents or employees who will have primary responsibility to mitigate and clean up a spill.

One comment stated that the Coast Guard should write a model plan that vessel owners could modify for their vessels. As discussed, response plans are for the owner or operator and its agents or employees. Therefore, we think it appropriate to give owners or operators as much flexibility as reasonably possible to determine what level of complexity and substance addresses their needs. A "cookbook" plan would unnecessarily restrict these owners or operators from devising the best plans for their operations and may unnecessarily increase their paperwork burden.

One comment stated that the plans should identify who to call for protection of environmentally sensitive areas and identify protection strategies.

The Coast Guard does not agree because that information is included already in the LCPs and will be included in the ACPs.

One comment objected to the wording used in proposed paragraph 155.1030(a) concerning the requirement for plans to be written in a language understood by "crew members responsible for carrying out the plan," because the wording implies that crew members must carry out the plan. The Coast Guard has changed the text of this paragraph to require the plan to be written in English and in a language understood by those crew members "with responsibilities under the plan."

Two comments stated that on-board plans should be concise and deal with only those issues specific to the ship. One other comment stated that a detailed and complex plan would be useless to shipboard personnel in an emergency. The Coast Guard agrees that only certain portions of the plan are needed for shipboard response operations.

Consequently, to minimize the paperwork burden on vessel crew members and to help ensure that the plan is useful during a spill, the Coast Guard has amended § 155.1030 to divide the plan into shipboard and shore components. The interim final rule specifies what must be in each component and requires the vessel to carry the shipboard component. The plan must include all of the required sections, but the owner or operator can tailor the length and complexity of the plan as appropriate for the vessel's operations.

One comment stated that the plan should identify communication methods and spill-tracking equipment and procedures. The Coast Guard already requires the owner or operator to identify their response command and control organizational structure in the plan. Communication procedures are an integral part of that structure. The ACPs will address equipment and procedures for spill-tracking, and the Coast Guard is studying the issue as the Committee recommended.

One comment recommended that the vessel response plans should assure the compatibility of communications among all responding private parties and agencies. The Coast Guard agrees that efficient and reliable communications is essential during an oil spill recovery operation. However, it is not possible for each vessel owner or operator to establish a common communications plan with all parties that may respond to an oil spill. This is the role of the NCP, ACPs, and OSC during a spill.

One comment stated that the Coast Guard should require vessel owners or operators to distribute to company personnel a separate document that summarizes key notification and response information. The Coast Guard is requiring owners or operators to use checklists and diagrams in certain parts of their plan. The Coast Guard believes owners or operators should have the flexibility to distribute this information to company personnel as necessary and has not made this a requirement. Requiring distribution of lists or diagrams may increase the paperwork burden on organizations with relatively limited operations.

One comment stated that the Coast Guard should require a vessel owner or operator to include in each plan, a letter authorizing the qualified individual to commit response resources when a plan is activated. The Coast Guard believes requiring an owner or operator to submit an unconditional letter of commitment creates a redundant requirement. An owner or operator already must name a qualified individual who must be notified in the event of a spill. That individual must have the authority to commit response resources.

One comment stated that the rule should require the qualified individual to implement the response plan and activate all resources for a worst case discharge unless the OSC says otherwise. The Coast Guard has sufficient authority to direct the responsible party to clean up a spill. The response plan is largely a planning document, covering such items as preparation of lists and compilation of data, training, and drills. The resources used in the event of an actual spill will depend on the specifics of the incident.

One comment stated that a dedicated response vessel should not be required to have a response plan if the vessel is released from its dedicated area to respond to a spill in another area, and is not transporting oil to or from the spill site. The Coast Guard agrees. A dedicated response vessel is only required to have a shipboard response plan when operating outside a response area and carrying oil in bulk as cargo.

Several comments stated that it was impossible to make the vessel response plans consistent with the unrevised NCP and incomplete ACPs. Most of these comments argued that the Coast Guard should delay the filing deadline for vessel response plans until the NCP and ACPs are finished.

The Coast Guard already has addressed this issue under "Discussion of general issues." In the absence of the revised NCP and completed ACPs, the Coast Guard will evaluate response plans based on the existing NCP published in 40 CFR part 300 and the ACP in effect on August 18, 1992.

There were a number of comments suggesting that we consider the proper content, format, and other issues when developing the ACPs. These comments are beyond the scope of this rulemaking.

In the NPRM, we proposed that a response plan that was completed prior to the effective date of the rule follow any format so long as the plan was supplemented with a cross-reference section to identify the location of the applicable sections required in the rule. The Coast Guard revised the interim final rule to clarify that the cross-reference section must address all required information and not simply the sections.

One comment indicated that owners or operators cannot "complete" their plans before they are submitted because the rule will require some elements that are not yet finalized. The Coast Guard agrees and changed the provision to address plans submitted on or before February 18, 1993.

The purpose of this provision is to reduce the initial burden on owners or operators who already have begun developing a response plan. The Coast Guard eliminated the requirement that a plan completed prior to the effective date of the interim final rule and using a cross reference must be submitted in the required format at the next required resubmission date. The Coast Guard intends to work with the various States to develop a universal format by the time the 5 year resubmittal is due. At that time, a plan utilizing a cross-reference section may be required to be resubmitted in a universal formal. See "Discussion of general issues" for information on submitting response plans based on the NVIC.

Several comments opposed a strict format and suggested allowing companies flexibility to create plans that fit their operation. These comments also suggested allowing owners or operators to submit a State approved plan to meet Federal requirements. Four comments stated that the Coast Guard should allow owners or operators to use their own or a State plan format if they cross-reference the format required under the VRP rules.

The Coast Guard made a number of small changes to the interim final rule to provide an owner or operator with more flexibility in organizing and submitting their plan. We have deleted the proposed requirement for the plan sections to be in a specific order. We added a provision to allow an owner or operator with multiple vessels to submit

one plan with separate vessel-specific appendices to satisfy the plan requirements for each of its vessels.

The revised interim final rule will permit the owner or operator to insert sections as necessary to satisfy any additional State or IMO requirements. However, the required sections and specific information required in those sections must remain distinct, and the appendix or table of contents must provide sufficient detail on the location of these distinct sections. As many comments recognized, this standard format will ease the administrative burden in reviewing the plans and create uniformity for responders who may not be familiar with a particular plan.

Three comments argued that the plan format was inconsistent with the recommendations of MARPOL Regulation 26. Three other comments stated that the plan format was useful in implementing Regulation 26 of MARPOL. The Coast Guard recognizes that OPA 90 plan standards exceed MARPOL standards but does not believe that these requirements are inconsistent with Regulation 26 standards. U.S. courts have recognized that Congress may direct the Coast Guard to set a stricter standard than the international standard as a condition of port entry. Although these requirements meet and exceed the MARPOL recommendations, the Coast Guard believes they are a logical extension of the IMO concept.

After reviewing the NPRM, the Coast Guard amended § 155.1030 by adding the requirement for the vessel owner or operator to maintain and make available copies of the submitted and approved plan. This provision was previously in § 155.1065, but we have determined that it is placed more appropriately in § 155.1030(i). This section has been revised to make it clear that it is the responsibility of the owner or operator to ensure that the qualified individual is provided with a current copy of the entire plan.

Sections 155.1035(a), 155.1040(b), and 155.1045(b) General Information and Introduction

The Coast Guard revised §§ 155.1035(a), 155.1040(b), and 155.1045(b) to require the call sign to be included in the response plan for each vessel covered by the plan. The Coast Guard is adopting this requirement to reflect a recommendation in the MARPOL Regulation 26 emergency plan guidelines.

The Coast Guard has moved the requirement in §§ 155.1035(a) and 155.1040(b) for owners and operators to identify the geographic areas covered by the plan to the appropriate geographic-specific appendix.

Sections 155.1035(b), 155.1040(c), and 155.1045(c) Notification Procedures

Several comments addressed the type and extent of the notification requirements. Four expressed concerns that the amount of notification requirements are cumbersome, and stated that the vessel owner or operator should have to report the discharge only to the National Response Center or the Coast Guard. Some of these comments also suggested including the requirements for State and local reports only in the Area Contingency Plans. One comment suggested that the Coast Guard maintain a centralized list of all notification requirements, with the COTP and Area Committees updating the list.

Two other comments stated that MARPOL Regulation 26 requirements should be used for contacts because a proposed notification checklist could be confusing in a disaster. Finally, one comment opposed descriptions of notification requirements and primary and secondary communication methods because descriptions are unnecessary and add complexity to the requirements.

The interim final rule requires that only the qualified individual be notified. However, other statutes and regulations establish oil spill reporting requirements, and the Coast Guard believes that owners or operators should set procedures for these notifications in their response plans. To minimize the burden on vessel owners and operators and facilitate rapid notification of a spill, most of this information can be provided in a checklist, which is consistent with MARPOL Regulation 26. To clarify that we need only a listing of notification procedures, we deleted the requirements in proposed §§ 155.1035(b)(2), 155.1040(c)(2), and 155.1045(c)(2) for owners or operators to "discuss" in the response plans notification requirements that apply in the vessel's area of operation.

The Coast Guard also revised the interim final rule to eliminate the requirement for response plans to include local notification requirements and for this information to be duplicated in the geographic-specific appendix. Under the revised notification sections, a response plan must describe primary communications methods for all vessel types and secondary methods if they are available.

To ensure consistency with IMO Resolution A648(16), the Coast Guard has revised the interim final rule to require response plans to include various additional items that must be identified in the initial notification and to establish guidelines for follow-up reports.

Sections 155.1035(c), 155.1040(d), and 155.1045(d) Shipboard Spill Mitigation Procedures

Two comments disagreed with the use of the term "fuel" in § 155.1035(c) because OPA 90 refers to "cargo" and not "fuel." The Coast Guard has deleted the term fuel from these sections. See the preamble discussion of "General issues" and "Section 155.1030" for further information on how U.S. vessels can meet the MARPOL Regulation 26 requirements.

To make § 155.1035 consistent with § 155.1040, the Coast Guard has moved to § 155.1035(j) (vessel-specific appendix) the requirement in § 155.1035(c)(1) for the response plan to identify the volumes of cargo that would be involved in the maximum most probable discharge and the worst case discharge. We have revised this provision to require that the response plan also identify the type(s) of oil cargo involved.

A few comments stated that owners or operators should not have to identify responsibilities of named personnel in the plan under proposed § 155.1035(c). Because identifying individual personnel responsibilities is cumbersome and goes beyond OPA 90, these comments suggested using a checkoff sheet.

Section 311(j)(5)(C)(iv) of the FWPCA states that in a response plan, the owner or operator must describe "the response actions of persons on the vessel." Section 155.1035(c) states that an owner or operator must identify the vessel crew's responsibilities by job title for these scenarios: transfer system leak, tank overflow, or suspected cargo tank, fuel tank, or hull leak.

Two comments opposed the requirement in § 155.1035(c) for the response plan to detail crew responsibilities for keeping records on and sampling of spilled products. The comments stated that vessel crews do not presently sample spilled products, and they objected to exposing personnel to safety and health hazards. The comments also noted that spill sampling is a government enforcement responsibility.

Section 155.1035(c) does not require or recommend that the crew take spill samples. We have revised the interim final rule to require owners or operators to identify only those procedures that the vessel already has in place for spill sampling. The interim final rule is also consistent with MARPOL, which recommends that response plans

include crew responsibilities, if any, for recordkeeping and sampling of spilled products.

One comment stated that the plans should include spill mitigation requirements for owners or operators to carry sorbent boom and to train crew members how to deploy the boom. Another comment stated that the onboard equipment requirements should be kept to a minimum. The Coast Guard is developing a separate rule to set out the types and amounts of equipment which must be onboard a vessel.

One comment stated that the vessel owner or operator should maintain the information on the availability, location, and contact numbers for lightering equipment because this information will benefit shore-based personnel more than shipboard personnel. The Coast Guard agrees and has deleted this requirement from §§ 155.1035(c) and 155.1040(d), and added it to §§ 155.1035(e) and 155.1040(f), the list of contacts section of the response plan. If more appropriate, the information may be included in the geographic-specific appendix and referenced in the list of contacts.

Sections 155.1035(d), 155.1040(e), and 155.1045(e) Shore-Based Resources

A number of comments stated that the vessel crew should not be responsible for supervising shore-based resources because their primary goal is to ensure the safety of the crew, vessel, and cargo. These comments recommended that the crew "advise" rather than "supervise" shore-based resources pending the arrival of the qualified individual. Many also argued that it is the Coast Guard's responsibility to remove a spill.

The interim final rule does not require the crew to supervise shore-based operations. We revised the interim final rule to clarify that crew responsibilities for supervising shore-based resources should be identified in the plan only if the owner or operator assigns such responsibilities to the crew. The Coast Guard has also deleted the term "pending arrival of qualified individual" to eliminate the perception that the qualified individual must be on scene. Under section 311 of the FWPCA, the Coast Guard has authority to ensure the effective and immediate removal of a spill, but it remains the owner's or operator's responsibility to remove the spill.

To ensure that the crew is aware of any responsibilities they may have to initiate a response and supervise shore-based resources, the Coast Guard has determined that this information should be kept onboard the vessel. We have deleted the requirement to identify these responsibilities from §§ 155.1035(d), 155.1040(e), and 155.1045(e) and added it to §§ 155.1035(c), 155.1040(d), and 155.1045(d) (shipboard spill mitigation).

Two comments stated that the requirements for shore-based response activities go beyond the scope of the onboard plan and do not need to be carried on the vessel. The Coast Guard agrees and will allow response plans to be divided into shipboard and shore components. The vessel does not have to carry the section on shore-based resources.

Five comments stated that the interim final rule should clarify who sets up the command center because setting up the command center is beyond the facilities and resources available to many independent shipowners. These comments felt that the command center was the Coast Guard's responsibility.

The interim final rule does not require that the vessel owner or operator set up a command center, but a command center may be part of the organizational structure of a response plan. The Coast Guard has determined that the owner or operator should identify the organizational structure that will be used to manage the response actions.

Many comments stated that the Coast Guard should require the use of the Incident Command System (ICS) under the National Interagency Incident Management System (NIIMS). These comments argued that NIIMS would facilitate cleanup efforts by creating a standard management system and allowing the operator to draw upon local community resources. One comment stated that we should not require the use of the NIIMS ICS.

The interim final rule does not require the use of the NIIMS ICS, but vessel owners and operators may choose to use this system or any organizational structure, as long as the response plan identifies the structure and the structure addresses the elements required in the interim final rule.

One comment stated that the number of shore-based management teams should be limited to one per COTP zone and these teams should be ad hoc committees to Area Committees. Some suggested that Federal, State, and private resources should fund the ad hoc committees. The comment rationalized that such a team would be used to working together and could coordinate with the OSC during spills to support area plan process, reduce costs, manage the qualified individual, and increase efficiency.

It is the responsibility of the vessel owners or operators to set up spill management teams. The Coast Guard will not specify the number of teams or fund the teams. The Area Committee membership is limited to members of Federal, State, and local governments. The COTP will determine the types and numbers of subcommittees involved in the Area Committee planning process.

Two comments stated that the requirements to identify oil spill removal organizations and list equipment and supplies in this section of the response plan duplicate the requirements for the geographic-specific appendix and § 155.1050. The comments suggested deleting the provisions under shore-based response activities in §§ 155.1035, 155.1040, and 155.1045 because they are unnecessary.

The Coast Guard agrees the requirements are duplicative and has revised the interim final rule so that a vessel owner or operator needs to identify these resources only in the geographic-specific appendix. We revised the interim final rule by deleting proposed §§ 155.1035(d)(6), 155.1040(e)(5), and 155.1045(e)(5), and by clarifying the existing requirements in §§ 155.1035(i), 155.1040(j), and 155.1045(j). Section 155.1050 is not duplicative because it defines the operating criteria of required response resources.

Some comments also expressed concern about the owner or operator having to identify sufficient resources to staff the oil spill removal organization for seven days. Three comments objected to this provision because owners will not have resources to run a major response for seven days. One comment suggested including this provision in a supplement or annex to a plan to reduce the burden of updating and reapproving the plan each time the personnel identification changes.

The Coast Guard is not requiring the owner or operator to name specific individuals of the oil spill management team or oil spill removal organizations in the response plan. The plan must contain a list with the name and number of the organization(s) that will supply personnel to staff a response for seven days, and the owner or operator must ensure that this organization has adequate resources to staff the response. To clarify the requirements, we now instruct the owner or operator to list the "sources of" trained personnel in the plan. Personnel changes are not "significant," therefore, the Coast Guard does not require the plan to be reapproved if personnel changes occur. However, the owner or operator must update the plan and send the changes in sources to the Coast Guard.

Two comments stated that the Coast Guard should list approved oil spill response organizations in the rule. Other comments stated that the Coast Guard should ensure that resources are available and capable. One comment disagreed with the need for pre-contracting resources.

Under section 311(j)(5), the responsible party must ensure, through contract or other approved means, that sufficient resources are available to respond to a worst case discharge or threat of such a discharge. The Coast Guard is not responsible for securing or listing the services available for the owner or operator. The Coast Guard expects to issue guidance on classification of oil spill removal organizations.

One comment stated that the rule should define "OSC" because the response plan must provide for coordination with that official. Another comment indicated the need for responders to coordinate with other levels of government that have responsibilities during a spill, not just the OSC.

The Coast Guard agrees and has added a definition of "OSC" to the interim final rule. The OSC's responsibilities include coordination with other appropriate government agencies. We have revised the interim final rule to make it clear that the plan must identify the qualified individual's responsibilities for immediate communication with the OSC.

Sections 155.1035(e), 155.1040(f), 155.1045(f) List of Contacts

Two comments disagreed with the requirement to list phone numbers (except for the qualified individual) in a public document because of privacy concerns. The comments suggested that the numbers could be "blacked out" in copies sent to Coast Guard. The Coast Guard disagrees. We believe that the phone numbers are essential to the overall effectiveness of the plan. We are not requiring that the 24-hour contact number be a personal or home phone number.

One comment stated that requiring owners or operators to update their response plan each time the vessel's insurance representative or agent changes is an unreasonable burden. The Coast Guard does not anticipate that keeping current the insurance representatives and vessel agent information will be a large burden. This requirement is consistent with MARPOL Regulation 26 and is generally known by vessel personnel. The Coast Guard will not require that the plan be reapproved whenever that information changes.

One comment disagreed with listing an alternate for the qualified individual because most owners will designate more than one qualified individual. The Coast Guard has determined that identifying an alternate will ensure that a qualified individual is accessible if the primary qualified individual cannot be reached.

One comment stated that Protection and Indemnity (P and I) Clubs publish lists of correspondents who are available to act for and assist shipowners, but it will be difficult for the vessel owner or operator to identify representatives of the individual P and I Clubs.

The proposed rule had a requirement to identify the vessel's P and I Club representative and a separate requirement to identify other applicable insurance representatives. Realizing that a P and I Club is one of many types of insurers, the interim final rule combines these two requirements together. The Coast Guard recognizes that individual P and I Club representatives may not exist for each vessel. In this situation, it would be permissible for an owner or operator to include a listing of the P and I Club organizational contact.

Sections 155.1035 (f) and (g), 155.1040 (g) and (h), and 155.1045 (g) and (h) Drills and Training

Sections 155.1055 and 155.1060 set out specific training and drill requirements. Two comments stated that the requirements for "drills" and "training" in §§ 155.1035, 155.1040, and 155.045 duplicate the requirements in §§ 155.1055 and 155.1060. The requirements in §§ 155.1035 and 155.1040 are not redundant because they only require that drill and training procedures be included in the vessel response plan. Section 155.1045 has unique training and drill requirements that do not reference §§ 155.1055 and 155.1060.

Sections 155.1035(i), 155.1040(j), 155.1045(j) Geographic-Specific Appendices

The Coast Guard has added two provisions to §§ 155.1035(i) and 155.1040(j) to facilitate plan preparation and review. First, as discussed in the preamble discussion of "Sections 155.1035(a) and 155.1040(b)," we have included the requirement for the plan to identify geographic areas covered by the plan. The owner or operator need only list the general area(s) (i.e., port areas, rivers and canals, Great Lakes, inland, nearshore, offshore, or open ocean) in which the vessel intends to handle, store, or transport oil. This allows an owner or operator the flexibility to plan only for those areas of the COTP zone in which the vessel will transit.

Second, the Coast Guard has added a requirement to identify the volume and type of oil on which the required level of response resources are calculated. This information must be included only if it differs from that identified in §§ 155.1035(j) and 155.1040(k). This provision allows the owner or operator to plan only for the quantity of oil actually handled, stored, or transported within the applicable COTP zone.

The Coast Guard received a number of comments on geographic-specific appendices. One comment agreed that plans should contain a geographic-specific appendix because ACPs cannot anticipate all available resources. The appendices should be consistent with ACPs. Another comment expressed concerns that having such an appendix implies that the rule will be applied inconsistently. This comment stated that plans must be consistent within the U.S. and with the international Oil Pollution Emergency Plans (OPEPs).

To ensure consistency among the plans, the Coast Guard will review the plans centrally and will provide COTPs with standard guidance for developing the ACPs.

One comment stated that if a vessel stays in the open ocean, it should not need an appendix. The Coast Guard disagrees. The information contained in the geographic-specific appendix is important for an effective response and for plan review.

One comment stated that developing a geographic-specific appendix is onerous for vessels operating on the spot market. Section 155.1025 allows a vessel a single-voyage exemption to this requirement for vessels making only one voyage to a port.

Three comments stated that some of these requirements duplicate those for shore-based response activities and suggested that they should be deleted. The Coast Guard deleted the duplicate provisions under shore-based response activities and made it clear that the appendix must identify the oil spill removal organizations which will provide the equipment and supplies required in §§ 155.1050, 155.1052, and 155.1054, as applicable.

We added §§ 155.1035(i)(7) and 155.1040(j)(7) to require the owner or operator to list in the appendix the response resources and related information required in the response plan. As an alternative, we added §§ 155.1035(i)(8) and 155.1040(j)(8) to allow owners or operators to identify only the organization(s) and their

applicable classification if the organization(s) have been evaluated by the Coast Guard and their capability has been determined to equal or exceed the response capability needed by the vessel. This alternative may reduce the burden on owners or operators in detailing their response resources. The Coast Guard is currently developing guidance for classifying oil spill removal organizations.

To be consistent with the requirements in §§ 155.1050, 155.1052, and 155.1054, the Coast Guard has added a paragraph to §§ 155.1035(i) and 155.1040(j) requiring the appendix to contain a separate list of identified companies that will provide salvage, vessel firefighting, lightering, and, if applicable, dispersant capabilities.

One comment stated that these appendices will cause plans to be out of date continuously. The Coast Guard requires owners or operators to amend their plan and submit for approval only significant changes to the plan. The appendices should change very infrequently.

One comment opposed requiring owners or operators to identify response resources for every geographic zone. The comment stated that owners or operators should rely on local response contractors who can identify environmentally sensitive locations and describe the best response strategies for these areas. OPA 90 requires owners or operators to plan for any area in which their vessel(s) will handle, store, or transport oil. Further, owners or operators must identify response resources in their plans. The ACP will identify response strategies.

Section 155.1035(j) and 155.1040(k) Vessel-Specific Appendices

One comment stated that the requirement under vessel-specific information for vessels to maintain damage stability data conflicts with the option for either the shore-based personnel or vessel personnel to maintain the data. We have revised the requirements to allow owners or operators to maintain the damage stability data apart from the plan if the plan identifies the location of the data.

Two comments opposed identifying the location of information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the oil cargo and fuel aboard the vessel. The interim final rule allows vessels to use Material Safety Data Sheets (MSDSs) to meet this requirement. Some stated that vessels do not usually carry MSDSs for fuel because its hazards are well-understood. Other comments stated that safety data sheets are not available for physical, chemical characteristics, or health and safety hazards for different crudes. Those comments proposed referencing the International Safety Guide for Oil Tankers and Terminals (ISGOTT) by OCIMF and requiring the cargo owner to supply the information on the cargo or fuel before it is taken aboard.

Vessels already are required under 33 CFR 155.750 to carry information on their cargo. Sections 155.1035(j) and 155.1040(k) will ensure that a plan user will know where to find this information. The Coast Guard has revised the interim final rule by deleting the requirement for owners or operators to identify this information for fuel. The interim final rule requires the plan to state only the location of this information for the oil cargo and the location of the cargo and fuel stowage plan. ISGOTT does not provide the detail of cargo information necessary to satisfy this requirement.

Section 155.1040 Requirements for Unmanned Tank Barges

Most comments supported requiring the barge to carry a checklist with emergency information. However, a few stated that towing vessels should also carry plans or written information for each barge they tow to facilitate access to those plans in the event of a spill. Others opposed dividing the plans for unmanned barges into a two part format because first responders would need access to the entire plan.

The Coast Guard has determined that requiring the towing vessel to carry individual plans for each barge it may tow is unreasonably burdensome. The owner or operator of the barge must inform the towing vessel operator of the plan location and any responsibilities the towing vessel operator may have under the plan. These plans are intended for use by the towing vessel's crew and spill management team, who will coordinate with the first responders.

A few comments objected to the requirements for barges to provide damage stability, emergency towing, and salvage plans. Others said that barges should not have to maintain a barge diagram or create lines plans or tables of offsets for the response plan.

The interim final rule requires the vessel owner or operator to provide emergency towing plans, damage stability information, lines plans, or tables of offsets only if they are available. If these documents already exist, the plan must reference the existing manual and note where the manual is located. The Coast Guard has determined that a tank barge plan must state the location of general arrangement plans, midship section plans, and tank tables. The Coast Guard revised § 155.1040 to make these requirements clear.

Three comments stated that a barge plan should not have to identify lightering resources because of the cost to barge owners or operators. One comment indicated that barges already have transfer procedures and these should not be repeated in the vessel response plans.

The Coast Guard has determined that barge owners or operators need to identify lightering resources because barges pose a risk to the environment similar to tankers. The response plan may reference any existing vessel transfer procedure that meets the requirements of the interim final rule. We have deleted the requirement for barges to follow the OCIMF Guide because the Guide does not specifically address barge operations.

One comment stated that the requirement to identify procedures for certain casualties was too cumbersome, and the circumstances, not the type of casualty, will ultimately dictate appropriate procedures. The Coast Guard recognizes that the incident circumstances will ultimately dictate appropriate response, but it has determined that identifying procedures for responding to various casualties is an important planning tool.

One comment opposes any implication in the interim final rule that the tankerman may have responsibility to mitigate spills because the barge owner or operator is the responsible party. Under 46 CFR 35.35, the tankerman is the person in charge of an unmanned barge during a transfer operation; and in an emergency, the tankerman must judge and pursue the most effective action to rectify the conditions causing the emergency. However, the barge owner or operator remains the responsible party.

One comment stated the requirement in proposed § 155.1040(e)(1) to identify the responsibilities of the towing vessel's crew duplicates the requirements under spill mitigation. The Coast Guard has moved the requirement for identifying crew responsibilities from § 155.1040(e)(1) to § 155.1040(d)(8). Section 155.1040(d)(8) states that the responsibilities need to be identified only if the vessel owner or operator requires the towing vessel crew to take action under the plan during a response.

We have revised § 155.1040(k)(2) to require that the response plan also identify the type(s) of oil cargo in

addition to the volumes of oil cargo involved in the maximum most probable discharge and worst case discharge.

Section 155.1045 Requirements for Vessels Carrying Oil As a Secondary Cargo

A number of comments disagreed with using 50% of the fuel capacity plus the cargo tank volume to derive the cargo volume for which an owner or operator must plan. Most comments said that 25% of the fuel capacity is a more appropriate amount to use for this calculation.

Based on the data these comments presented, the Coast Guard agrees. Based on an evaluation of actual transfer data, we changed paragraph 155.1045(a). For vessels that transfer a portion of their fuel as cargo, 25% of the fuel capacity of the vessel plus the capacity of any cargo tank(s) will be assumed to be the cargo volume for determining applicable response plan requirements, unless the vessel owner or operator indicates otherwise. If the actual volume transferred is greater than 25%, the interim final rule requires the owner or operator to plan for the greater volume. A vessel owner or operator may use a volume less than 25% if the owner or operator submits historical data showing that the vessel transfers a lower percentage of its fuel capacity as cargo between refuelings.

A number of comments addressed the issue of non-contractual written agreements with shore-based responders. Some opposed non-contractual written agreements, recognizing that contractors need incentive to maintain and improve their response capability. These comments stated that an owner or operator should not have to obtain letters of consent because the owner or operator already must provide a list of contractors in the response plan.

OPA 90 specifically requires owners or operators to identify and ensure the availability of response resources through contract or other approved means. The Coast Guard has determined that for secondary carriers, a written letter of consent constitutes "other approved means" to ensure the availability of the response resources. The interim final rule does not preclude these vessel owners or operators from contracting for these resources. (See the preamble discussion on the definition of "contract or other approved means" for further information.)

In proposed § 155.1045(j)(3), the Coast Guard required that response plans for vessels carrying oil as a secondary cargo list the required response resources. We have revised § 155.1045(j)(3) to require that the geographic-specific appendix list the oil spill removal organizations available to respond to the vessel's worst case discharge. The identified oil spill removal organizations must be capable of commencing oil spill containment and on-water recovery within the tier 1 response times.

One comment opposed requiring refresher training because already trained individuals would have to drill even if the individuals were not assigned to a vessel. Other comments argued that maintaining training records on the vessel imposes an undue burden on the vessel crew and only a logbook should be required onboard.

The interim final rule requires refresher training only as necessary. We have revised the interim final rule by adding a provision that allows the owner or operator to count documented work experience toward training. Only individuals onboard the vessel at the time of a drill must participate in the drill. We also have revised the interim final rule so that drill records may be maintained on the vessel, at the U.S. location of the spill management team, or with the qualified individual. However, the plan must specify the location of the records.

Paragraph 155.1045(i) of the proposed rule discusses the procedures for plan review and update. The Coast Guard has determined it appropriate to expand this paragraph in the interim final rule and include a new provision for revising the plan to address deficiencies identified by the Coast Guard. A provision has also been added to provide an appeals process for owners or operators. The title of this paragraph has been renamed "Plan revision, update, and appeal procedures."

The Coast Guard has revised paragraph (i) to require resubmission of the plan for approval 6 months before the end of the Coast Guard approval period. This replaces the proposed requirement for resubmission exactly five years from date of approval. The Coast Guard has also revised this paragraph to require, under certain circumstances, a resubmission of the plan when there is a change in the owner or operator of the vessel.

Section 155.1050 Response Plan Development and Evaluation Criteria for Vessels Carrying Groups I Through IV Petroleum Oil as a Primary Cargo

The Coast Guard has renamed this section and made many changes to the text to limit § 155.1050 to vessels that carry group I through IV petroleum oil as a primary cargo. We have done this to account for the new sections §§ 155.1052 and 155.1054, which address primary carriers of new group V petroleum oil and non-petroleum oils respectively. Some comments questioned whether § 155.1050 applied to vessels that carry oil as a secondary cargo. Only portions of § 155.1050 apply to secondary carriers, and these portions are specifically referenced in § 155.1045(j).

Section 155.1050(a)

This paragraph directs the vessel owner or operator to use specific criteria to evaluate the operability of response resources identified in a response plan under certain conditions. Six comments were received on this paragraph and the corresponding section in appendix B. Two comments requested that we make it clear that owners or operators should use the referenced criteria only for planning purposes and should not consider the criteria as limitations on the equipment used during a response.

Evaluating equipment under § 155.1050(a) is intended only to identify that equipment which the owner or operator expects to operate in the significant wave heights in Table 1. It does not restrict certain equipment to the geographic areas specified in the plan. Paragraph (a)(1)(ii) of the interim final rule has been modified to reflect better the intended use of the criteria.

For evaluating equipment, one comment recommended that we consider the categories of calm water, protected water, and open water as used in the "World Catalog of Oil Spill Response Products—Third Edition" instead of the geographic-based criteria. ASTM is also considering this approach The Coast Guard has determined that the World Catalog approach is burdensome because it would require all bodies of water to be evaluated before the owner or operator would know what type equipment would be required. The classification based on the four geographic areas (ocean, inland, river, Great Lakes) sets a baseline that an owner or operator can use without additional action. The procedures that allow the COTP to reclassify specified bodies of water using significant wave height frequency will address variations in conditions similar to those addressed by the World Catalog.

Section 155.1050(b)

Six comments addressed the criteria included in paragraph (a)(3) of the NPRM for the COTP to reclassify a body of water to a more or less stringent operating environment that better reflects the local conditions. These comments requested that we clarify the process for reclassifying bodies of water;

how affected interests would be notified and involved in the process; and when the reclassifications might happen. One comment requested that we reclassify Prince William Sound from "inland" to "ocean."

To make this provision clear in the interim final rule, we have included this provision in a renumbered paragraph (b). (Note: Because we have added a new paragraph to § 155.1050, proposed paragraphs (b) through (p) have been renumbered as paragraphs (c) through (q) in the interim final rule. The preamble discussion will refer to the paragraphs as numbered in the interim final rule.)

Paragraph (b) allows the COTP to evaluate bodies of water using historical data available from the National Weather Service, port authorities, or other sources, and reclassify a body of water or any portion of a body of water. The COTP will give information to potentially affected entities by including the reclassification in the area contingency plan, by responding to specific inquiries, and by informing the maritime community through appropriate local methods.

Four comments offered alternative percentages to the criteria included in the proposed rule. Some suggested using the more stringent operating environment if prevailing wave heights exceeded the significant wave height criteria in Table 1 for more than 5 percent of the year. Others wanted the COTP to reclassify a less stringent operating environment if the prevailing wave heights were less than the significant wave height criteria in Table 1 for more than 65 percent of the year. Some comments were confused about how the COTP would reclassify a body of water from a stringent operating environment to a less stringent operating environment.

The Coast Guard has retained the percentages from the proposed rule. 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.

Regarding reclassification to a less stringent operating environment, a COTP could reclassify an area only if the significant wave heights in the area do not exceed the wave heights for a less stringent operating environment for more than 35 percent of the year. For example, to reclassify a body of water from ocean to inland, the significant wave heights in the body of water could not exceed 3 feet over 35 percent of the year. The COTP would use a similar approach in reclassifying an area to a more stringent environment.

Note also that any COTP reclassification of a body of water affects only the type of equipment that an owner or operator must identify in a plan for a given area in which a vessel may operate, and does not affect the other planning criteria.

Section 155.1050(c)

This new paragraph includes the proposed requirement for an owner or operator to identify only that equipment in a response plan meeting the specific design criteria included in Table 1 of appendix B. The identified equipment must be capable of functioning in the applicable operating environment. The Coast Guard received one comment on this paragraph. This comment requested we make it clear that Table 1 of appendix B criteria are used for planning and not equipment operations. The Coast Guard agrees and has deleted the reference to "operating" in subparagraph (c)(1) of the interim final rule.

A new requirement has been added to new paragraph (c) of the interim final rule requiring response equipment to be appropriate for the petroleum oil carried. "Appropriate" in this paragraph means the response equipment identified must be capable of performing its assigned task and not be in violation of any existing regulations. For example, any certificated recovery vessel identified for credit in the vessel response plan, must be certificated for recovery of the grade of oil spilled. This requirement was contained in § 155.1050(e)(2)(3) of the proposed rule, and has been moved to paragraph (c) to consolidate the discussion of response equipment in one location and to make it applicable to all spill scenarios.

Section 155.1050(d)

This paragraph requires an owner or operator of a vessel carrying oil as a primary cargo to identify resources for a response to the average most probable discharge (50 barrels) at the point of an oil transfer. We received twenty comments on this paragraph and the corresponding section in appendix B. Five comments supported the requirement as proposed. Three comments opposed the requirement arguing, among other things, that the cost to comply was unreasonable, that providing resources in remote areas was difficult, and that addressing a discharge other than a worst case discharge was beyond our authority under OPA 90.

One comment argued that planning for an average most probable discharge should not be subject to the statutory deadlines in OPA 90 because planning for anything less than the worst case discharge goes beyond the OPA 90 mandate. The deadline for complying remains the same in the interim final rule as in the proposed rule. Applying the same implementation dates for the worst case discharge and the average most probable discharge reduces the burden on the marine transportation industry to comply with the requirements of this interim final rule. Having different implementation dates would add to the burden by requiring multiple submission dates for plan components. See the preamble discussion under "Discussion of general issues" for Coast Guard authority to require planning for an average most probable discharge.

The Coast Guard received seven comments concerning subparagraph (d)(1) requirements for containment boom, oil recovery devices, and temporary storage capacity to be available at or near the point of oil transfer within specified time frames. One comment recommended excluding transfers of non-persistent oils from this requirement because the characteristics of these oils may hamper oil containment and recovery. The Coast Guard disagrees. When discharged, non-persistent oils tend to dissipate more rapidly than persistent oils, but in many instances, spills of such products can be contained and recovered. Even if the containment equipment is not used for recovering the spilled product, responders could use the boom to protect sensitive areas or to minimize the spread of the product.

One comment stated that subparagraph (d)(1) does not apply to unmanned barges. This is incorrect. The provision applies to all vessels carrying groups I through IV petroleum oil as a primary cargo, including unmanned tank barges. Subparagraph (d)(1) also applies to transfers of oil from a barge or tanker to another vessel for use as fuel because the fuel is "cargo" for the delivering vessel.

One comment indicated that it might be impossible to meet the proposed response times on inland rivers. The Coast Guard believes that compliance will be the same in inland rivers as in other areas of the country. Therefore, we have not changed the requirement in the interim final rule.

Two comments indicated that it was unclear how long it could be for the necessary containment boom to be on scene and recommended one hour be used. The Coast Guard agrees and has

modified subparagraph (d)(1)(i) in the interim final rule to state that an owner or operator must plan for deploying the containment boom at the site of oil transfer operations within one hour of detection of an oil discharge. The equipment must be sited to meet this criteria.

Three comments were received concerning equipment sharing by multiple vessels in a lightering area as proposed in subparagraph (d)(2). Two comments asked that this provision be extended to multiple vessels moored at a common facility and one comment asked whether equipment could be staged to cover transfers involving vessels at nearby facilities. The Coast Guard has modified the language in the interim final rule to permit the use of common equipment for any location with multiple vessel transfers, whether at a facility or in a lightering area. The purpose of the requirement is to ensure that the equipment is available and deployable at the point of oil transfer within the indicated times. If the equipment is located so that it can arrive within those times, then the planning criteria have been met.

Eight comments were received concerning proposed subparagraph (c)(3) that authorizes a vessel owner or operator to contract with a facility to provide the average most probable discharge response capability. Four comments indicated that the facility, not the vessel, involved in the transfer should be required to provide the response capability. Three comments also supported this, further noting that response resources were limited on the inland river system and the facility at which the transfer occurs should provide the average most probable capability. One comment supported the requirement as proposed, noting that many facilities are not equipped to provide this capability, but should be able to contract with a vessel.

The Coast Guard considered these comments. In the interim final rule, we are not requiring the owner or operator of a vessel conducting transfer operations at a facility required to submit a response plan under 33 CFR 154.1017 to identify and ensure the availability of response resources to respond to an average most probable discharge. The Coast Guard has determined that it is not necessary to require both the facility and vessel owners or operators to plan for resources to respond to an average most probable discharge. Requiring the facility to plan for and ensure the availability of these resources is consistent with 33 CFR 154.545, which already requires facilities to have access to discharge containment equipment to control an oil discharge from operations from that facility. If the facility has identified these response resources, the Coast Guard believes that they will be readily available to respond to an average most probable discharge from the vessel occurring during transfer operations.

Section 155.1050(e)

This paragraph addresses the requirements for the vessel response plan to identify the response resources to prepare for the maximum most probable discharge (MMPD) (2500 barrels or 10% of the cargo capacity, whichever is less). Fifty-nine comments were received on this paragraph and the corresponding section appendix B. Two comments supported the requirement as proposed.

Three comments opposed the requirement arguing, among other things, that the cost to comply was unreasonable, providing resources in remote areas was difficult, and addressing a discharge other than a worst case discharge was beyond our authority under OPA 90. See the preamble discussion of these issues under "Section 155.1050(c)" and "Discussion of general issues."

Two comments specifically opposed applying the requirement in remote areas of Alaska and the islands in the Pacific. For reasons stated earlier in the preamble discussion of "Discussion of general issues," the Coast Guard made no changes to the interim final rule to address remote areas.

One comment asked whether the owner or operator needed to identify and ensure separate resources to respond to a maximum most probable discharge and a worst case discharge. Response resources identified in a response plan must reflect a continuum in capability to respond to anything from minor operational discharges up to worst case discharges. With the exception of the Great Lakes, the response times for the maximum most probable discharge are the same as those for a tier 1 worst case discharge. Therefore, the Coast Guard does not require an owner or operator to identify separate resources for a maximum most probable discharge and a worst case discharge, unless the identified tier 1 oil spill removal organization is limited by charter or contractual agreement to responding to discharges that exceed the owner's or operator's MMPD planning volume.

On the Great Lakes, the response times for a MMPD are less than those for a tier 1 worst case discharge (WCD). The owner or operator will have to take into consideration the different response times when identifying resources for a MMPD and a WCD.

Nineteen comments addressed the response times in subparagraph (e)(1). Of these, many recommended that the times be reduced to periods ranging from 2 hours to 6 hours in higher volume port areas and 12 hours in all other areas. Others supported the times as proposed. Except for the open ocean, the Coast Guard has retained the times as proposed. The response times represent the maximum time needed for resources to arrive on scene at the farthest distance from port in the geographic planning area. The closer a vessel is operating to a port, the quicker the response resources should arrive on scene.

We received four comments on the open ocean response times. One comment believed that on-water recovery capability should not be required in the open ocean, eliminating the need for a response time. One comment supported the time as proposed, and one comment believed that travel time to the open ocean should be measured from shore and not from 50 miles offshore.

The Coast Guard has revised the interim final rule to indicate that the response time for open ocean areas will be 24 hours plus travel time from shore. This travel time is measured from the closest shoreline area; not the closest port, effectively adding 5–10 hours (depending on travel speed assumptions) to the response times in these areas. This change should further increase the incentive for vessel owners to operate their vessels greater than 50 miles from shore.

Seven comments stated that the Great Lakes should be treated like all other water bodies and allowed a 24-hour maximum response time for the MMPD because the spill history and oil traffic in the Great Lakes is completely different from that in higher volume port areas. The Coast Guard disagrees and retained the 12-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 spills occur infrequently, 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.

One comment asked that we make it clear that the response time clock starts to run when the responsible party discovers the discharge and not a third

party. Another comment asked that the response time be measured from the notification of the response resources, not from discovery of the discharge.

We did not change the proposed requirement that for planning, the response time clock starts at discovery of a spill by a person with responsibility under the plan to initiate notice and to mobilize resources. To encourage planners to incorporate provisions in the plan for rapid notice, discovery is the baseline for measuring response times. During the planning and resource identification process, owners or operators must factor in the time necessary to notify the identified oil spill removal organizations.

Two comments stated that requiring the response plan to include specific information on the oil recovery devices identified for response plan credit is burdensome. The Coast Guard believes that this information is necessary for plan review. As discussed under "General Issues," the Coast Guard is considering classifying oil spill removal organizations to minimize the burden on owners or operators.

The Coast Guard received thirty-nine comments concerning the condition in subparagraph (e)(5) for the MMPD response resources to remain prepositioned in an area, unless the COTP approves moving the identified response resources to the scene of another spill outside the area. One comment stated that the response plan should remain valid only if the owner or operator identified and ensured other sources of response capability to replace the released resources.

Thirty-five comments were concerned with the vessel owner's or operator's potential liability if the Coast Guard "directed" response resources to another spill, and some requested that we make it clear that a vessel owner or operator would not have additional liability under OPA 90 if the response was delayed because the COTP approved resources for use in another spill. One comment challenged the COTP's authority to disapprove the movement of private equipment. Three comments also asked that we require the COTP to identify public and private resources available when the COTP "approves" moving response resources.

The Coast Guard modified subparagraph (e)(5) in the interim final rule to address these concerns. The required resources must be capable of meeting the planned arrival times in subparagraph (e)(1) of this section, but the resources may be located in an adjacent COTP zone. Our intention in requiring the COTP to "approve" the mobilization of equipment to another spill was to keep the COTP apprised of the port's overall readiness and ability to respond to discharges; it was not intended to control the movement of equipment. We have made this clear by changing the interim final rule to require that the COTP be "notified" whenever the identified response resources are not capable of meeting planned arrival times.

If the COTP is notified, a vessel response plan will remain valid. The Coast Guard will not require a vessel owner or operator to identify alternate sources of response resources. However, it may be prudent for a vessel owner or operator to plan for alternate sources of spill response capability with a response resource identified in the plan. We cannot exclude owners or operators from their statutory responsibility to clean up a spill or from potential liability if their identified resources are unavailable.

Section 155.1050(f)

This paragraph requires response plans to identify and ensure the availability, through contract or other approved means, of resources necessary to respond to the worst case discharge volume of the oil cargo to the maximum extent practicable.

Three comments supported the general approach for determining equipment requirements for responding to a worst case discharge. Nine comments argued that there is no precedent for a worst case discharge and therefore it is unnecessary to plan for one. Numerous comments suggested that the vessel response plan should plan for cleaning up a "maximum most probable spill" rather than the worst case discharge. One comment suggested that a most likely spill scenario of ⅓ the dead weight tonnage would be reasonable. Another comment recommended that all planning factors in appendix B be revised down because the discharge will not be instantaneous.

Six comments recommended that the Coast Guard give various types of credit against response capability required for a worst case discharge. For example, five comments recommended that up to a 50% credit be given for double hulls. One comment recommended that credit should be given for all preventative measures, not just double hulls.

As amended by OPA 90, section 311(j)(5)(C) of the FWPCA requires an owner or operator to prepare and submit a plan that identifies and ensures the availability of, by contract or other approved means, private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge. A worst case discharge is defined as "a discharge in adverse weather of a vessel's entire cargo."

The Coast Guard acknowledges that there are many valuable actions and measures that can be taken that reduce the likelihood of an accident occurring, or that potentially reduce the volume of oil that may be spilled after a grounding or collision. These include double hulls, measures to improve navigation, and measures to reduce human error such as training and manning procedures. However, it is difficult to quantify the benefit of these measures, and they do not guarantee that a worst case discharge will not still occur. Therefore it is still necessary to plan for a worst case discharge. and to identify adequate spill response resources. Under certain conditions, the Coast Guard will grant credit against on-water recovery capability for dispersants, effectively replacing oil-recovery equipment (skimmers, containment, and temporary oil storage) with a mitigating technology (dispersants). Applying the credit will not diminish the on-water spill recovery capability.

One comment suggested that vessels planning for the Great Lakes area should receive credit against required response capability because most major spills on the Great Lakes have historically occurred in locks where containment equipment already exists. The Coast Guard does not agree with this recommendation. Although a lock may provide a high level of oil spill containment, a vessel spends a relatively short transit time inside a lock. The probability of a spill occurring while the vessel is outside of a lock is much greater, and therefore it would be inappropriate to rely on locks for oil spill containment.

One comment specifically asked if the resources required by § 155.1050(f) have to be retained within the applicable geographic area. There is no requirement that the equipment identified in a vessel response plan to respond to a worst case discharge must remain within the geographic area. The resources necessary to respond to a worst case discharge must be located to meet the response times for the applicable geographic area(s).

Twelve comments recommended that the rule direct the owner or operator to plan for nearshore spills. Several comments suggested that an owner or operator plan for spill response equipment capable of operating in 6 to 12 feet of water. The Coast Guard agrees and has added a new subparagraph to § 155.1050(f) describing the requirements for close-to-shore response activities in shallow water. The amount of equipment required to be capable of

operating in waters of 6 feet or less diminishes as the distance from shore increases. The requirement reflects that for open ocean spills, there will usually be time to obtain oil spill recovery equipment with shallow water capability before the spill arrives in shallow water.

For higher volume ports, one comment recommended oil spill removal capability of 20,000 bbl per day on vessels capable of operating in 12 feet of water or less. The Coast Guard did not adopt this recommendation because it is excessive for this planning area and inconsistent with the response capability caps.

One comment recommended that the planning criteria for a worst case discharge should not apply to chemical tankers carrying less than 5,000 metric tons of petroleum oil as cargo because these tankers are typically double-hulled and highly subdivided with small cargo tanks. The comment argued alternatively that if owners or operators were required to plan for these tankers, the vessel response plan should be deferred until the rules for hazardous substances are developed. The statute is explicit that chemical tankers carrying oil in bulk as cargo must prepare and submit a vessel response plan under the requirements of this interim final rule.

One comment recommended that we exempt vessels carrying non-persistent edible oil from the planning requirements for a worst case discharge because these vessels do not pose a significant threat to the environment. The Coast Guard disagrees that non-persistent petroleum oils do not pose a significant threat to the environment.

One comment suggested that vessels carrying edible oils should be subject to reduced requirements because edible oils pose less relative risks to the environment. The Coast Guard disagrees. There is insufficient data to support a finding that a spill of a large quantity of edible oil will have less adverse impact on the environment than a spill of other kinds of oil. A new section has been added to the interim final rule in recognition of the unique characteristics of non-petroleum oils. Section 155.1054 specifies the response plan development and evaluation criteria for vessels carrying non-petroleum oils as a primary cargo.

One comment asked that we clarify the circumstances in which an owner or operator can ensure the availability of resources necessary to respond to a worst case discharge with written consent from a response organization.

We have revised the definition of "contract or other approved means" in § 155.1020 to indicate clearly that written consent of an oil spill removal organization is an acceptable alternative under the 9 situations described in § 155.1020.

Section 155.1050(g)

This paragraph sets out three tiers of response times for the worst case discharge response resources to arrive on scene. Tiering resources allows the owner or operator to identify resources outside the geographic area to meet the requirements.

Three comments supported the response times and the tiering of equipment. Six comments argued that the response times were too long. Most comments recommended that all geographic-specific response times be reduced by half. One comment requested clarification and rationale for the response time frames.

The Coast Guard does not concur with the recommendations to decrease the response times. The response times, although not specifically recommended by the Committee, are based largely on discussions of the Committee. It must be possible to have the required response equipment arrive on scene within the stated response times, and these times take into account the outermost boundaries of the applicable area. For locations closer to shore within the applicable area, the achievable response time may be less than the required response time.

The Coast Guard believes that the response times are appropriate because they represent the planned arrival time at the outermost boundaries of the applicable area and recognize the need to cascade additional equipment as time progresses.

For example, in a higher volume port area, the equipment required for tier 1 must be capable of arriving on scene within 12 hours at a location 50 miles seaward of the entrance to the higher volume port. For a vessel operating in the offshore area (12 to 50 miles from the shore), the equipment required for tier 1 must be capable of arriving on scene at the most distant point of this zone in which the vessel plans to transit, within 24 hours of discovery of a discharge. Resources for tiers 2 and 3 must be capable of arriving in 24-hour increments. This approach ensures a steady stream of spill response resources arriving during the first 3 days of the spill when oil recovery is most likely. The 24-hour interval permits resources to cascade in from increasingly distant locations.

One comment recommended a 6-hour response time for rivers and the nearshore area. Another comment recommended that rivers should have shorter response times because longer response times may result in the progression of oil into drinking water intakes.

Six comments stated that a worst case discharge would not be instantaneous, and therefore the required clean up resources could be planned for over a 30 day period (the vessel response plan has a 3 to 10 day planning window). One comment further argued that because the worst case discharge would not be instantaneous, response times should be directly related to the size of the vessel. One comment stated that historically less than 30% of tanker capacity is instantaneously discharged. Numerous comments noted that the tiered response times for the worst case discharge ignored the Committee's recommendation that the Coast Guard consider that a worst case discharge from any vessel is likely to occur over time and not instantaneously.

There is historical precedent for the near instantaneous discharge of a vessel's entire cargo. However, the Coast Guard acknowledges that a worst case discharge is more likely to occur over time, and has established the response tiers accordingly. The Committee recognized the importance of early equipment arrival at the scene of a discharge and recommended that equipment mobilization occur within the first 3 days of a discharge when oil recovery is most likely. The tiered response times accomplishes this Committee recommendation and requires the vessel owner or operator to plan for the early arrival of equipment.

Two comments recommended that the tiered response times should be measured from notification instead of discovery of the discharge, and one argued that the response times should be increased by 30 minutes to allow for notification. The Coast Guard believes that measuring the response times from the time of discovery will encourage owners or operators to establish expedient spill reporting procedures. The Coast Guard does not agree with the recommendation that the response time tiers should be increased to take into consideration the 30 minutes allowed for notification, because we have already factored the time required for notification and mobilization into the tiered response times.

One comment recommended that owners or operators should be able to calculate the travel time for open ocean response resources from shore rather than from a point 50 miles from shore. The comment argued that this would encourage vessels to stay fifty miles or more offshore and, therefore minimize potential harm to the shoreline from an

oil spill. The Coast Guard concurs and has revised § 155.1050(e), § 155.1050(g), and section 7.2.3 of appendix B to allow greater travel time for open ocean response resources.

One comment stated that the term "tier" has a different meaning in certain industry publications, and suggested that we use a different term in § 155.1050 to avoid confusion. The Coast Guard believes that no confusion exists within the context of this regulation and has not changed the interim final rule. We are establishing a consistent national standard and believe that adjusting terms to accommodate specific publications would create greater confusion in the interim final rule.

In the proposed rule, the Coast Guard solicited comments on whether to grant credit for the early arrival of oil recovery devices and other response equipment when determining overall capability required to be planned for. Four comments were received. Three comments stated that we should grant credit for the early arrival of equipment, but their proposed methodologies were either too general or would increase greatly the complexity in calculating required equipment. In the absence of a workable recommendation, the Coast Guard has decided not to recognize or give credit for the early arrival on-scene of oil recovery devices.

Response time tiers were the source of confusion for readers of the NPRM. The tiered response times in § 155.1050(g) apply only to the boom, oil recovery devices, and storage capacity identified for responding to a worst case discharge. The response time tiers do not apply to dispersants, salvage and firefighting resources, shoreline protection or cleanup resources, or any other types of oil spill recovery equipment or supplies. The Coast Guard has amended § 155.1050 to clarify these points.

Section 155.1050(h)

This paragraph identifies 14 areas designated as higher volume port areas. The Coast Guard selected these areas based on a weighted index of oil volumes and vessel traffic.

One comment requested clarification on how the area 50 nautical miles seaward of the entrance will be measured. The distance is measured as an arc from the entrance(s) to the higher volume port area. For most higher volume port areas, this distance will be measured from the appropriate COLREG demarcation, entrance buoy, or natural entrance into the port. For Prince William Sound, this distance would be measured from Seal Rock to be consistent with the definition of the Sound in subpart E.

Section 155.1050(h) also has been revised to accommodate those higher volume port areas with multiple entrances from the sea. In these areas, an owner or operator must plan for multiple 50 nautical mile entrance arcs.

One comment stated that certain parts of the Sacramento and Delaware Rivers extend far upstream into areas that, although still navigable, do not experience high volumes of traffic. The Coast Guard agrees with this observation and has amended § 155.1050(h) to create upstream boundaries for both these higher volume port areas. In redefining the description for the port of San Francisco and adjacent high volume traffic areas, we deleted the Sacramento River and replaced it with a more representative description of the higher volume port area. The Coast Guard established these upstream boundaries in consultation with the local COTPs and based the boundaries on observed traffic volumes and the location of primary shore-based facilities.

One comment observed that in the geographic boundary of the proposed higher volume port area of the Strait of Juan De Fuca and Puget Sound, WA, response equipment could not arrive at a point 50 miles seaward from the entrance to the Strait within the planning response times for a higher volume port area. The comment recommended that the geographic point from which 50 miles seaward is measured be the pilot station off Port Angeles, WA. The Coast Guard concurs with this recommendation and has revised § 155.1050(h) to make Port Angeles, WA the reference point for measuring the 50 nautical mile seaward arc for the Strait. We did this by revising the geographic description of the higher volume port area.

This change reflects the unique geography of the Strait of Juan De Fuca, including the lack of deep water ports in the western portion of the Strait and the practical limits on the transit speed of dedicated response vessels. Further, this designation is consistent with the designation of Port Angeles as the point at which State pilotage is required.

One comment observed that although the Louisiana Offshore Oil Port (LOOP) was not designated as a higher volume port area in the proposed rule, LOOP was indirectly captured as a higher volume port area because it is within the 50-mile seaward radius of the Mississippi River higher volume port area. The comment recommended that LOOP be exempted from the increased planning standards for higher volume port areas. The Coast Guard concurs with this recommendation and has amended § 155.1050(h)(6) accordingly.

Two comments recommended designating Cook Inlet, AK as a higher volume port area based on the environmental sensitivity, tidal range, ice, currents, and other risks in that area. One comment noted that the designation of higher volume ports ignored the issue of environmental sensitivity. That comment also recommended that the ACPs have the responsibility for determining response capability. For a uniform national standard, the Coast Guard continues to believe that the overall volume of shipped oil—and not environmental sensitivity—is the best indicator of those areas requiring an enhanced standard for response equipment. The ACPs may contain additional strategies based on unique local considerations, including environmental sensitivity.

One comment recommended that we designate the Florida Straits as a higher volume port area because virtually all the oil transported to or from seven of the fifteen identified higher volume port areas will transit within 50 miles of the environmentally sensitive Florida Straits. The Coast Guard does not have the data to support or refute this recommendation, and the comment does not supply a source for this assertion. The Coast Guard is conducting a study to determine if there is a need to establish Tanker Exclusion Zones (TEZs) in various areas, including the Florida Straits. In a TEZ, tankers must remain a predetermined distance offshore from environmentally sensitive areas.

Ten comments recommended that the Great Lakes should not be considered a higher volume port area. The Great Lakes are not a higher volume port area under these rules. The Great Lakes response times are based on considerations different from those used in determining the higher volume port areas. The response times for the Great Lakes have been revised as previously discussed in the preamble.

Section 155.1050 (i) and (j)

These sections describe the notification and mobilization criteria for tier 1, 2, and 3 resources. One comment asked that we require that all tier 1 resources to be "capable" of being mobilized within 2 hours after notification, but not require all to arrive on scene in the initial stages of a response. For example, an owner or operator must plan to mobilize temporary storage resources within 2 hours, but may not need them on scene until oil recovery has started. The Coast

Guard believes that the interim final rule as written is clear.

One comment stated that we should not require the same response for a threat of a spill as for a worst case discharge, and recommended deleting the phrase "* * * or substantial threat of discharge." The Coast Guard disagrees. The statute directs owners or operators to plan for "a worst case discharge or a substantial threat of such a discharge," and does not provide for reduced planning requirements for situations involving the substantial threat of a discharge.

Section 155.1050(k)

In the NPRM, we proposed requiring vessels carrying group II or III persistent oils as a primary cargo in offshore and open ocean areas to identify and ensure, through contract or other approved means, the availability of resources to apply dispersants. The NPRM also required the resources to be capable of arriving at the scene of a discharge within 24 hours.

We received a total of 68 comments on these proposed requirements. Most of the comments opposed the requirement to contract for dispersant capability in advance. The concerns ranged from the high cost of providing the necessary capability with no assurance of approval for use; the lack of existing capability to provide the volumes of dispersants proposed; the inability to meet the required response times in remote areas; and the general uncertainty of receiving approval for the use of dispersants during a spill response.

One comment supported the use of dispersants as a high-rate response strategy, essential during a response to a worst case discharge volume. Four comments supported planning for dispersant use, but opposed any requirement for contracting for capability until the decision making process under the National Contingency Plan was revised to improve the likelihood of approval for use. Twenty comments supported contracting for dispersant use only after pre-approval is received for an area. As discussed below, the Coast Guard has deleted the general requirement for vessels to contract for dispersant capability.

Twelve comments addressed the issue of credits for dispersants against response plan on-water oil recovery capacity requirements. Five comments supported the ability to receive a credit for dispersant capability in pre-approved areas. Three comments believed that any vessel that contracts for dispersant capability should be allowed to use that capability as a credit against on-water recovery capacity. Four comments objected to a credit for dispersant capability. Two comments argued that not enough information was available about dispersant effectiveness to make decisions on their use, and two comments opposed reducing the on-water requirements for any reason.

Thirteen comments addressed the proposed volumes of dispersant capability required and the response times. Eight comments indicated that the requirement to provide dispersant capability for the largest storage tank was unrealistic due to the massive volumes of dispersants that would be required. Some comments suggested a study be conducted to determine a practical volume of dispersant capability to plan for. Others suggested that the vessel owner or operator be allowed to decide what quantity of dispersants to plan for. As discussed below, the Coast Guard has modified the volume of oil to be used for planning in the interim final rule.

Five comments addressed the response times. All noted that allowing 24 hours of dispersant capability to arrive on scene was too long since dispersants are most effective early in a spill while the oil is still fresh and unweathered. Recommended arrival times on scene ranged from 6 hours to an unspecified time less than 24 hours. The Coast Guard agrees and has modified the interim final rule to require that dispersants be capable of being on scene within 12 hours of discovery of a discharge.

The Coast Guard has considered the comments and modified the interim final rule to delete the requirement for all vessels carrying group II or III petroleum oil in offshore and open ocean areas to contract for dispersant capability. The interim final rule provides that such vessels operating in any area with year-round pre-approval for dispersant use may identify in their response plan and ensure, through contract or other approved means, the availability of the necessary resources to apply dispersants. No vessel is required to provide this capability. Vessels operating in such areas may request a credit for up to 25 percent of their on-water oil recovery capacity for each worst case discharge tier required under this interim final rule if the owner or operator can document in its plan the availability of the necessary dispersant stockpiles, application equipment, and monitoring capability. The credit will be given only if the vessel owner or operator can identify sources of dispersant supplies to provide the equivalent daily dispersant application rate. The credit will only apply in those pre-approval areas; the owner or operator would still have to identify full mechanical recovery capacity in all other areas that the vessel operates.

The Coast Guard believes that such a credit in pre-approved areas is appropriate for those areas where the regional response team has considered the use of dispersants and made a decision to pre-authorize their year-round use as a primary response method. The interim final rule also retains the language indicating that identification of dispersant capability in a response plan provides no assurance that their use will be authorized during a spill response.

Section 155.1050(l)

As proposed, this paragraph requires vessel owners or operators to identify in their response plans and ensure, through contract or other approved means, the availability of private response resources for salvage and vessel firefighting. We received 66 comments on the proposed requirements for salvage in subparagraph (l)(1), and 68 comments on the proposed requirements for vessel firefighting capability in subparagraph (l)(2).

Most comments received on salvage capability opposed the requirement to contract in advance for the capability. Some reasons for opposing the requirement were that there was little existing capability in the United States, that contracting for this capability in advance was too expensive, and that such a requirement was inconsistent with the historical practice of arranging for such services when needed.

A few comments supported directing an owner or operator to identify potential sources of salvage capability, but opposed requiring them to contract in advance. One comment suggested that the United States government provide the required capability and charge vessels on a per visit basis. One comment noted that the Marine Board of the National Academy of Sciences is conducting a study on the status of the salvage industry in the United States and recommended that we delay any requirement for salvage and firefighting until the study is completed in 1993. Six comments supported only identifying sources of firefighting capability. Eleven comments supported the proposed requirement to contract for salvage capability, with some noting that requiring contracts for salvage capability could result in expanding salvage resources in the U.S. Two of those comments recommended specific salvage resource capabilities that should be identified, noting that it was better to

have no salvage resources rather than inadequate prepared resources.

Most comments on vessel firefighting opposed any requirement to contract for the capability. Thirty-five comments said that vessel firefighting was best left to local port (in most cases public) firefighting capabilities. Two comments challenged the Coast Guard's position that public resources could not be identified to meet the requirement.

Many comments were also concerned that private vessel firefighting capability in the United States is limited and that contracting for such capability in advance would be prohibitive. Eleven comments supported only identifying sources of firefighting capability. Eleven comments supported the proposed requirement to contract for private vessel firefighting capability in advance, and two recommended that we specify response times ranging from 12 to 36 hours and specify equipment.

In response to these comments, the Coast Guard has modified the requirements both for salvage and marine firefighting capability in the interim final rule. The Coast Guard has retained the requirement for a vessel owner or operator to identify private salvage and vessel firefighting capability in their response plan because this approach is consistent with Congressional intent that a vessel owner or operator plan for the resources that may be necessary to remove, prevent, or mitigate the effects of a worst case discharge or threat of such a discharge.

The Coast Guard does not agree that an owner or operator may identify public resources in a vessel response plan. First, public firefighting resources that are available within port areas may not be available to fight a fire aboard a vessel. Second, in most instances, these public firefighters will respond only to fires within the immediate port area; a vessel operating offshore and transiting from port to port may not be protected by such resources. Third, a private citizen cannot ensure the availability of a public resource. For these reasons, the Coast Guard retains the requirement that an owner or operator must identify private marine firefighting resources for each COTP zone in which the vessel operates. United States Navy salvage resources also are public resources, and whether these resources are available depends on their specific location and assignments.

The Coast Guard recognizes that public resources may be employed during an actual incident. The Area Contingency Plan will identify available public resources, the process to access those resources, and the integration of both public and private capability.

The Coast Guard has revised the interim final rule to permit an owner or operator to list private salvage or marine firefighting capability in a response plan if the salvage or firefighting resource provider gives its written consent. The resource provider's written consent is necessary to ensure that the provider has the necessary capability, and is willing to provide it in a response to an incident involving the owner's or operator's vessel. The plan does not need to include this written document. The certification by the vessel owner or operator that it has obtained written consent is sufficient for plan review. However, the Coast Guard may request a copy of this written consent during plan review.

The Coast Guard has left it up to vessel owners or operators to evaluate available salvage and firefighting resources and determine what capabilities they will need for their plan. In reviewing a response plan, the Coast Guard will assess whether the identified companies are capable of providing the necessary capability.

The Coast Guard recognizes that private salvage and marine firefighting capability is currently limited in the United States. Consequently, the interim final rule does not require owners or operators to specify response times for the resources identified in plans submitted before 1998. However, we have revised the interim final rule to require plans submitted or resubmitted for approval after March 1998 to identify salvage and firefighting resources and plan to deploy them to a port nearest the water area where the vessel operates within 24 hours of notification. The Coast Guard has determined that delaying this requirement until 1998 provides sufficient time for the industry to assess the existing capability fully and to take steps to address any shortfalls.

Section 155.1050(m)

As proposed, this paragraph requires a vessel owner or operator to identify in the response plan and ensure, through contract or other approved means, the availability of fendering, transfer hoses, and lightering pumps necessary to perform vessel-to-vessel lightering in an emergency within specified response times. We received 42 comments addressing this proposed requirement.

One comment specifically supported the requirement as proposed. One comment supported it, but recommended that we require owners or operators to contract in advance for mooring masters. Thirty-six comments said that identifying and ensuring the availability of lightering capability was too costly and burdensome. Some comments also believed that requiring a contract went beyond the recommendations of the Committee. The Coast Guard asked the Committee for additional input on this issue, but received differing views on what the Committee meant when it made its lightering recommendation. The Coast Guard has determined that this requirement is necessary and appropriate to meet the statutory intent that the availability of such resources be ensured.

We have reduced the burden of complying with this requirement by changing the definition of "contract or other approved means." The burden has been reduced further for tank barges that operate on rivers and canals by authorizing the barge owner or operator simply to identify resources in a response plan to meet this requirement with the written consent of the resource provider.

Four comments stated that extending the requirements to tank barges was inconsistent with the Committee recommendations. The Coast Guard reviewed the Committee's work and found no Committee determination to exclude tank barges from all lightering requirements. The Coast Guard believes that planning for lightering capability is as necessary for transfers from tank barges in an emergency as it is for transfers from other vessels. The Coast Guard has retained the requirement for tank barges in the interim final rule.

Six comments addressed what equipment arrangements should be planned in advance. Two comments recommended that we not require owners or operators to list specific equipment because the equipment needed will depend on the incident. Two comments recommended pumps ranging from a capacity to lighter the largest cargo tank in 24 hours to lightering the entire vessel in 96 hours. The Coast Guard has determined that the requirement for owners or operators to identify lightering equipment capable of off-loading the vessel's largest cargo tank in 24 hours of continuous operation results in sufficient pumping capacity for most emergency lightering situations. We also believe that a required pumping capacity will provide a basis for the owner or operator and the Coast Guard to evaluate lightering capability more effectively.

The Coast Guard has made three other revisions to this paragraph in the interim final rule. First, a plan for a tanker loading cargo at a TAPAA facility in Prince William Sound, Alaska does not need to address the response times in subparagraph (m)(2)(i) for inland

waters, because a separate response time for this capability is included in § 155.1130(h). Second, subparagraph (m)(2)(ii) has been revised to include a response time of 18 hours for rivers and canals. Third, the Coast Guard inadvertently did not address rivers and canals in the NPRM and believes that using the 18-hour response time for these areas is reasonable and practical. The Coast Guard has revised the interim final rule to permit barges operating in rivers and canals areas to meet the requirements of this paragraph by ensuring availability of response resources through written consent from the oil spill removal organization.

Section 155.1050(n)

This paragraph requires planning for boom for shoreline protection according to criteria set out in Table 2 of appendix B.

In Table 2 of appendix B, the Coast Guard proposed a minimum amount of boom for shoreline protection based on the general environment in which the vessel operates. The Coast Guard considered setting a planning requirement for boom based on vessel size, but discarded that approach because equipment necessary to protect shoreline areas is generally the same regardless of the size of the vessel that may be the source of the discharge. A discharge from a larger vessel has the potential to affect more shoreline area than one from a smaller vessel. However, in general, there is not a one-for-one relationship between the quantity of oil spilled and the number of miles of shoreline contaminated.

We received many comments on the best way to determine how much boom to require for shoreline cleanup. Six comments agreed that until the ACPs are published, owners or operators should plan for an amount of boom based on the geographic area of vessel operation rather than vessel size. Nearly an equal number of comments argued that an owner or operator should plan for protective boom based on vessel size, cargo capacity, and type of cargo. None of the comments suggested a methodology to account for these factors.

Many comments addressed the quantity of boom proposed in Table 2 of appendix B. Two comments supported the proposed quantity. Two comments argued that 30,000 feet of boom for persistent oils in the nearshore and inland areas was excessive. Two comments recommended that vessels with less risk of a spill should have to plan for a lesser quantity of boom for shoreline protection. One comment recommended requiring 50,000 feet of boom in higher volume port areas. One comment recommended that an owner or operator plan for sufficient boom to encircle the vessel only. Five comments recommended that there should be no planning requirements for shoreline protection until publication of the ACPs.

The Coast Guard has determined that it is appropriate to require a minimum level of response equipment based on the vessel's area of operation and believes that the quantity of boom specified in Table 2 of appendix B is reasonable.

The Coast Guard has determined not to tie adjustments to the boom requirements to the ACP, because the ACPs will set mostly response strategy rather than response resource requirements. However, we agree with the Committee that the methodology for determining an appropriate planning quantity of boom for shoreline protection is sound—look to the geographic-specific area of a potential spill. Therefore, the Coast Guard has deleted the instruction to adjust the boom planning amount according to the applicable ACP. Instead, when an Area Committee articulates a shoreline protection response strategy in its ACP, the Coast Guard may propose to adjust the boom requirements in 33 CFR part 155 accordingly.

We received three comments on boom requirements for rivers. One comment noted that it is impossible to protect a large section of river shoreline. For persistent oils, one comment questioned by an owner or operator must plan for more boom nearshore than for rivers. One comment asked that we require only a minimum quantity of boom until the ACPs are developed because the locks and dams help contain a spill, and boom is used largely to facilitate recovery by diverting oil into slow-moving water.

The Coast Guard recognizes that shoreline protection in rivers and canals may require different strategies than other areas. Although it may be difficult to protect river shoreline, boom is still required to protect sensitive areas, deflect oil from impacting the shoreline, or collecting it in other less sensitive areas. Locks and dams may be part of this overall strategy, but they are not sufficient by themselves because they may be far apart and not optimally located for the particular spill scenario.

The amount of boom required in Table 2 reflects the relative amount of shoreline that must be protected from persistent and non-persistent oils. The relative difference in boom quantities between nearshore and river areas is based on the differences in shoreline protection strategies employed in rivers and the fact that a spill occurring in the nearshore area (up to 12 miles off shore) has the opportunity to spread and impact a large section of shoreline as it travels towards the shore.

For non-persistent oils discharged into a river operating area, it is likely that the oil will encounter shoreline before it has dissipated into the air and water column. In the nearshore operating area, a larger amount of non-persistent oil is likely to dissipate before encountering shoreline. Consequently, more shoreline is likely to be affected in the river operating area than in the nearshore area.

In Table 2 of appendix B, the Coast Guard has eliminated the requirement that an owner or operator must identify shoreline protection boom in a plan for a vessel that operates in the open ocean and carries persistent oil, and for a vessel that operates offshore and carries non-persistent oils. This change reflects the low relative risk that oil discharged from these vessels will impact shorelines. For reasons stated earlier in this discussion, we have eliminated Table 2 references to the ACPs.

Many comments recommended that for shoreline protection requirements, vessels using the Louisiana Offshore Oil Port (LOOP) and vessels lightering in the open ocean (greater than 50 miles offshore) should be treated the same. Under the proposed rule, an owner or operator does not have to plan for shoreline protection for vessels transiting or lightering more than 50 miles offshore. The comments stated that using LOOP was a preferred alternative to lightering in the open ocean, and that the proposed rule would be a disincentive for vessels to use LOOP. The comments noted that offshore lightering of large tankers require off-taking shuttle ships to transport the crude oil from the lightering area into the inland waters for final unloading at terminals and refineries, and that this increase in traffic on inland waters increases the risk of collisions and groundings and resulting oil spills. The comments point out that LOOP offloads the large tankers offshore and delivers the crude oil via buried pipeline, thus eliminating the shuttle ship traffic and attendant risk of collisions, groundings, and oil spills. We received similar comments on § 155.1050(o) for planning for shoreline clean-up operations.

For the reasons stated in the comments, and because Congress wishes to encourage the use of deep-water ports, the Coast Guard agrees that regarding shoreline protection, vessels using LOOP should be treated the same

as vessels lightering in the open ocean. Consequently, the Coast Guard has changed this section of the interim final rule to allow vessels under certain circumstances to call at LOOP without having to ensure the availability of shoreline protection resources through contract or other approved means. This provision applies only when the vessel is approaching or departing the LOOP terminal within the LOOP Shipping Safety Fairway, and when either moored at the terminal or anchored in the designated anchorage area. Making this opportunity available only when a vessel is using this obstruction free Safety Fairway will provide an extra measure of safety for these vessels.

Two comments noted that Table 2 of appendix B did not include the Great Lakes and requested clarification on whether the Great Lakes should be in the table. We have revised Table 2 of appendix B to include the Great Lakes in the nearshore and inland classification because oil spilled and not recovered on the Great Lakes, like oil spilled in any essentially closed system, in highly likely to come ashore.

Two comments expressed concern that this section established a performance standard rather than a planning standard. One comment recommended we revise this section to make it clear that it is a planning standard only, and another comment requested a revision to make it clear that the owner or operator is ultimately responsible for shoreline protection and cleanup, irrespective of the amount of response equipment for which the owner or operator must plan.

The appendix B criteria referenced in this section are for planning purposes only. Section 155.1010 already clearly makes this point.

Six comments are received on how the ACP strategies for shoreline protection should be phased in to replace the temporary requirements of Table 2 of appendix B. Two comments agreed that the ACP requirements should be phased in by 1998, as proposed in the NPRM. All other comments recommended that the ACP requirements become effective at some calculable time after the publication of the applicable ACPs. The recommended phase-in time ranged from immediately to three years.

For the reasons stated earlier in this discussion, the Coast Guard has decided against using the ACPs to set adjustments for response resource requirements. The Coast Guard will evaluate the shoreline protection response strategy provided for in the various ACPs when they are issued and may adjust vessel response plan requirements as warranted.

Many comments confused requirements under this section for protective boom with requirements under §§ 155.1050 (d) through (f) for containment boom. Any owner or operator of a vessel subject to these regulations must plan for a quantity of containment boom and a quantity of protective boom.

For determining the planning amount of protective boom, the owner or operator of a vessel carrying group I through IV petroleum oil as primary cargo must use Table 2 for the geographic area where the vessel operates. For containment boom, these owners or operators should identify sufficient boom to handle the average most probable discharge, the maximum most probable discharge, and a worst case discharge.

One comment questioned whether an ACP can revise a regulatory requirement without complying with the notice and comment requirements of the Administrative Procedure Act. For reasons stated earlier in this discussion, this comment is moot.

Section 155.1050(o)

This paragraph establishes the requirement to plan for shoreline cleanup operations. It is impossible to articulate detailed requirements for shoreline response resources in advance, because the need for these resources is intricately connected to the geography of the shore and its environmental sensitivity. Therefore, the NPRM proposed to use a qualitative evaluation based on a planning volume of oil that could reach the shoreline.

Four comments supported the qualitative planning approach. Two comments argued that the requirements were too vague and that it was unclear how the Coast Guard would evaluate shoreline cleanup resources. Three comments expressed concern that it was either impracticable or infeasible to plan to simultaneously cleanup vast reaches of shoreline. One comment recommended that the applicable ACPs address shoreline cleanup requirements—not the vessel response plan rules.

The vessel response plan rules give an owner or operator maximum flexibility to develop an operations strategy for shoreline clean up, restrained only by the NCP and the local plan in any area where its vessels operate. Appendix B supplies a formula by which an owner or operator may calculate a volume of emulsified oil that may reach the shore. The Coast Guard will evaluate the sufficiency of shoreline response planning based on the planning volume and the strategic consistency with the NCP and any applicable local plan.

The owner or operator must identify and ensure by contract or other approved means, an oil spill removal organization who is capable of conducting a shoreline cleanup based on the planned worst case volume of emulsified oil that will reach the shore. Using our criteria, the Coast Guard does not believe an owner or operator will have to plan for the simultaneous cleanup of all shoreline along the vessel's planned route.

One comment expressed concern that the regulation would require an excessive number of contracts and asked whether an owner or operator could rely upon one principal contractor and require that principal to contract for any necessary, specialized equipment. The Coast Guard has set out an approved means other than a contract by which an owner or operator can ensure the availability of required resources. The owner or operator is free to make whatever arrangements it chooses as long as it ensures the required resources by contract or other approved means.

Nine comments recommended that there should be no requirement to contract for shoreline cleanup operations because the required equipment is generic, not specialized, generally available, and there is no urgency to immediately clean up the oil once it impacts the shoreline. The Coast Guard disagrees. The statute clearly requires an owner or operator of a vessel to ensure that private resources are available, by contract or other approved means, to "remove" to the maximum extent practicable a worst case discharge. In the statute "removal" or "remove" refers to the containment and removal of oil from the water or shorelines. The Coast Guard contends that the interim final rule properly reflects the statutory requirement to contract for resources to remove oil from the shoreline. Because we have added an "approved means" other than a contract, an owner or operator may ensure the availability of these resources without a contract.

One comment stated that we should require vessels operating in the open ocean to contract for shoreline cleanup operations. The NPRM exempted these vessels from the requirement to contract for this capability. The Coast Guard has made every effort to require only that level of planning which is appropriate for a reasonably likely spill scenario.

For oil discharged from a vessel greater than 50 miles from shore, it is unlikely that the spill will impact shorelines before the oil sinks,

evaporates, or is recovered. If conditions are such that the oil could foreseeably threaten the shoreline, there will be sufficient time to arrange for the necessary resources. For these reasons, the Coast Guard has eliminated the requirement for a response plan of a vessel operating in the open ocean to identify an oil spill removal organization capable of conducting shoreline cleanup operations.

One comment requested to know if the tier response times described in § 155.1050(g) apply to shoreline cleanup operations. The response time tiers do not apply to planning for shoreline clean-up. There are no response times in the interim final rule associated with planning for shoreline clean-up.

For the reasons cited in the discussion of shoreline protection under "Section 155.1050(n)," the Coast Guard has determined not to tie future adjustments of the shoreline cleanup requirements to the ACPs. We have eliminated this provision in the interim final rule. The Coast Guard will evaluate the ACPs when they are issued and may amend the vessel response plan rules as warranted.

For the same reasons cited in the discussion of shoreline protection under "Section 155.1050(n)," the Coast Guard has determined that regarding shoreline cleanup requirements, vessels using LOOP should be treated the same as vessels lightering in the open ocean. Consequently, the Coast Guard has revised this section to allow vessels to call at LOOP under certain circumstances without having to ensure the availability of, through contract or other approved means, response resources necessary to perform shoreline protection operations. This provision applies only when the vessel is approaching or departing the LOOP terminal within the LOOP Shipping Safety Fairway, and when either moored at the terminal or anchored in the designated anchorage area. Making this opportunity available only when a vessel is using this obstruction free Safety Fairway will provide an extra measure of safety for these vessels.

Section 155.1050(p)

This section and Table 6 of appendix B establish limits on the amount of response resources required. Many comments expressed uncertainty and confusion over the purpose and use of caps. The purpose of the caps is to recognize a practicable level of on-water removal capacity which an owner or operator reasonably can be required to ensure through contract or other approved means in planning for a worst case discharge.

Caps apply only to on-water recovery capacity for a worst case discharge, and not to other types of response resources or discharges. Further, caps apply only to vessels carrying group I through IV petroleum oil as a primary cargo.

We received over 200 comments on caps. Over 40 comments recommended that there be no caps, and that the owner or operator be required to identify and contract for whatever equipment is required to respond to an immediate discharge of a vessel's entire cargo in adverse weather. One comment noted that the caps do not adequately address the worst case discharge scenario, and that the manufacturers of oil spill recovery equipment have the capacity to deliver additional equipment before 1993.

Another comment strongly opposed the concept of caps, and argued that market availability of spill response resources should determine what is practicable. The comment argued that the caps may discourage growth of the oil spill response equipment industry.

The majority of the comments supported the basic concept of caps, but varied widely on an appropriate level for caps. Approximately 150 comments recommended that they be doubled, but did not address the issue of whether it was practicable for an owner or operator to plan a response for so great a quantity of oil. One comment stated that the current 1993 caps failed to set an equipment requirement based on the definition of "maximum extent practicable," and therefore was not in keeping with the intent of Congress. Several comments stated that in certain areas of the country, oil spill resources already exceed the proposed 1993 caps. Another comment argued that the proposed caps are too low because they would supersede the calculated worst case discharge planning volumes as determined in appendix B for 99% of all crude carriers. Several comments recommended that the caps should be set higher to establish ambitious targets for improving private response capability or to force an increase in those resources.

One comment observed that the proposed caps for 1993 were reasonable based on current manufacturing capacity, but that within 3 years it would be reasonable for manufacturers to triple the available equipment. One comment recommended that the five year cap increases should not be greater than 25%.

A number of comments supported the proposed caps as a reasonable method of recognizing technological and practical limitations, and one comment noted that without caps, complying with the regulations would be impracticable.

Through caps, the Coast Guard has established a quantity of oil for which a response is practicable given 1993 technology and response resources. Through two rulemaking documents and various public meetings, including Committee meetings, the Coast Guard sought data from environmentalists, industry, State governments, the general public, and response contractors on how we could assess what is practicable in 1993.

We learned that it is impracticable in 1993 to instruct a vessel owner or operator to plan for the discharge of a vessel's entire cargo for several reasons. First, in many geographic areas of the U.S., on-water recovery capability and containment and protection resources simply do not exist at any price for responding to a large spill—especially from a very large crude carrier or ultra large crude carrier. Second, we believe Congress did intend to encourage both developing and enlarging the response community, but not at the price of a significant adverse economic impact to oil markets. When we assess all these factors, the Coast Guard continues to believe that, with the exception of the Great Lakes, the proposed caps represent imperfect, but reasonable and practicable quantities to plan for given technology, existing capability, and costs.

The Coast Guard recognizes that in certain geographic areas the existing response capabilities already exceed the 1993 caps. The Coast Guard has established a nationwide standard rather than attempting to establish unique caps for every port or geographic region, because there is neither the time nor sufficient Federal resources to take account of the peculiarities of each port and region.

The caps also reflect that inherent in the concept of practicability is an acknowledgment of a reasonable and practicable limit to the amount of resources that can be constructively used during the first stages of a spill response. Therefore, the caps place a practical limit on the amount of response resources for which an owner or operator must ensure the availability of in advance, by contract or other approved means. Vessel owners or operators will be expected to activate the response resources necessary for the particular circumstances of the spill, regardless of what has been ensured by contract or other approved means.

Many comments recommended that caps for the Great Lakes should be lower than proposed. Some suggested that the Great Lakes caps should be the same as

those for rivers and canals. The reasons were that the risk of spills on the Great Lakes is small as demonstrated by historical spill data; that most tankers transiting the Great Lakes have small cargo capacities and are double-hulled; and that adequate private response capability does not exist in the Great Lakes. Many argued that a relatively small number of vessels would have to share the costs of establishing and maintaining response equipment to respond up to the cap for a number of propositioned sites large enough to cover the Great Lakes.

The Coast Guard agrees the caps for the Great Lakes should be reduced. The size of the Great Lakes and the relatively small number of affected vessels makes it impracticable for owners or operators to plan for the proposed level of private spill response capability. Therefore, the Coast Guard has revised Table 3 of appendix B and set a response capability cap for the Great Lakes based on the available private removal capability and the unique environment of the Great Lakes. For these reasons and other reasons discussed earlier in the preamble, we have also adjusted the response times for the Great Lakes in § 155.1050(g).

We received a great number of comments on the proposed cap increases for 1998 and 2003. Many argued that it was impractical and premature to establish cap increases and that a number of issues needed to be considered before increasing the caps, including changes or advances in: Oil spill recovery equipment; spill management techniques; daily sustainability factors; bioremediation techniques; and other research and development initiatives.

Some argued that setting cap increases now ignores benefits that OPA 90 will bring. One comment recommended that cap increases should be used as an incentive for research and development, and not as an instrument to add automatically to the quantity of equipment and other response resources. Several comments supported leaving the cap increases in the rule because fixed dates and quantities give ample notice of what will be required and encourage market forces to make greater response resource capability available.

The Coast Guard agrees with setting the 1998 cap now to provide a clear upper target for which the vessel owners or operators and the oil equipment response industry must plan. An increase of 25% will encourage the industry to increase its response capability. Consequently, it facilitates meeting this important goal of OPA 90.

Establishing caps for 2003 may be premature. Therefore, the caps for 2003 in Table 6 of appendix B have been eliminated and replaced with an entry indicating that they will be determined later. Section 155.1050(q) establishes the procedure for developing the 2003 cap.

Four comments noted that the Committee did not agree to either automatic or specific cap increases and argued that 25% cap increases were arbitrary. One of these comments further stated that setting future caps today is counterproductive and against the spirit of the Committee recommendation.

The Coast Guard believes that the proposed cap increases capture the substance and effect of the Committee recommendation. The Committee recommended response capability caps increase at appropriate intervals that roughly correspond to the review period for response plans. They also recommended factors that should be considered when evaluating the ability to meet this increase. The Committee recommendation left to the Coast Guard what the caps should be set at in 1993 and how this increase should be approached. The 25% cap increase selected by the Coast Guard falls within the range of values discussed by the Committee, and reflects what the Coast Guard believes is obtainable and desirable for 1998 and beyond. These caps also recognize the practical limit of how much equipment needs to be pre-contracted for and how much equipment can be productively deployed during the initial response. For the reasons discussed in other sections of the preamble, the Coast Guard did not consider public resources and the possible benefits of other provisions of OPA 90 in determining what was practicable.

Proposed section 5.3 of appendix B required the owner or operator whose vessel's calculated effective daily recovery capacity exceeds the applicable contracting caps in Table 6 of the appendix to identify sources of additional equipment. Several comments questioned the practicality of identifying additional resources beyond the caps, and requested we clarify how much more equipment had to be identified. Some comments interpreted proposed section 5.3 of appendix B to require the identification of equipment capable of responding to the entire worst case discharge planning volume and argued that sufficient capability did not exist to respond within the specified response time.

The Coast Guard agrees that this requirement was ambiguous, and has clarified the requirement in the interim final rule. Section 155.1050(p) of the interim final rule requires the owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo, whose required daily recovery capacity exceeds the applicable contracting caps in Table 6, to identify sources of additional equipment equal to twice the cap listed in tier 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The equipment so identified must be capable of arriving on scene no later than the tier 3 response times contained in § 155.1050(g). No contract is required for this equipment.

The Coast Guard concurred with a recommendation of the Committee that we evaluate the proposed cap increases before they become effective to determine if they remain practicable. The Coast Guard proposed to conduct these evaluations through a public notice and comment process approximately two years before the cap increases become effective.

Several comments supported this evaluation process, but one comment recommended that we conduct a review just before the effective date of the increase rather than two years in advance. Another comment opposed having the Coast Guard waive the proposed increases if they are found impracticable. The Coast Guard will review the proposed caps before their effective date to determine if they remain practicable. We have codified this approach in new § 155.1050(q). During this review, we will consider recent developments in oil spill recovery and reduce the caps if it is impracticable to plan a response for that quantity of oil.

Section 155.1050(q)

This new section establishes a procedure for systematic Coast Guard review of proposed cap increases and phased-in requirements for firefighting and salvage capabilities.

During the last session of the Committee, some members expressed concern that the scheduled cap increases for 1998 and 2003 would occur without benefit of a Coast Guard review. To address this concern, the Coast Guard has added language to this section that makes the effective date of the cap increase either the scheduled date (February 18, 1998 and 18 February 2003), or 90 days after public notification of the results of the review, whichever occurs later.

Section 155.1052

The Coast Guard has included a new § 155.1052 in the interim final rule. This new section covers the specific response

plan development and evaluation criteria for vessels carrying group V petroleum oil as a primary cargo. This new section was created to address concerns of some comments that many of the criteria proposed in § 155.1050 and appendix B were not applicable to petroleum oils such as asphalt and carbon black that, because of their specific gravity, would sink when discharged. The Coast Guard agrees and has included in this new section applicable portions of § 155.1050. The only portion of appendix B that remains applicable are sections 2.1 through 2.4 and Table 1.

Paragraph (a) of this section requires the owner or operator of a vessel that carries a group V petroleum oil as a primary cargo to include in their response plan procedures and strategies and sources of response resources that would be necessary to locate, contain, recover, or mitigate the effects of such oils. Because these oils behave differently than those that float, the response plan needs to address specific methods for responding to such spills.

Paragraph (b) of this section parallels the requirements in § 155.1050(a) that any equipment identified in the response plan to meet the requirements of this section be capable of operating in the specific conditions expected in the geographic area that the vessel will operate. The specifics of this requirement were discussed in the preamble to the proposed rule.

Paragraph (c) requires that the vessel owner or operator identify in the response plan and ensure, through contract or other approved means, the availability of response resources appropriate for oils that sink. The owner or operator may ensure the availability of these response resources by using the fifth element contained within the definition of "contract or other approved means." For details, see the preamble discussion of "Section 155.1020 Definitions."

The types of equipment include those necessary for locating, containing, and recovering oil from the water column or the bottom. Unlike the specific criteria for determining the quantity of resources included in § 155.1050, this section does not require minimum quantities of resources. The Coast Guard intends to evaluate information submitted by the vessel owner or operator to determine whether the resources identified are consistent with the volume of such oil carried as cargo.

Paragraph (d) of this section requires that the resources identified in a response plan be capable of being deployed to the port nearest the area where the vessel is operating within 24 hours. Because of the variability in the types of resources that may be required, the Coast Guard has determined that this is a better approach for these unique oils than using the specific response times that vary by location, as required in § 155.1050.

Paragraph (e) of this section requires that the vessel owner or operator identify in their response plan and ensure, through contract or other approved means, the availability of salvage and vessel firefighting capability. Paragraph (f) provides for the phased implementation of this requirement. These requirements parallel those in § 155.1050(l). The previous preamble discussion for that section also applies to this section.

Paragraph (g) of this section requires that the vessel owner or operator identify in the response plan and ensure, through contract or other approved means, the availability of certain equipment necessary to conduct vessel-to-vessel lightering in an emergency. This requirement parallels that in § 155.1050(m). The previous preamble discussion for that section also applies to this section.

The Coast Guard has not included a requirement to identify resources in the response plan for the average most probable and maximum most probable discharge. The resources identified in the plan will be expected to be capable of responding to any size spill up to and including the worst case discharge.

The Coast Guard has determined that the requirements of this new section are within the scope of those included in the proposed rule. However, because the specific provisions were not included in the proposed rule, the Coast Guard solicits comments on the specific provisions of this section. All comments will be considered and this section may be revised based on these comments.

Section 155.1054

The Coast Guard has included a new section 155.1054 in the interim final rule. This new section covers the specific response plan development and evaluation criteria for vessels carrying non-petroleum oil as a primary cargo. This new section was created to address concerns of some commenters that many of the criteria proposed in § 155.1050 and appendix B were not applicable to non-petroleum oils, such as edible oils.

One comment suggested that vessels carrying edible oils should be subject to reduced requirements because edible oils pose less relative risks to the environment. The Coast Guard disagrees. There is insufficient data to support a finding that a spill of a large quantity of edible oil will have less adverse impact on the environment than a spill of other kinds of oil. However, the Coast Guard acknowledges that non-petroleum oil may behave differently from a petroleum or petroleum-based oil.

The Coast Guard conducted a literature search on these oils and was unable to find much information on their behavior when spilled, their environmental persistence, or tendency to emulsify. Because it was unable to verify that the criteria and methodology used for petroleum oils would apply to non-petroleum oils, the Coast Guard has determined that the specific factors (natural dissipation, emulsification) included in appendix B for petroleum oils would not be applicable. Thus, a new section to address these oils has been added, and it includes applicable portions of § 155.1050. The only portion of appendix B that remains applicable are section 2.1 through 2.4 and Table 1.

Paragraph (a) of this section requires the owner or operator of a vessel that carries non-petroleum oil as a primary cargo to include in their response plan procedures and strategies and sources of response resources that would be necessary to contain, recover, or mitigate the effects of such oils. Because these oils may behave differently than petroleum oils when spilled, the response plan needs to address specific methods for responding to such spills.

Paragraph (b) of this section parallels the requirements in § 155.1050(a) that any equipment identified in the response plan to meet the requirements of this section be capable of operating in the specific conditions expected in the geographic area where the vessel will operate. The specifics of this requirement were discussed in the preamble to the proposed rule.

Paragraph (c) requires that the vessel owner or operator identify in the response plan and ensure, through contract or other approved means, the availability of response resources appropriate for the non-petroleum oils carried as cargo. The owner or operator may ensure the availability of these response resources by using the fifth element contained within the definition of "contract or other approved means." For details, see the preamble discussion of "Section 155.1020 Definitions."

The types of equipment include those necessary for containing and recovering these oils from the water and to protect shorelines from impact. Unlike the specific criteria for determining the quantity of resources included in § 155.1050, this section does not require minimum quantities of resources. The Coast Guard intends to evaluate

information submitted by the vessel owner or operator to determine whether the resources identified are consistent with the volume of such oil carried as cargo.

Paragraph (d) of this section requires that the resources identified in a response plan be capable of commencing an effective on-scene response within the applicable tier 1 response times in § 155.1050(g).

Paragraph (e) of this section requires that the vessel owner or operator identify in their response plan and ensure, through contract or other approved means, the availability of salvage and vessel firefighting capability. Paragraph (f) provides for the phased implementation of this requirement. These requirements parallel those in § 155.1050(l). The previous preamble discussion for that section also applies to this section.

Paragraph (g) of this section requires that the vessel owner or operator identify in the response plan and ensure, through contract or other approved means, the availability of certain equipment necessary to conduct vessel-to-vessel lightering in an emergency. This requirement parallels that in § 155.1050(m). The previous preamble discussion for that section also applies to this section.

The Coast Guard has not included a requirement to identify resources in the response plan for the average most probable and maximum most probable discharge. The resources identified in the plan will be expected to be capable of responding to any size spill up to and including the worst case discharge.

The Coast Guard has determined that the requirements of this new section are within the scope of those included in the proposed rule. However, because the specific provisions were not included in the proposed rule, the Coast Guard solicits comments on the specific provisions of this section. All comments will be considered and this section may be revised based on these comments.

Section 155.1055 Training

The Coast Guard received twenty-six comments on this section. Four comments agreed with the NPRM, and the remainder suggest revisions.

One comment suggested that it is impossible to train in advance the thousands of workers needed to clean up a major spill and to keep records on them. The Coast Guard has clarified the interim final rule by requiring that vessel owners and operators identify in the response plan the training to be provided only to specific individuals. For manned vessels carrying oil as a primary cargo, these individuals are members of the vessel crew having responsibilities under the plan, the qualified individual, and the spill management team. For unmanned tank barges carrying oil as a primary cargo, these individuals are the spill management team, the qualified individual, and other personnel with specific responsibilities under the plan.

Eleven comments stated that the owner or operator should not be responsible for training shore-based personnel. The comments recommend that either the Coast Guard or the response contractors should be responsible for training of these personnel. Several of these comments also stated that it is not possible for the owner or operator to check every contractor employee for compliance with the OSHA training requirements.

The owner or operator is not required to personally conduct any training. However, the owner or operator remains responsible for ensuring the training of the qualified individual, shore maintenance team, vessel crew with responsibilities under the plan, and other appropriate personnel, and ensuring that any oil spill removal organizations it identifies in the vessel response plan are capable of actually providing the resources identified in the plan. Part of these resources are the trained personnel to operate the response equipment. It is the responsibility of the owner or operator to ensure the availability of records sufficient to document any training.

The Coast Guard has revised § 155.1055 by adding a new paragraph (d) to make it clear that it is necessary to ensure the availability of training records.

Several comments noted that the Coast Guard is already developing rules for certification and approval of shorebased contractors for oil recovery, and stated that it was therefore not necessary for the owner or operator to ensure the training of contractors which will already be certified by the Coast Guard. The Coast Guard is developing a voluntary system for classifying oil spill response organizations by equipment capacity. The Coast Guard will assess whether an oil spill response organization has or has access to sufficient trained personnel to operate its equipment. However, Coast Guard classification of an oil spill removal organization cannot relieve the owner or operator of their ultimate statutory responsibility to ensure the adequacy of the spill response resources identified in a response plan.

One comment noted that it will be very difficult for foreigners to meet the OSHA training requirements. It was not clear if the comment was concerned about vessel personnel or shore-based personnel. As noted in the preamble to the ANPRM, the OSHA training requirements only apply to shore-based personnel and not to the vessel's crew.

In the NPRM, the Coast Guard requested comments on whether to include specific training requirements in the interim final rule. Only one comment suggested that they should be specific. One noted that training standards should be developed once a database is created based on early training records. One comment suggested that if requirements are specified, they must take into account the wide variety of vessels and cargo, and four suggested that specific requirements are impossible because of that variety.

The majority of comments addressing this issue gave reasons against creating strict training guidelines. One comment noted that more training may cause difficult contractual labor problems. Another suggested that traditional maritime skills will suffice. One comment mentioned that specifics should not be required because no legislation can ensure their effectiveness. Another mentioned that the Coast Guard should simply review the training plans together with the remainder of the response plan when the latter is submitted for review and approval.

The Coast Guard agrees that specific training requirements are inappropriate. The interim final rule grants vessel owners or operators maximum flexibility in choosing the training appropriate for their vessels and crew. Three comments mentioned that some companies already have training programs for specific vessels, cargos, or specific jobs. Nothing in the interim final rule prevents an owner or operator from identifying an existing training program to satisfy all or part of the training requirements of this section. Based on the comments, the Coast Guard has also amended the interim final rule to permit a vessel owner or operator to identifying equivalent work experience which fulfills specific training requirements.

Three comments suggest that training records should not be required to be kept aboard ship because personnel rotate too quickly, and the paperwork would be excessive. The Coast Guard agrees. We have revised the interim final rule to allow the records to be kept aboard the vessel, with the qualified individual, or at a U.S. location of the spill management team. The response plan must specify the chosen location.

Section 155.1060 Drills

The interim final rule requires a vessel owner or operator to have a drill program which ensures that persons with responsibility under the response plan are prepared to fulfill their responsibilities. This program must include both announced and unannounced drills conducted by the vessel owner or operator as necessary to ensure that a response plan will function in an emergency. The interim final rule does not require drills to cover specific sections of a response plan. Because response plans are to ensure that responsible parties are prepared for spill emergencies, the interim final rule allows a vessel owner or operator to tailor drills to exercise either components of a plan, or an entire plan, and to exercise those sections of the response plan that the owner or operator believes are most appropriate.

The interim final rule specifies a minimum frequency for drills for both the vessel's crew and the shore-based personnel with responsibilities under the plan. Additionally, a vessel owner or operator is required to conduct a drill which exercises the entire plan at least once every 3 years. This minimum frequency in no way intimates that vessel owners or operators may not need additional drills. Vessel owners or operators are required to conduct drills "as necessary" to ensure the response plan will work as intended.

The Coast Guard has revised §§ 155.1055 and 155.1060 to clarify that the owner or operator is required only to "ensure" the oil spill removal organization(s) conducts an annual drill and is adequately trained.

Several comments suggested that higher volume port areas should have at least one drill per year. We encourage this, but will not mandate it for vessel owners or operators. Each Area Committee will look at its drill program and take steps to enhance the overall port spill readiness posture. Coast Guard unannounced drills will also be conducted in all port areas on a sporadic basis, approximately twelve per year.

Some comments suggested that the Coast Guard verify oil spill removal organization drills and equipment deployment drills, and inform vessel owners and operators of the results. Although the Coast Guard intends to participate in about twelve unannounced drills a year, it will not "verify" the results. The thrust of OPA 90 is to develop private sector responsibility for all aspects of oil spill response planning. However, the Coast Guard's assessment of any drill it observes will be publicly available. Vessel owners or operators retain responsibility for implementation of their response plans and need to drill the various entities with responsibilities in the plan to the extent necessary to implement the plan. Accordingly, the interim final rule does not implement this suggestion.

Several comments said that the monthly shipboard emergency procedures and qualified individual notification drills requirements are too burdensome on industry. Considering crew turnovers, the routine unavailability of all members of the crew, and our experience with firefighting, lifesaving, and other shipboard emergency drills, the Coast Guard does not concur that these drills should happen less than once per month. The initial actions by a ship's crew to handle an emergency, and the notification of the qualified individual, can be critical to mitigate the effects of a spill, and vessel owners or operators need to ensure these events happen as planned.

Additional comments suggested that the drill requirements for unannounced drills will be too burdensome for vessel owners or operators, and that credit should be given for participation in other unannounced drills. Section 311(j)(7) of the FWPCA requires that the Coast Guard periodically conduct unannounced drills of removal capability in areas designated for development of Area Contingency Plans. The Coast Guard will involve vessels and facilities in these drills. These drills will be infrequent. A vessel owner or operator selected to participate in such a drill will be expected to activate the spill management team and oil spill removal organizations identified in the plan to the extent required by the COTP. The cost of activating these resources must be borne by the vessel owner or operator. The Coast Guard anticipates holding up to 12 drills per year throughout the country.

While the probability of any one vessel being involved in a drill is low, the Coast Guard has eased the potential burden of unannounced drills by allowing credit for participation in an unannounced Federal or State oil spill response drill within the last twenty-four months. To take advantage of this credit, the vessel owner or operator must immediately provide records of the unannounced drill to the Captain of the Port who is directing them to participate in a subsequent unannounced drill. This should allow the drill to proceed with other participants. The Coast Guard also does not envision that vessel operations will be significantly impacted when an unannounced drill does happen. Unannounced drills will be designed to stress response systems, including that of potential responsible parties. The focus of unannounced drills will be on those entities which the vessel owner or operator has identified to carry out its response plan, not the vessel itself.

One comment suggested that drill credit should be given for training. This is inappropriate because training and drills serve different purposes. Drills test the response organization of the potentially responsible party. They should be designed to stress the entire response system, or portions of the system. Training supplies individuals having assigned tasks with basic response knowledge and skills, and is a prerequisite for an effective drill.

Several comments stated that the owners or operators should not have to keep records of drills performed by shore-based personnel. The Coast Guard agrees that drill records need not be kept with the vessel owner or operator, but records still need to be maintained and available for Coast Guard examination. We have revised the interim final rule to require the records to be maintained, but they may be kept at the United States location of either the qualified individual, the spill management team, the vessel owner or operator, or the response organization. The response plan must specify the location of the drill records.

To further ease the potential burden of these rules, while still ensuring that response plans can be implemented as designed, the interim final rule allows vessel owners or operators to take credit for drills in which their spill management team or identified oil spill response organization(s) participate for the areas in which the vessel operates. The Coast Guard recognizes that many vessel owners and operators will rely on the same response resources. There is no need for these resources to be exercised continually to meet the requirements of individual owners and operators. Documented drills involving identified response resources can be used to meet the requirements of this section. This would also apply to vessel owners or operators with multiple vessels. Participation in one drill held by a common spill management team will meet the requirement for all vessels utilizing that team.

Section 155.1062 Inspection and Maintenance of Response Resources

OPA 90 amended the FWPCA to require the periodic inspection of containment booms, skimmers, vessels,

and other major equipment used to remove discharges. (See 311(j)(5).) These requirements were not included in the NPRM, and the Coast Guard has since determined that it is appropriate to implement them through this rulemaking.

A new § 155.1062 of the interim final rule requires vessel owners or operators to ensure that containment booms, skimmers, vessels, and other major equipment listed in a vessel response plan are periodically inspected and maintained in good operating condition, in accordance with manufacturer's recommendations and best commercial practices.

The Coast Guard may visit equipment locations listed in response plans to verify that the equipment inventories exist as represented and that the records of inspection and maintenance reflect the actual condition of the equipment. The Coast Guard may also inspect and require operational tests of equipment to verify readiness.

The Coast Guard considers these requirements to be a logical extension of the vessel response plan requirements contained in the NPRM. The Coast Guard assumes that responsible owners or operators would already require the periodic inspection and maintenance of the response equipment identified in their response plan. Otherwise they could not ensure that the equipment they have identified in their plan is capable of responding to a discharge.

The Coast Guard solicits comments on the specific provisions of this section. All comments will be considered, and this section may be revised based on these comments.

Section 155.1065 Plan Submission, Approval, and Appeal Procedures

There were 16 comments on this section. A number of these comments addressed the issue of who should review the plans. Three comments agreed that the Coast Guard should centralize the review of plans. One comment stated that plan review should be delegated by the Coast Guard to the individual States and that the Area Committees formed under section 4202(a) of OPA 90 should be involved in plan review. This comment also stated that a Coast Guard requirement for review was a duplication of effort because some States already require plans to be submitted and approved.

The Coast Guard has determined that the initial review and approval of plans will be done at Coast Guard Headquarters. A centralized review by the Coast Guard will ensure the consistency of administrative review. The Coast Guard cannot delegate a Federal function to an individual State. To eliminate any duplication of effort, States should consider accepting plans approved by the Coast Guard rather than requiring a separate submission to and review by the State.

The Coast Guard does not agree that Area Committees should be involved in the review and approval of vessel response plans. Area Committees were formed by Congress to develop Area Contingency Plans in conjunction with State and local officials to ensure effective preplanning for joint response efforts. Because at least one Area Committee will be formed to focus on local issues for each Captain of the Port zone, there will be a large number of Area Committees. Review by any number of Area Committees will be cumbersome and unnecessary.

Five comments stated that Regional Citizens Advisory Councils (RCACs) should be involved in the plan review. Section 5002(d)(6)(D) of OPA 90 requires that the RCACs of Prince William Sound and Cook Inlet should review the adequacy of contingency plans for crude oil tankers operating in these areas. The Coast Guard will coordinate with the appropriate RCAC the review of plans submitted by the vessels using those two areas.

One comment suggested that the interim final rule should include the address to which plans should be sent. The Coast Guard agrees and has provided the address in the interim final rule.

Two comments stated that there should be a time limit for the Coast Guard to approve the plans; 60 days was suggested. The Coast Guard anticipates a large initial influx of plans to approve and has determined that a 60-day time limit would be difficult for the Coast Guard to meet and, because the vessel will be permitted to continue to operate during the review period, would be unnecessarily restrictive. Section 155.1025 allows a vessel to continue to operate for up to two years after the date of submission of a response plan, pending approval of that plan, as long as the owner or operator certifies that resources have been identified and ensured available to respond to a worst case discharge. This provision effectively allows the Coast Guard two years to approve the plans without adversely affecting vessel operations.

Two comments stated that the Coast Guard should allow for appeals if a plan is disapproved. The Coast Guard has determined that appeals will be allowed and has added paragraph (d) in this section to specify how to appeal to the Chief, Office of Marine Safety, Security and Environmental Protection.

Five comments argued that more than 30 days is needed to correct deficiencies and resubmit the plan or corrected portions of the plan. The Coast Guard agrees and will provide up to 45 days depending on the scope of the deficiency. The person submitting the plan will be notified of the time frame allowed to correct the deficiency.

One comment noted that requiring vessels to carry and maintain the entire response plan was unnecessary. The comment stated that a vessel master should only maintain and have available those sections of the plan that contain information applicable to the vessel. The Coast Guard agrees that vessels should carry only those portions of the response plan that are applicable to shipboard operations or that the master may need to know. The sections of the plan that will be required to be carried on the vessel are identified in § 155.1030.

Section 155.1065 describes submission and approval procedures. In the NPRM, paragraph 155.1065(d) describes where the response plan must be kept and requires the master and qualified individual to maintain the plan. Because proposed paragraph 155.1065(d) is not pertinent to submission and approval procedures, that paragraph has been moved to § 155.1030, General response plan requirements.

The Coast Guard has added two new provisions to this section of the interim final rule. First, we revised § 155.1065(a) to require response plans submitted on or after August 18, 1993 to be submitted at least 60 days before the vessel intends to handle, store, transport, transfer, or lighter oil. This will provide the Coast Guard sufficient time to review the plan for compliance with the interim final rule. Second, the Coast Guard has added a provision for handling significant plan deficiencies for vessels temporarily authorized to operate without an approved plan pending final Coast Guard approval.

Section 155.1070 Plan Review, Revision, Amendment, and Appeal Procedures for Vessels Carrying Oil as a Primary Cargo

The Coast Guard has revised the title of this section to make it clear that the provisions only apply to vessels carrying oil as a primary cargo. For vessels carrying oil as a secondary cargo the provisions of § 155.1045(i) apply. We have also revised paragraph (c) of this section to require a resubmission of the plan when, under certain circumstances, there is a change in the owner or operator of the vessel.

There were 20 comments on this section. More than half of the comments stated that the time provided to correct deficiencies or submit appeals was insufficient. Many felt that the 3 day period permitted to correct deficiencies involving the identification of a qualified individual or response resources was particularly restrictive.

The Coast Guard wants deficiencies to be corrected quickly. Having a qualified individual and response resources ready and available to respond is a basic requirement that vessel owners or operators must meet in order to store, transfer, or handle oil in areas subject to the jurisdiction of the United States. The Coast Guard has determined that instead of fixed time periods during which deficiencies should be corrected, the COTP issuing the deficiency notice will determine the time allowed to correct the deficiency. The time allowed may range from immediate to longer periods depending on the significance of the deficiency. A provision has also been added to the interim final rule that requires the vessel owner or operator to notify the Coast Guard office that issued the deficiency whenever a deficiency has been corrected.

Owners of foreign vessels stated that they should be required to correct deficiencies only prior to the vessel's next visit to U.S. waters and not within the specified time frames. The Coast Guard recognizes that foreign vessels in waters not subject to U.S. jurisdiction do not need to correct the deficiencies unless they intend to return to U.S. waters. Foreign flag vessels must correct identified deficiencies before they return to U.S. waters or within the deadlines stated by the COTP if they continue to operate in areas subject to U.S. jurisdiction.

The Coast Guard has revised the interim final rule to require resubmission of the plan for approval 6 months before the end of the Coast Guard approval period. The approval period will be up to five years. This replaces the proposed requirement for resubmission exactly five years from date of approval.

Three comments stated that the proposed rule did not address what will happen if the Coast Guard did not complete the review of a plan submitted for its required 5 year review and the 5 year period expired during the review time. The comments were concerned that the vessel would not be allowed to operate between expiration and reapproval because it would no longer have an approved plan. As discussed above, the interim final rule has been revised to require resubmission of the plan for approval 6 months before the end of the Coast Guard approval period. Six months will provide sufficient time for the Coast Guard to review and reapprove the plan. The level of effort required by the Coast Guard to reapprove a plan should be considerably less than that required for the initial review of a new response plan.

One comment stated that the requirement to report an annual review is an excessive paperwork burden. The Coast Guard agrees and will only require that the annual review be noted on the page where changes to the plan are recorded.

One comment stated that reviews of plans should coincide with other State requirements, and therefore be resubmitted every 3 years rather than every 5 years, as proposed. The Coast Guard believes that the required annual review and the requirement for owners or operators to resubmit the plans for approval whenever there is a significant change is sufficient to ensure that the plans remain current for the approval period. Reapproval every 3 years would create an excessive burden with little benefit.

Four comments suggested revising the conditions in paragraph 155.1070(b) that trigger the need for a plan to be amended so that only significant changes would require a plan revision. The Coast Guard agrees that plans must be revised or amended only when significant changes are made and has revised the wording of the paragraph to make this clear.

One comment stated that the Coast Guard did not explain what guidelines it would use when considering appeals. The Coast Guard intends to use the requirements set forth in the interim final rule to guide its determination on whether or not a plan is deficient.

Subpart E—Additional Response Plan Requirements for Tankers Loading Cargo at a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

Section 155.1110 Purpose and Applicability

Since the publication of the proposed rule, section 352 of the FY93 DOT Appropriations Act amended section 5005 of OPA 90. The amendment changed which vessels operating within Prince William Sound (PWS) are subject to the additional response planning requirements of this subpart E.

Only tankers loading cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. 1651 *et seq.*) must comply with this subpart. Vessels operating on PWS that do not load cargo at a TAPAA facility and all tank barges operating on PWS are no longer subject to this subpart. Military Sealift Command (MSC) chartered vessels which off-load cargo at Whittier, AK are not subject to subpart E. Any public comments received on the applicability of the subpart to non-crude carriers have not been addressed in the preamble.

The Coast Guard revised subpart E by eliminating the definition of crude oil and non-crude oil, replacing all references to "vessel" with "tanker," and eliminating the requirements for vessels carrying non-crude oil. We also added the definition of "tanker" to § 155.1020 of subpart D.

Section 155.1115 Definitions

One comment recommended that the criteria for certifying equipment should not be based on the manufacturers' specifications. The comment reasoned that there is no review or approval process for manufacturer specifications, and therefore they are not necessarily correct or obtainable. The Coast Guard agrees and has revised the definition of "certification of equipment" by changing the criteria to be that the equipment must be in good operating condition. The new definition was incorporated in § 155.1125(a)(3)(iii) and was deleted from § 155.1115.

Section 155.1120 Operating Restrictions and Interim Operating Authorization

Four comments were received. Two recommended that approval of vessel response plans must be contingent on funding of citizens' advisory programs. The Coast Guard disagrees. There is no statutory basis to require this. Three comments stated that the owner or operator should be required to do more than simply "identify" the necessary response resources to remove a worst case discharge or 200,000 bbls in Prince William Sound. Because section 5005 of OPA 90 requires pre-positioned equipment within Price William Sound, it is reasonable to establish a higher standard. The Coast Guard has changed the term "identified" to "provided."

Section 155.1125 Additional Response Plan Requirements

One comment recommended an area-wide cooperative to serve as a single response organization. While the Coast Guard may agree that such an approach is logical, it does not have the discretion to mandate it. The Coast Guard amended the language of § 155.1125(a)(1)(ii) to state that training programs should include local residents and fishermen.

Numerous comments stated that it was not practicable to require the oil spill removal organization to, among other things, consist of sufficient numbers of trained personnel to remove a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater. The Coast Guard agrees and has amended § 155.1125(a)(1)(iii) to require that the oil spill removal organization identified in a response plan must consist of sufficient numbers of trained personnel with appropriate technical skills to respond to a worst case discharge, and has added a new § 155.1125(a)(iv) to require the identified oil spill removal organization to provide a plan for training sufficient numbers of additional personnel.

The oil spill removal organization should have in their employment, or under contract, a sufficient number of skilled personnel who can handle the technical aspects of responding to a worst case discharge. However, the unskilled laborers that will be required to respond to a worst case discharge can be trained in relatively short order and therefore do not need to be in the continual employment of the oil spill removal organization. It is the Coast Guard's opinion that this is a reasonable way of assuring that the desired number of trained individuals are available when needed. This change does not affect the requirement of § 155.1125(a)(1)(ii) to actually train personnel from certain locations in Prince William Sound.

The same comment recommended that a 200,000 bbl response capability should be available throughout Alaska. Section 5005 of OPA 90 only extends certain additional response plan requirements to Price William Sound.

One comment recommended that certification of equipment should be performed by contractual arrangement either through Coast Guard or State inspections or through routine updates of inventory requirements. In response to this, the Coast Guard added § 155.1125(a)(3)(iii) to state that an independent entity, with appropriate training and expertise, should certify that equipment is on-site and in good operating condition.

The Coast Guard has amended § 155.1125(a)(1)(ii) to remove the formal names of fish hatcheries listed in proposed § 155.1125(a)(1)(ii) (F)–(J). This action was taken because of the possibility of names changing or new hatcheries opening. By specifying the areas, rather than the names, the Coast Guard believes it has strengthened the applicability of the rulemaking.

There was a comment that training should be limited to on-water recovery and that training drills be limited to those people identified as having initial response duties in the response plan. The Coast Guard disagrees with both suggestions. To assure an effective spill response capability, all aspects of oil spill removal need to be addressed through training.

Another comment recommended that separate response criteria should be adopted for low density traffic areas. This issue has been addressed in other sections of the preamble.

Section 155.1130 Requirements for Pre-Positioned Response Equipment

One comment recommended that 200,000 bbl crude storage capacity be available within six hours of notification of discharge and 450,000 within 24 hours. Another recommended on-water crude oil recovery equipment with minimum daily recovery rate of 300,000 bbls/day within six hours; on-water storage capacity of 300,000 bbls/day within six hours; and additional storage of 600,000 bbls/day within 12 hours.

Based on these comments and upon review of oil spill recovery equipment that currently exists within Prince William Sound, the Coast Guard has amended this section. Section 155.1130(c) now requires additional on-water recovery equipment with a minimum daily recovery capacity of 40,000 barrels capable of being on-scene within 18 hours of notification of discharge. This revision brings the total required on-water daily capacity to 80,000 barrels after 18 hours, and 110,000 barrels at the end of 36 hours.

Numerous comments were received expressing the opinion that the proposed Federal response requirements were far below the limits mandated by the State of Alaska, and that the Federal standards should be raised to those of the State. This issue has been addressed in other sections of the preamble.

One comment recommended that shoreline protection equipment should include intermediate transfer devices to transfer large volumes of oil of various viscosities under various temperatures. Section 2.1 of appendix B already requires that all equipment identified in a response plan must be capable of operating in the conditions expected in the geographic area in which a vessel operates. This would include considering the effect of temperature on the viscosity of the oil that must be recovered.

Section 9.2 of appendix B also requires a vessel owner or operator to evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from the equipment identified in the plan. It is the opinion of the Coast Guard that this issue is already adequately addressed in the interim final rule, and additional requirements are not needed.

All comments received opposed the requirement in the proposed rule for two escort vessels, each fitted with skimming and onboard storage capabilities, for each oil-laden vessel transit. Based upon these comments, and a review of the statutory language, the Coast Guard has amended the requirement to state that of the two escort vessels, only one must be equipped with skimming and storage capabilities.

One comment noted that the lightering provisions in proposed §§ 155.1130 (f) and (h) were inconsistent with § 155.1035(c)(5) because they contained conflicting guidance on the required arrival times. Section 155.1050 has been amended to eliminate this conflict.

One comment recommended that the lightering resources should be sufficient to remove the entire cargo within 96 hours. The Coast Guard agrees that some planning standard should be provided. Section 155.1050(m) has been revised to require that the response plans identify sufficient portable pumps and ancillary equipment necessary to off load the vessel's largest cargo tank in 24 hours of continuous operation.

One comment recommended that it was not necessary to require the pre-positioning of skimmers at specific locations so long as the six-hour response requirement contained in § 155.1130(a) was met. The Coast Guard agrees that the owners or operators of tankers should be provided the flexibility to preposition this equipment in those locations that provide the best overall protection for Prince William Sound.

The existing requirement that a certain quantity of on-water recovery equipment must be capable of being on-scene within six hours of notification of a discharge will adequately guarantee an appropriate response capability for those locations identified in § 155.1125. A new § 155.1130(e) was added to require that on-water recovery devices and storage equipment be located in communities and at strategic locations within the Sound to meet the specified arrival times. Proposed § 155.1130(d)(1) of the NPRM was deleted.

One comment stated that the proposed rule imposed requirements that were impossible to meet, especially the identification of shoreline cleanup capabilities for Prince William Sound within 36 hours of a worst case

discharge. The comment recommended that shoreline capability should not be addressed in the regulation, because shoreline cleanup methods would be decided upon by the spiller, Coast Guard, and the State of Alaska on an incident-specific basis. The Coast Guard disagrees with this interpretation of the proposed rule. Section 155.1050 requires the owner or operator of certain vessels to identify and ensure the availability of an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified oil to be planned for in shoreline cleanup operations. There are no specific time frames for this organization to be on scene or within which the cleanup operation must be completed. The Coast Guard acknowledges that the actual resources used to respond to a spill will depend on the specific circumstances encountered. This does not diminish the desirability of having the owner or operator pre-identify through his vessel response plan which resources he intends to utilize in the event of a spill.

Section 115.1135 Response Plan Development and Evaluation Criteria

Only two comments were received. One supported the tiered response requirements, and the other said that response times were meaningless in Prince William Sound and recommended deleting the section. The tiered response times contained in this section replace those contained in proposed § 155.1050(g) for tankers subject to the requirements of subpart E. They require a more rapid response and an accelerated tiering of resources to satisfy the statutory requirements of section 5005 of OPA 90.

Section 155.1140 Special Consideration for Vessels Contracting with a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

Three comments were received. Two protested the special consideration given to TAPS-trade tankers. One recommended that the provision be deleted until the Coast Guard can justify the implication that Alyeska's Ship Escort Response Vessel System (SERVS) meets the requirements of section 5005 of OPA 90 and only when Alyeska's response capability and contracts had met certification regulations.

The other comment agreed with this objection and asked that we consider other alternatives, such as the planned Alaska Nearshore Response Strike Teams and the concept of an Alaskan Coastal Community Cooperative. In addition, the COTP should be given more guidance and should be required to consult with the RCAC before making decisions. The third comment agreed with the section, saying that vessels could contract with Alyeska to meet any requirements of subpart E.

The Coast Guard disagrees that special consideration is being given to TAPAA trade tankers or to SERVs. Any vessel in any geographic location is permitted to contract with any capable organization, including marine transportation-related facilities, to ensure the availability of certain equipment or capabilities that is required to be identified in a vessel response plan. It will be up to the discretion of these various organizations (including any marine transportation related facility) whether they want to get into the business of being an oil spill removal organization. Section 155.1130 was included in subpart E to make it clear that each vessel owner or operator does not have to establish its own oil spill removal organization.

Section 155.1135 does not automatically pre-qualify SERVs as being capable of providing all or some of the requirements of either subpart D or E. The resources and capabilities of SERVs must be evaluated as would any other oil spill removal organization. The COTP will utilize the guidance contained in the IFR to evaluate the equipment and abilities of a facility permitted under the Trans-Alaska Pipeline Act.

The Coast Guard has amended this section to clarify the intent and purpose of this section. It has removed the words "Special consideration for * * *" from the title to eliminate the impression that this is a provision only applicable to certain vessels or facilities. It has also been changed to make it clear that an owner or operator may contract with a facility permitted under the Trans-Alaska Pipeline Act to meet some or all of the requirements of this subpart.

Section 155.1145 Submission and Approval Procedures

One comment stated that the plan approval process did not include RCAC approval as set forth in OPA 90 5002(d). The Coast Guard appreciates the importance of RCAC review of response plans under section 5002(d) of OPA 90 for vessels in Prince William Sound and the role of RCACs in advising, monitoring, and making recommendations to industry and the government. However, we do not believe that section 5002 grants authority for a RCAC to approve a vessel response plan.

Appendix B to Part 155—Guidelines for Determining and Evaluating Required Response Resources for Vessel Response Plans

We received many comments concerning Appendix B. One comment maintained that nothing in the appendix could be binding because it was not part of the rule.

The Coast Guard does not agree. Section 5 U.S.C. 552 sets out the minimum procedure that the Coast Guard must follow in issuing a rule. The Coast Guard's obligation under this law is to give interested parties notice which "affords (them) a reasonable opportunity to participate in the rulemaking process" (*Illinois Commerce Commission* v. *I.C.C.*, 776 F.2d 355 (D.C. Cir. 1985). This decision updated an ICC regulation published in the Code of Federal Regulations as an appendix, because "the proposal was clear on its face and the complainant had a full opportunity to address it." Further, Code of Federal Regulation format encourages the use of an appendix in a regulation when its use will improve the quality or utility of a regulation. Using an appendix is also appropriate for providing supplemental, background, or explanatory information or for detailed text or evaluation procedures which must be used with regulatory text.

Appendix B, Section 1

As proposed, this section of the appendix describes the purpose and use of the appendix. We received no comments on this section. However, the Coast Guard revised this paragraph to make it clear that the guidelines in the appendix also apply to evaluating response resources identified under subpart E. Subpart E sets out additional requirements for Prince William Sound, Alaska.

Appendix B, Section 2

This section of the appendix gives guidance and sets out procedures for an owner or operator to evaluate the readiness and operability of equipment to be identified in a response plan. We received seven comments on this section.

Two comments supported paragraph 2.1, which requires that equipment identified in a response plan be operable in the geographic area where the vessel operates. When we said in the proposed rule that an owner or operator must identify equipment "designed" for the geographic area where the vessel operates, we did not mean to exclude equipment designed for an area more demanding than the vessel's operating area. One comment questioned our use

of the term "designed" in this context. We have revised the interim final rule to state that equipment identified in a response plan must be "capable" of operating in the applicable area.

The Coast Guard has revised section 2.4 of the interim final rule to include procedures for demonstrating that the boom identified in a vessel response plan meets the criteria of Table 1. Demonstration will only be required if there is doubt over the suitability of the identified boom. The Coast Guard has also revised paragraph 2.6 to make it clear that the equipment evaluation criteria in the appendix also apply to the requirements in subpart E.

We received two comments concerning the on-water speed to be used for response planning. Both agreed that the proposed 10 knots was beyond the speed capability of towed barges and many self-propelled skimmers. The Coast Guard agrees. Therefore, we have reduced the on-water transit speed for response planning to 5 knots. The vessel owner or operator may provide information to show that a higher transit speed is appropriate for the specific response resources identified in a plan.

Four comments addressed section 2.7 of the proposed appendix. Two comments stated that the requirement to identify overall boom height should note that the term meant draft plus freeboard as was included in Table 1. The Coast Guard agrees and has added the specific reference in the paragraph.

Two comments addressed the requirements for providing information on response equipment, one stating that we asked for too much, and another stating that we asked for too little. The Coast Guard has required only that information which is necessary to evaluate whether the owner or operator has identified equipment in a response plan that reasonably correlates with the planning volume in quantity and capability and with the area where the vessel operates. Asking for more information would impose a burden not commensurate with the benefit.

The Coast Guard has also changed the term "effective daily recovery rate" to "effective daily recovery capacity," so that people understand we are establishing a planning standard—not a performance standard.

One comment stated it was inappropriate for the vessel owner or operator to be responsible for ensuring compatible connectors for boom, recommending that we require response contractors to do this. The FWPCA states that the owner or operator must ensure the availability of resources. Any requirements in the interim final rule are placed on those owners or operators. The vessel owner or operator and an oil spill response resource can settle this issue.

Appendix B, Section 3

This section of the proposed appendix provides information for determining the response resources required for the average most probable discharge. Three comments addressed this section, although many comments made on the proposed requirements in § 155.1050(d) apply to this section of the appendix.

Three comments questioned the amount of containment boom required to be available for deployment. As proposed, the interim final rule requires boom twice the length of the vessel. One comment believed that the amount should be less than the length of the vessel, but did not specify a length. One comment recommended that 1000 feet be the maximum amount required, and another said we should require boom sufficient to encircle two vessel(s) involved in a transfer.

The amount of boom required is based on an estimate of how much boom would be needed for initial containment of a 50 barrel oil discharge either alongside or between two vessels involved in an oil transfer operation. Because we want to require only that amount of boom for which it is practicable to plan, we will not revise this provision. A 50 barrel spill is the average most probable discharge (AMPD) volume.

One comment recommended that we increase the required oil recovery capacity in proposed paragraph 3.1.2 to 200 barrels per day. No change was made to the interim final rule. The 50 barrel per day recovery capacity reflects the average most probable discharge volume.

The Coast Guard has also deleted the requirement in the proposed paragraph 3.1.2 for vessels carrying oil as a secondary cargo to identify sources of equipment. We received many comments concerning the burden imposed on secondary carriers to identify these resources. Data provided indicated that the total volume of oil transferred by secondary carriers frequently was less than 50 barrels, and the transfers occurred in remote areas. Therefore, identifying recovery capacity for a 50 barrel spill may constitute planning for a discharge of the vessel's entire cargo.

Thus, § 155.1050 and this paragraph have been revised to delete the requirement for a secondary carrier to identify resources sufficient to respond to the average most probable discharge. However, we kept the requirement in § 155.1045(j)(3) for a secondary carrier to identify an oil spill removal organization in the area or areas where its vessels operate.

The Coast Guard has revised paragraph 3.1 to make it clear that an owner or operator must arrange for resources identified in a response plan to address the average most probable discharge through contract or other approved means. This phrase was left out of the proposed rule inadvertently.

The Coast Guard has revised paragraph 3.1.1 to require that the containment boom identified in the response plan be capable of being deployed at the site of oil transfer operations within 1 hour of spill detection. This revision parallels a change in § 155.1050(d).

Appendix B, Section 4

This section of the proposed appendix provides information for determining the resources required for response to the maximum most probable discharge volume. We received three comments concerning this section. One comment fully supported the requirement as written. One comment recommended that the section be revised to make it clear that an owner or operator had to ensure this capability by contract or other approved means. The Coast Guard has so revised paragraph 4.1. This phrase was left out of the proposed rule inadvertently.

One comment recommended that we require additional storage capacity under paragraph 4.5 if the effective daily recovery capacity is limited by available storage capacity. No change has been made in the interim final rule. the purpose of the provision is to inform owners or operators that the Coast Guard will use available storage capacity in evaluating whether the response plan indicates sufficient capacity for the maximum most probable discharge planning volume. The vessel owner or operator will still need to identify storage capacity to meet the provisions of section 9.2 (twice the effective daily recovery capacity or less under certain circumstances) to have its response plan approved.

In addition to the above changes, the Coast Guard has made many other changes in the interim final rule to be consistent with revisions made to § 155.1050. We have revised the travel times for open ocean in paragraph 4.3 to match the revisions made in § 155.1050(e), and changed paragraph 4.4 to make it clear that the vessel owner or operator must ensure the availability of oil collection and containment boom through contract or other approved means.

Appendix B, Section 5

As proposed, this section of the appendix describes the methodology for determining the response resources required for the worst case discharge to the maximum extent practicable.

A number of format and content changes have been made to this section. As previously noted, the discussion of caps contained in section 5.3 of the proposed rule has been revised and moved to 155.1050(p). Section 5 has been renumbered to accommodate two new subsections. Section 5.5 has been added to describe the process for determining what percentage of on-water response equipment must be capable of operating in waters of 6 feet or less in support of close-to-shore response activities. Section 5.7 has been added to describe the process for determining the volume of emulsified oil that may impact the shoreline during a spill.

Section 5.6 has been revised to make it clear that boom is required for both shoreline protection and for oil containment and collection. Table 2 of Appendix B identifies specific quantities of boom for shoreline protection. The quantity of boom that is required for oil containment and collection is not explicitly stated, and is left to the owner or operator to determine based on the specific recovery equipment and strategies that will be employed. However, in both instances the boom's availability must be ensured through contract or other approved means.

Several comments were received concerning the basic planning methodology. Three comments supported the simple process by which vessel owners will plan for the worst case discharge. An equal number of comments argued that the calculations and procedures are too complicated and confusing.

The Coast Guard disagrees that the calculations are too complicated. Although numerous sequential steps must be followed, none of the individual calculations require more than simple arithmetic and the applications of factors contained in various tables. The example contained in section 7.3 has been modified to better explain the calculations and the use of the various tables.

Two comments recommended that the process be simplified by precalculating the requirements and placing them into one table. The Coast Guard has conducted a preliminary analysis and determined that it would require at least 16 tables to cover all of the needed information. However, these table(s) would become extremely complicated and difficult to maintain when the issues of caps, cap increases, and the identification of equipment above the caps were taken into consideration. If upon further review the Coast Guard deems it practicable and useful to prepare such tables, it will do so through a NVIC or some other form of policy guidance document, rather than in a rulemaking. This approach would provide the desired simplification, while preserving in the regulation the actual methodology of how the specific numbers were calculated.

Appendix B, Section 6

This section of the proposed appendix provides information for determining the effective daily recovery capacity for oil recovery devices. We received thirteen comments on this section.

One comment was concerned that the use of the term "effective daily recovery rate" could be misinterpreted as a performance standard and recommended that it be changed to "effective daily recovery capacity." Another comment said the "effective daily recovery rate" could be divided by 24 hours to obtain an "effective hourly recovery rate" for use in determining temporary storage capacity required.

The "effective daily recovery rate" is used as a planning criteria for determining whether sufficient on-water recovery capacity has been identified in a response plan and does not equate to an expected hourly recovery rate. An owner or operator must determine temporary storage capacity using an assumption of the number of hours per day that the oil recovery devices identified in a response plan can sustain operations. The factors used to estimate the daily rates include time of skimming, encounter rates, and other factors. To eliminate confusion, the Coast Guard has revised the phrase "effective daily recovery rate" to "effective daily recovery capacity" throughout the interim final rule.

Six comments were concerned that the method in paragraph 6.2 for calculating effective daily recovery capacities oversimplified the many complex factors by which you can assess the efficiency and effectiveness of oil recovery operations. Some of those comments stated that the method favors certain types of oil recovery devices and requested we use some alternative method to rate these devices. Others stated that the 20% derating factor was too low for some devices and too high for others. One comment said that oil encounter rate was the critical variable in oil recovery device performance and it should be a factor in determining the effective daily recovery rate.

The Coast Guard has considered these comments and has retained the methodology in the interim final rule. The effective daily recovery rate accounts for a number of variables, and facilitates identifying relative capacities of different recovery devices. The resulting "effective daily recovery capacity" will not predict how a device will perform during an actual response; there are too many variables to make such a prediction. The purpose of calculating an "effective daily recovery capacity" is to help an owner or operator plan for ensuring that there are sufficient oil recovery devices available to initiate a response action.

One comment asked that section 6.2.1 be revised to allow the Coast Guard to increase the standard efficiency factor above 20% if performance data supported an increase. The Coast Guard has determined that this change is unnecessary. Oil spill recovery technology is dynamic, and the Coast Guard may amend these rules whenever new information warrants making a change. In the meantime, if a vessel owner or operator can document that an oil recovery device has an effective daily recovery capacity greater than the formula in section 6.2.1 reflects, the owner or operator is free to submit data to document this different capacity under section 6.3.

Five comments were confused about the method proposed in section 6.2.3 for calculating throughput for mop or belt type oil recovery devices. After further review, the Coast Guard has determined that there are too many differences in these devices to develop a standard formula. Therefore, we have revised section 6.2.3 to indicate that an owner or operator should base the throughput rate on manufacturer's data for nameplate rated capacity. A new section 6.2.4 has been added so that a vessel owner or operator may submit data to support an alternative method for calculating a throughput rating if the vessel owner or operator includes in their response plan oil recovery devices, with capacities that cannot be measured using pump capacity (i.e., vacuum devices).

One comment stated that the formula in section 6.3.1 failed to account for equipment breakdowns, oil encounter rates, or the time needed to empty storage devices. Although all these factors affect performance during a response, the Coast Guard does not consider them applicable for use in this regulation, because effective daily recovery capacity is a planning criteria. These same factors will affect all

devices the same, thus adding an additional derating for them is not appropriate for response planning.

Regarding temporary storage capacity, the Coast Guard notes that the effective daily recovery capacity of an oil recovery device identified in a response plan is limited by the available temporary storage capacity which will sustain that device. In addition, the Coast Guard believes that the number of hours per day that recovery device operations can be sustained under spill conditions will account for these variables.

Two comments were concerned that decisions related to reducing the standard 20% derating factor would be arbitrary and recommended a central review location rather than having each COTP deciding. The Coast Guard agrees and has added a new section 6.5 indicating that the Commandant will make determinations of alternative efficiency factors under section 6.2 or alternative effective daily recovery capacity ratings under section 6.3.

One comment said that because an equipment manufacturer or response contractor is in the best position to provide the specific information in support of an alternative effective daily recovery capacity for a given oil recovery device, the vessel owner or operator should not have to provide the information. The Coast Guard agrees that the necessary information likely will come from the equipment manufacturer, but the responsibility to prepare and submit a response plan with the necessary information lies with the vessel owner or operator. However, the Coast Guard has included in the new section 6.5 a provision that allows an equipment manufacturer or response contractor to submit information directly to the Coast Guard on behalf of multiple vessel owners or operators that identify such equipment in their response plans.

Appendix B, Section 7

As proposed, this section of the appendix provides the procedure for calculating the worst case discharge planning volumes.

Section 7.2.3 has been changed to reflect the addition of unique response times for the Great Lakes. This section has also been amended to reflect the changes made in the calculation of the additional travel time permitted for spill resources responding to a spill in the open ocean area. As previously noted in the preamble, the assumed transit speed has been reduced from 10 kts to 5 kts, and the point of measurement has been changed from the point 50 miles from shore to the shoreline.

One comment stated that it was burdensome to require the owner or operator of a vessel that carries varying amounts of different types of oil to calculate the planning volume for each type of oil separately. The comment reasoned that the owner or operator would need to continually recalculate and possibly resubmit the vessel response plan for each trip if the quantity, mix, or type of oil changed from the previous trip.

It is permissible for an owner or operator of a vessel to create and submit a vessel response plan for each unique configuration of cargo their vessel may carry. However the Coast Guard suggests, that in the situation where the cargo mix changes frequently, the owner or operator of the vessel submit one vessel response plan based on the vessel cargo loading scheme that results in the largest foreseeable required planning volume. A vessel response plan submitted and approved using this planning volume, would also cover any situations that resulted in a lesser level of planning. It would remain the responsibility of the owner or operator to recalculate the required planning volume and the resulting on-water recovery capacity as necessary to assure that the submitted vessel response plan is adequate. The Coast Guard does not consider these calculations to be overly burdensome.

Section 7.2.4 has been clarified to indicate that for a vessel that carries multiple groups of oil, the required effective daily recovery capacity for each group is calculated and added together before applying the caps contained in Table 6.

Only two specific comments on the example provided in section 7.4 of Appendix B were received. One stated the example was confusing, the other noted that the examples was incorrect because the owner or operator would be required to contract with an oil spill removal organization capable of conducting shoreline cleanup operations only if the vessel came closer to shore than 12 miles and not 50 miles as stated in the example.

The Coast Guard has revised the example to make it easier to understand and to incorporate the revised planning factors used in this interim final rule. The example was correct in that when a vessel operates closer than 50 miles from shore the owner or operator must identify and ensure the availability of an oil spill removal organization capable of effecting a shoreline cleanup operation.

In the calculation for planning volumes for onshore recovery, the calculation for open ocean has been eliminated. This reflects the elimination of the open ocean requirement for shoreline cleanup planning contained in § 155.1050(o)(1) of the proposed rule. The paragraph following the onshore recovery calculations also has been revised accordingly.

A new paragraph has been added after the last table of calculations to discuss the new requirement for a certain percentage of on-water recovery capability to be capable of operating in water with a depth of 6 feet or less. This calculation must be done for all tiers and for all applicable geographic areas.

Appendix B, Section 8

This section of the proposed appendix provided information for evaluating high-rate response methods (for example, dispersants, in-situ burning) in a response plan. We received fifteen comments on this section. Most of these comments repeated issues raised and addressed in our discussion on proposed § 155.1050(k), and will not be repeated here.

Throughout Appendix B, we have revised the requirements for dispersant planning, response times, and methodology for receiving plan credit just as we did in § 155.1050(k).

The Coast Guard has revised section 8.2.2 of appendix B by adding section 8.2.3 to provide information on how we will assess whether to recognize a credit against required on-water recovery capability. Any dispersant capability identified for plan credit must include sufficient resources to sustain that capability for at least three days at the rate proposed for plan credit. This time period reflects the generally accepted "window of opportunity" to disperse oil before it becomes too weathered for dispersants to be effective. Section 8.2.3 provides an example of how this credit would be calculated and applied against tier 1, 2, or 3 resource requirements.

The Coast Guard has added a new section 8.5 to make it clear that any credit against a portion of the 1993 or 2003 cap increases based on dispersant capability will apply only to vessels that operate in areas where using dispersants has been pre-authorized by the Regional Response Team.

We received seven comments on using in-situ burning as a high-rate response method. As proposed, the rule would not allow an owner or operator to use in-situ burning as a response strategy for reducing required oil recovery capability in 1993. Four comments recommended that a vessel owner or operator receive a credit of up to 25 percent against mechanical recovery capacity for in-situ burning. None of the comments suggested what in-situ burning capability should be

demonstrated to obtain this credit. One comment suggested that all owners or operators identify resources for in-situ burning and for required mechanical recovery and dispersant capability. Three comments recommended that the Coast Guard study in-situ burning as a viable response option. These comments did not address using a credit against mechanical recovery as an incentive for developing this capability.

The Coast Guard will not permit an owner or operator to use in-situ burning as a planning response strategy for 1993. The use of in-situ burning is still being studied. The Coast Guard has added language to the renumbered section 8.6 (proposed 8.5) to indicate that we will evaluate in-situ burning as a permissible response strategy for capability increases required in 1998.

One comment opposed using bioremediation as an acceptable emergency response strategy, indicating that there was no evidence it was effective for treating floating oil. The Coast Guard continues to evaluate all potential high-rate response methods for use in spill response, but did not include bioremediation in appendix B because its effectiveness for use in emergency response is uncertain. Responders have used this technique mostly for shoreline treatment as part of the later stages of a shoreline cleanup. If new data show bioremediation or any other high-rate response method to be effective for emergency response, the Coast Guard will consider their application to response planning.

Appendix B, Section 9

This section of the proposed appendix provides information for determining the resources for which an owner or operator must plan to sustain response operations. The section covers trained personnel, temporary storage capacity, and other support equipment required for a response. We received thirty comments on this section.

One comment recommended that vessel response plans should require sorbent boom in addition to containment boom in a quantity sufficient to encircle the containment boom. The comment also recommended that the vessel owners or operators should plan for enough sorbents to sorb the statistically average shipboard spill. Section 9.1 already requires the vessel owner or operator to ensure that a sufficient quantity of sorbent material is available to sustain response operations to completion, and the Coast Guard believes that sorbent material includes sorbent boom. However, we have revised section 9.1 to explicitly mention sorbent boom.

Section 155.1050(o) requires certain owners or operators to identify and ensure the availability of shoreline cleanup resources in an amount commensurate with the planning volume of emulsified oil. The Coast Guard fully expects owners or operators to consider whether a resource has sorbent material and sorbent boom in determining if the resource is capable of effecting a shoreline cleanup operation.

In the NPRM on Discharge-Removal Equipment for Vessels Carrying Oil, we proposed requiring certain vessels to carry sorbent material. The Coast Guard believes that the section 9 requirements and the proposed equipment carriage requirements will ensure that sufficient sorbents are available to respond to a spill, and that no further requirements for sorbents are necessary.

Two comments supported the provision in section 9.1 that the vessel owner or operator also ensure the availability of support equipment and supplies to sustain response operations. One comment recommended that the support equipment also be capable of use in the same operating conditions as the oil recovery devices, boom, and temporary storage capability. The Coast Guard has revised this section in the interim final rule to state explicitly that the support equipment must be suitable for use with the primary equipment (oil recovery devices, boom, and temporary storage capability) identified in the response plan. The Coast Guard also has revised the last sentence of section 9.1 to make it clear that an owner or operator does not need to supply detailed information on the support equipment capability in the response plan.

Four comments supported the requirement in section 9.2 that an owner or operator identify temporary storage capability in the response plan. Three of those comments recommended that owners or operators plan for a defined initial storage capacity to arrive with an oil recovery device. One comment recommended that we evaluate oil recovery devices and temporary storage as a system. The Coast Guard has determined that requiring an owner or operator to identify a defined volume of storage capacity during the initial response is unnecessary. An owner or operator should match storage capacity to the types and quantities of oil recovery devices identified in the plan.

For example, each oil recovery device must have sufficient temporary storage capacity matched to its expected recovery capacity. If the planned response strategy is to operate ten such devices independently, each must have separate storage capacity. This storage capacity does not have to be dedicated for a given device. Most oil recovery devices have limited storage capacity because they are designed principally for recovery and emptied into a larger storage device. Although this is acceptable, the vessel owner or operator must assess how much time it takes to transfer oil from a recovery device to a storage device in calculating the effective daily recovery capacity.

Twenty-three comments opposed the requirement under section 9.2 to contract for temporary storage capacity as being too costly. The Coast Guard added an alternate approved means by which an owner or operator may ensure the availability of resources for which it must plan.

Five comments opposed requiring owners or operators to identify daily temporary storage capacity equivalent to double the effective daily recovery capacity, and recommended that storage capacity be equivalent to recovery capacity if the capability to decant water from the storage device exists. One comment recommended that the Coast Guard allow either twice the daily recovery rate or a lesser volume if the owner or operator provides a waste stream analysis to show that a volume less than the section 9.2 volume would need to be stored daily.

The Coast Guard has considered these comments and retained the requirement for storage capacity to equal twice the recovery capacity. All oil recovery devices collect some water with the oily material, and the volume of this water varies with the design of the device and the thickness of the oil on the water's surface. The factor of 2 accounts for recovering a volume of water with the recovered oil. In addition, we have revised section 9.2 so that a vessel owner or operator may identify storage capacity for less than the section 9.2 volume, if the owner or operator provides a waste stream analysis to show that the efficiencies of its identified recovery devices, the ability to decant water from the storage devices, or the availability of alternative storage or disposal locations in the area where the vessel operates result in reducing the volume of material requiring temporary storage.

Two comments requested that the vessel owner or operator be responsible for arranging for disposal of recovered product, and not the oil spill removal organization identified in a response plan. Section 9.3 as proposed reflected industry practice that the spill response contractor arrange for the disposal on behalf of the responsible party. However, because OPA 90 makes the vessel owner or operator responsible for

ensuring that its plan addresses disposal, we have revised the interim final rule to make that clear.

Appendix B, Table 1

As proposed, this table provided operating and design criteria to use in evaluating oil recovery devices and booms identified in a response plan. Table 1 is based on information for equipment selection in the 'World Catalog of Oil Spill Response Products—Third Edition." The American Society of Testing and Material (ASTM) used the World Catalog as the starting point for its pending oil recovery equipment standard. We received five comments on this table.

One comment recommended that we delete the Great Lakes data from the table and apply river or inland criteria for the Great Lakes. The Coast Guard disagrees. The Great Lakes criteria derive from unique conditions there. The equipment operating and design criteria are consistent with World Catalog specifications for oil recovery operations in areas like the Great Lakes. Nothing in the comment indicated that this data was incorrect.

Four comments provided various drafts of the ASTM standard for boom performance and standard environmental conditions. The draft standard has categories of information and criteria similar to the VRP rule. Because ASTM has yet to reach consensus on this standard, the Coast Guard has determined it premature to incorporate all or any part of the draft ASTM standard. The Coast Guard is involved in the ASTM committee developing these standards, and we note the similarities between the ASTM drafts and this rule. The Coast Guard will consider the need to change Table 1 once the final ASTM standards are published.

The Coast Guard has made 3 minor changes to Table 1 in the interim final rule. The term "rivers" was changed to "rivers and canals" to be consistent with the use of this term throughout the interim final rule. We changed the symbol used to describe significant wave height from "less than" (<) to "less than or equal to" (≤) to clarify better the intended meaning of significant wave height.

A footnote was added to the table to explain that the oil recovery device and boom must be at least capable of operating in a significant wave height up to and including the value listed in the table for each environment. The lower value for permissible boom height for rivers and canals has been decreased from 10 inches to 6 inches. This change was based on further assessment of available boom types and potential uses within the operating environment.

One comment was concerned that existing stockpiles of boom would be unusable in the open ocean area because the proposed boom heights are greater than boom heights used routinely in open ocean responses. Although the Coast Guard recognizes the comment's concern, the boom height reflects the statutory requirement to plan for responding to a worst case discharge in adverse weather. For ocean areas, "adverse weather" could be seas with significant wave heights of up to 6 feet.

Appendix B, Table 2

Table 2 sets out shoreline protection requirements. The Table has been revised to reflect the changes discussed in the preamble for § 155.1050(n): Eliminating all requirements to identify boom, adding the Great Lakes to the nearshore and inland category for both persistent and non-persistent oils.

Appendix B, Table 3

This table sets out factors needed to calculate the planning volumes for response resource identification. Because of loss to the environment, potential for shoreline impact, and potential for on-water recovery varies by the oil type and location, we have included a factor (percentage) for each.

One comment recommended that Table 3 should have a separate category for edible oils. Another comment recommended that the table should have a separate category for asphalt because it sinks and can't be recovered by conventional methods. The Coast Guard has revised the rule in recognition of the unique characteristics both of nonpetroleum oils and of oils heavier than water. We have addressed issues and comments for these oils in the preamble discussion of §§ 155.1052 and 155.1054. Table 3 is inapplicable.

Eight comments argued that the percentages in the table have no technical basis, that there is no justification for the wide variances in the additive values, and that the percentages for a specific geographic area should not exceed 100% when summed together.

The values in Table 3 were drawn from 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.

As noted in the preamble to the NPRM, in the inland, nearshore, and offshore portions of the table, the percentages do not add up to 100%. This reflects an adjustment in the on water percentage to increase the quantity of resources that are planned for mobilization in the first 3 days of the response. Because the oil may rapidly impact the shoreline in these areas, quick mobilization is essential.

One comment expressed concern that having the percentages exceed 100% could be construed as setting a performance standard. The Coast Guard disagrees. The preamble to the NPRM clearly stated why the percentages exceeded 100%. Additionally, we have restated in many places in both the IFR and this preamble that these are not performance standards.

One comment noted that the percentages should not exceed 100% because the effect of emulsification has already been taken into consideration. The Coast Guard disagrees. The application of an emulsification factor recognizes the very real fact that the volume of oil that must be recovered may increase due to the effects of emulsification. The intended purpose of having the percentages exceed 100% was to increase the quantity of on water resources that are planned for mobilization in the first 3 days of the response. The two issues are not directly related.

One comment recommended that the percentages in the table for "recovered floating oil" should be increased because oil which comes onshore has the potential of becoming floating oil again through either tidal or human action. The Coast Guard concurs that this is a possibility, but does not agree that it is a phenomenon that can realistically be taken into consideration. It is not practical to estimate the amount of oil that will reenter the water after it has been deposited on the shore line. Additionally, tidal ranges vary widely making the establishment of one national standard difficult.

One comment recommended that if emulsification is taken into consideration, then evaporation should also be taken into consideration as recommended by the Committee. The effect of evaporation is included in Table 3. The percentage attributed to natural dissipation is not explicitly used to determine the planning volume for on water recovery capacity or shoreline cleanup capacity. However, the relative effect of natural dissipation in different environments and for different oil groups was taken into consideration when determining what percentage of the planning volume would be available for on-water or on shore recovery.

Numerous comments noted that the Great Lakes were not included in any of

the spill locations contained in Table 3 of the proposed rule. This oversight has been corrected in the interim final rule. The Great Lakes have been expressly added to the nearshore and inland category.

Table 3 of the proposed rule included percentages for oil on shore for the open ocean. However, § 155.1050(o) exempts vessel response plans for vessels operating in the open ocean areas from having to plan for shoreline cleanup. To avoid any confusion that Table 3 contradicts the intent of § 155.1050(o) the appropriate entries in table 3 have been annotated to indicate that they are included in the table for continuity, and that no planning is required.

Appendix B, Table 4

Twelve comments addressed the emulsification factors listed in table four. Two comments supported the factors used in the table but the others stated that the levels were too high for a variety of reasons. Case histories, distance from shore, type of water body, fresh water, weather and temperature variables, and discharge rates were all cited as factors that should be considered when setting the emulsification factors. Two comments indicated that the scientific data is insufficient or not available to support the high emulsification factors listed.

Numerous comments argued that emulsification is already taken into consideration through the 20% rating factor applied to oil recovery devices in section 6 of appendix B. The Coast Guard disagrees. The emulsification factors listed in Table 4 are to account for emulsification that occurs to the oil prior to the oil being encountered by the skimming equipment. The 20% rating factor includes, among other things, consideration of the efficiency of the actual skimming device to remove oily material from water. The two issues are unrelated.

One comment recommended that the plan holder should have the option of demonstrating that a lower factor is appropriate. The Coast Guard disagrees. This would introduce an unnecessary level of detail and not be consistent with the desired practicality of maintaining one nationwide standard.

The Coast Guard recognizes that emulsification depends on a variety of factors. The proposed Table 4 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 favored the emulsification process. There was no other method suggested to account for the variables although the Coast Guard has been convinced by the comments that the emulsification factors listed in Table 4 of the NPRM were too high. Consequently, the emulsification factors in Table 4 have been revised. All of the factors that were greater than 1 in the original table have been reduced.

Appendix B, Table 5

Seven comments discussed Table 5, Mobilization Factors. One comment supported the factors, one comment stated the factors were too low at the beginning of the operation, and one comment stated the factors were too high for river operations. Three comments stated the table should be deleted because the mobilization factors created a performance standard and not a planning standard. One comment suggested incorporating Table 5 with Table 4 to simplify this portion of the rule.

Table 5 provides mobilization factors to assist in planning for the recovery of a worst case discharge. The Coast Guard recognizes that oil recovery operations are most effective in the initial stages but also acknowledges that it is unrealistic to plan for the majority of the response equipment to be immediately available. In rivers, where spills are spread rapidly, it is most important to plan for a strong initial response to contain and recover a spill and consequently these planning factors are higher than for other areas. The Coast Guard recognizes that the wording of the preamble that explained Table 5 in the NPRM could have been misunderstood to constitute a performance factor. However, the Coast Guard has indicated repeatedly elsewhere in this rule that this rule sets forth planning criteria and does not establish performance standards. The Coast Guard believes that this table is fairly straightforward and although one comment suggested a way to simplify it, no one commented that it is confusing. Consequently, Table 5 has not been changed.

Appendix B, Table 6

Table 6 provides response capability caps by geographic area. The Table has been revised to reflect the changes discussed in the preamble for § 155.1050(p). Specifically, a unique cap has been created for the Great Lakes, and all explicit caps for 2003 have been eliminated and replaced with the comment that they will be determined in the future. The caps for 2003 will be established during the Coast Guard review of the proposed caps for 1998. For consistency and continuity, the effective date of the caps has been changed from March 18th to February 18th for 1993, 1998, and 2003.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 155.140 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

This interim final rule is major under Executive Order 12291 and is significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

This rulemaking will cost the oil transportation industry and the general public more than $100 million annually. It may also affect domestic and international shipments of oil to and from the United States and may generate substantial public interest and controversy. These regulations will also impact cleanup contractors, oil spill cooperatives, and other not-for-profit cleanup organizations.

The interim final rule contains requirements for vessel response plans, as well as additional requirements for certain vessels operating in Prince William Sound, Alaska. The impact of these requirements has been analyzed separately and is summarized below.

In the NPRM, the Coast Guard solicited public comment on the draft Regulatory Impact Analysis (RIA) for vessel response plans and the draft Regulatory Evaluation (RE) for Prince William Sound. A summary of the public comments received appear later in this discussion.

The Coast Guard has revised the RIA and RE based on public comments received, revisions made to the IFR, and two recent legislative changes which significantly affected the applicability of the interim final rule. As discussed in the "Regulatory History" section of the preamble, OSVs and certain fish vessels and fish tenders are no longer required to prepare vessel response plans, and the additional requirements for PWS now apply only to tankers loading cargo at a TAPs facility. Both changes will reduce the number of entities affected.

The Interim Final RIA and Interim Final RE are available in the docket for inspection or copying, as indicated under "**ADDRESSES.**" They have 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.

Vessel Response Plans

In performing the regulatory impact analysis, the following four response plan alternatives were considered:

(1) No requirements,

(2) Comprehensive requirements for all tank vessels,

(3) Reduced requirements for vessels carrying oil as a secondary cargo, and

(4) Reduced requirements for inland barges only.

In response to public comments on the Draft RIA, and to reflect changes and improvements in cost estimates, numerous modifications have been made to the Interim Final RIA. Principal changes made include:

- Estimates of the costs of qualified individuals have been included.
- Estimates of costs for spill response capabilities in the Great Lakes have been developed.
- Impacts on costs of the future increases in contracting caps have been assessed.
- Revised cost data for major cost items have been incorporated.
- Cost/benefit has been calculated in terms of the cost per barrel of oil saved.
- Discount rate has been reduced from 10 percent to 7 percent, reflecting the latest OMB guidelines.
- Off Shore Supply Vessels have been eliminated from the Industry Profile and subsequent analysis.

VRP Industry Profile

The vessels that are subject to these requirements are divided into four distinct groupings: (1) Oil tankships in international trade, (2) coastal trading U.S. tankships and tank barges, (3) inland tank barges, and (4) other vessels not certificated under 46 CFR subchapter D, which carry oil in bulk as a secondary cargo. The distinct industry groups comprise the majority of these other vessels. They are certain fishing vessels and certain towing vessels.

Approximately 363 companies owning 1,050 vessels constitute the international tankship sector. The number of vessels held by any one company varies from 1 to over 50 vessels. The assets of the publicly held tankship operating firms vary from $28 million to $95 billion.

The coastal fleet consists of U.S. owned tankships and coastal trading tank barges. The coastal fleet is comprised of 147 tankships owned by 28 companies and 190 tank barges owned by 52 companies. The number of vessels owned by any one company varies from 1 to over 10 vessels. The assets of the independent, publicly-held companies engaged in operating the coastal fleet vary from $50 million to over $1 billion.

The inland barge fleet is comprised of 409 companies with 3,461 active barges. Of these, 219 companies own only 1 vessel or 6 percent of the fleet. The assets of publicly traded firms in this industry vary from $23 million to $13 billion.

The fishing vessel industry consists of 5,422 vessels owned by 4,587 companies. In addition, 22,371 documented fishing vessels are owned by individuals. The vast majority of these are owners or operators of one vessel. Approximately 80 to 100 of these vessels or 0.4 percent will potentially be impacted by this regulation because they carry oil as a secondary cargo. Virtually all of these vessels are privately owned.

The towing vessel industry consists of 5,703 vessels owned by 2,156 companies. Of these, two companies own over 50 vessels while 1,357 owners have only one vessel. Approximately 2.5 percent of the fleet or 150 vessels are engaged in the transfer of oil to other vessels. This interim final rule would not be applicable to the majority of these vessels because the oil carried would not be considered cargo due to the nature of their operation.

VRP Costs

In the aggregate, the requirement for vessel response plans will result in substantial costs to the industries affected. The present value cost of this regulation for the period 1992 through 2015 is estimated at $2.7 billion. The bulk of this cost entails large capital and operating expenditures to ensure adequate shore-based response capability. This accounts for 53 percent of the total incremental cost, or $1.4 billion. The next most costly items are drills and training with costs of $410 million for the 24-year period examined, or 15 percent of the total cost. The incremental cost of the entire regulation is $318 million for 1992, but declines to $226 million annually for the period 2005 through 2015.

For individual tankship or coastal trading tank barge owners or operators, the cost of compliance will vary slightly. The owners or operators of large fleets can spread the costs of response plan development over many vessels. The annual cost per vessel to major oil companies is estimated to be $6,500 per vessel. However, the small independent operators are not placed at a significant cost disadvantage over larger independent operators, as they have been able to find cost effective means to develop and maintain plans. The cost to small independent vessels owners or operators is estimated to be $6,900 per vessel.

For individual inland tank barge owners or operators, however, the cost per tank barge will vary widely according to the number of barges owned. Large operators are expected to gain economies of scale on a cost-per-barge basis, as they are able to spread the costs of plan development, maintenance, revision, and drills over a larger number of barges. For companies with more than 80 barges, the annual cost is estimated to be less than $2,900 per barge for development and maintenance of the plan, drill costs, and inland response capability. In contrast, the cost for companies with 1 to 9 barges is estimated between $7,500 and $17,300 per barge per year. The wide variance of costs within the inland tank barge industry is a direct result of fleet size.

For fleets of approximately equal size, the annual costs per tank barge is expected to be lower than the annual costs per tank vessel. This is due to a number of factors including reduced drill frequency, no requirement for comprehensive on-board response plans, and the ability to prepare one vessel-specific appendix for a large number of nearly identical barges. Additionally, it is expected that most barge owners or operators will submit one basic plan with separate vessel specific and geographic specific appendices.

The costs for certain fishing vessel and certain towing vessel owners or operators are estimated to be about $1,000 per year. As with other vessels, there would be economies of scale for owners or operators of multiple vessels.

VRP Summary of Benefits

The principal benefit of the vessel response plan requirement is a potential reduction in oil spilled with a corresponding reduction in natural resource damages and cleanup costs. Vessel response plans are expected to influence: Oil outflow volumes when an incident occurs; spill preparedness; and response management. The requirements of the interim final rule should result in: improved notification and communications; quicker mobilization and reduced response times; and clearer procedures and guidelines for onboard transfers, lightering, and towing. The potential benefits of vessel response plans were calculated by conducting detailed analyses of historical cases and by assessing the effectiveness they might have had in reducing outflows, cleanup costs, and damages. This analysis showed that VRPs can be expected to result in environmental improvements ranging from 7 to 22 percent.

Quantifying benefits of avoided natural resource damages associated with the vessel response plan regulations is difficult. The ideal methodology would be to conduct a multiple case study of historical spill data that would include natural resource damage assessments. The results would represent the range of benefits from avoided natural resource damages. This could not be done for two reasons. First, there are a limited number of claims actually settled which established a resource damage and restoration claim. Second, although models and methodologies are being developed which may better quantify natural resource damages, there is a lack of standardized models to do these assessments.

The Coast Guard is undertaking further work to refine and expand its database of oil spill cleanup and damage cost information and is further studying the matter of natural resource damage valuation, which is currently the subject of comprehensive research and evaluation by NOAA. This will facilitate development of more accurate, representative and consistent spill-unit values to serve as the basis for reevaluating benefit estimates in this and other regulatory evaluations undertaken for the implementation of OPA 90.

Public Comments on the Draft VRP RIA

Several comments stated that the VRP requirements cannot be analyzed in isolation of other requirements contained in OPA 90, particularly the double hull requirement. The Coast Guard acknowledges that some of the rules required by sections IV and V of OPA will interact with each other. For example, the beneficial impact of the double hull rule is the reduced amount of oil spilled after certain goundings or collisions. This reduction in the volume of oil spilled may reduce the calculated "cost effectiveness" of vessel response plans for these vessels.

The Coast Guard intends to conduct a comprehensive, programmatic RIA for all title IV and V OPA rules. This comprehensive RIA will evaluate the interaction of the rules relative to each other, and assess their impacts in total. However, since the rules will be developed and issued individually over several years, each rule will undergo an interim evaluation against a baseline that assumes no other OPA 90 requirements are implemented.

Several comments also stated that the RIA did not take into consideration macroeconomic impacts and the fact that current economic market conditions are poor. The RIA considers the costs of this rule on GNP, inflation, employment and balance of payments. It also takes into consideration economic conditions when examining the impact of this rule.

Many comments argued that the RIA underestimated costs. The oil spill response industry is undergoing a significant change as a result of OPA 90. New corporations are emerging in response to these regulations. When new industries develop, costs are initially high as companies gear up and buy new equipment. As demand increases and economies of scale are created, costs tend to drop. For example, the Marine Preservation Association which funds the Marine Spill Response Corporation (MSRC) has reduced its annual dues for vessel owners and operators from $50,000 to $10,000. In addition, the Natural Resource Corporation (NRC) offers vessel owners and operators spill response contracts on a per voyage basis. In the near future, with more companies entering the spill response market, costs of contracting should continue to decline as a result of intensified competition.

Comments noted that the RIA did not capture certain cost elements, including the costs of cap increases in 1998 and 2003, the cost of recruiting, training, and drilling qualified individuals and response teams, the additional costs of NRC, the cost of establishing Great Lakes spill capabilities, and the cost of assessing contractor capability. One comment stated that the cost of company specific table-top drills were underestimated. Another comment stated that the costs to the inland barge industry were underestimated. In response to the comments, additional analysis has been included in the Interim Final RIA to evaluate these costs. Several cost estimates were increased, and incremental costs assumptions were reviewed, in light of additional cost information provided in the comments.

Several comments presented arguments concerning which industry costs should be included in the cost calculations. Several comments argued that costs incurred prior to, but in anticipation of, OPA 90 should be included in the calculations. Others argued that it was incorrect to include costs for response activities that preceded passage of OPA 90. The Coast Guard determined that it was appropriate to include in the RIA those costs that industry spent in anticipation of the rule. The Coast Guard considered that after the Exxon Valdez spill, there was strong sentiment in Congress for developing comprehensive spill prevention regulations, resulting in promulgation of OPA 90. Industry, anticipating this action, took many preliminary actions including the development of MSRC. The Coast Guard could have begun costing this rule using a later date. However, the cost/benefit ratio of this rule is not dependent on where the RIA chose to begin costing. If the cost projections began in a later year, related benefit estimates would be reduced. The ratio of costs to benefits would be relatively unaffected by choice of the year costing begins.

One comment noted that the costs incurred by oil spill cooperatives should be included in the RIA. The interim final RIA has been revised to include the appropriate incremental portion of cooperatives budgets that can be directly accredited to the VRP requirements.

Several comments noted that the RIA did not account for firefighting, salvage and lightering costs. The interim final rule permits the owner or operator of a vessel to meet the firefighting and salvage requirements by obtaining the written consent of the provider before listing the provider in the VRP as an available resource. The interim final rule also permits the owner or operator of a barge which operates on rivers and canals to meet the lightering requirements by obtaining the written consent of the provider. These are changes from the NPRM, which required the more rigorous forms of "contract or other approved means." The interim final RIA concludes that due to competition in the salvage and firefighting industry, salvage and firefighting companies will not charge retainer fees for a listing in a vessel response plan. The interim final rule does not require advance contracting for dedicated lightering vessels. Therefore, the RIA is correct in not including these costs.

Several comments noted that the RIA did not include the costs of dispersants. The interim final rule does not require the owner or operator of a vessel to ensure through contract or other approved means the availability of dispersants. Rather, the identification of dispersants is optional in certain areas where year-round use of dispersants has been approved. Because identification of dispersants is allowed but not required, the cost of dispersants has correctly been omitted from the RIA.

One comment noted that costs are inaccurate because the full impact of the NCP and ACPs on the vessel response plans are unknown. In NVIC No. 8–92, the Coast Guard announced that it will evaluate whether a response plan is consistent with the NCP by using the existing NCP published in 40 CFR part

300. Further, the local oil and hazardous substances contingency plans in effect on August 18, 1992 will be used to evaluate whether or not a response plan submitted to meet the February 18, 1993 deadline is consistent with the ACP. The Coast Guard does not anticipate significant additional costs in making a vessel response plan consistent with the revised NCP and ACPs. However, if there are significant costs, they will be captured in the final RIA.

Several comments stated that the Coast Guard should have considered costs in the determination of "Maximum Extent Possible". As previously discussed in "Section 155.1020 Definitions" the Coast Guard did consider costs in the development of this rule making.

A few comments claimed that the costs of training were underestimated. The Coast Guard has used the best available data on training costs and believes the RIA is accurate.

One comment stated that the costs of revisions of names and phone numbers was not included in the draft RIA. Another comment stated that the costs of making copies were underestimated. It is anticipated that these costs will be small and are adequately captured in the paperwork costs and effort estimates.

Several comments stated that the benefit estimates used in the draft RIA were too low, specifically the natural resource damage assessment (NRDA) estimates. Others stated the NRDA estimates were too high. The interim final RIA does not place a dollar value on the benefits of avoided natural resource damages associated with the vessel response plan regulations. The Coast Guard has determined that there are insufficient data and no standardized models with which to reliably value these benefits. The Coast Guard and NOAA are conducting further research and evaluation to facilitate the development of more accurate, representative and consistent spill-unit values to serve as the basis for reevaluating the benefits estimates.

For purposes of the interim final RIA, benefits have been estimated on the basis of the volume of oil spills prevented. This provides the basis for a "cost effectiveness" analysis rather than a benefit-cost assessment. The Coast Guard and OMB have determined that this is the most appropriate approach until revised NRDA estimates can be developed.

One comment stated that using historical spill data underestimates the benefits of the regulation because the historical costs do not take into consideration the new liability regimes established in FWPCA as amended by OPA 90. As discussed above, there is an ongoing effort to improve the estimation of benefits. Another comment stated that the draft RIA overestimated future spill volumes. The Coast Guard believes using historical spill data is the most accurate method currently available to estimate future spills.

Several comments thought that the effectiveness rates for vessel response plans are too high. The potential benefits of VRPs were quantified by conducting detailed analysis of historical cases and assessing the effectiveness VRPs might have had in reducing outflows, cleanup costs, and damages. This analysis showed that VRPs can be expected to result in environmental improvements ranging from 7 to 22 percent. The interim final RIA used an effectiveness measure of 15 percent. The Coast Guard considers this to be a reasonable measure, based on the best information currently available.

One comment noted that the RIA did not include the benefits of positive job gains in the oil spill recovery industry. The Coast Guard was unable to precisely estimate the number of jobs that will be developed as a result of this rule. To the extent that jobs are in fact being created, this will have a positive effect on employment in some parts of the country.

One comment noted that the time horizons for benefits estimates were too short. The Coast Guard and OMB commonly use a 10 year horizon for the analysis of costs and benefits. The vessel response plan RIA uses a 23 year time horizon. This time horizon was chosen for this rule to coincide with the time horizon used with the double hull rule.

Additional Response Plans Requirements for Certain Vessels Operating in Prince William Sound, Alaska

PWS Industry Profile

Vessel traffic in Prince William Sound is dominated by large crude tankers calling at the Trans-Alaska Pipeline (TAPS) terminal near Valdez, Alaska. The terminal is operated by the Alyeska Pipeline Service Company, a consortium of seven major oil companies. This trade consists of approximately 900 tanker loadings accounting for approximately 700 million barrels of Alaskan North Slope crude annually. However, North Slope oil production is now declining and is expected to continue to drop about 6–7% per year. The vast majority of tankers calling at the TAPs terminal are U.S. flagged, single hulled vessels. The operators are large oil companies, including Alyeska consortium members and independent U.S. vessel operators.

Tankers loading cargo at a TAPS facility are the only vessels subject to the special requirements of section 5005 of OPA 90. The draft RE addressed all tank vessels operating on PWS, including barges and relatively small, single-hull tankships. As previously discussed, the interim final rule now applies only to tankers loading at a TAPS facility. Other vessels have been eliminated from the PWS Industry Profile and subsequent analysis in the interim final RE.

PWS Costs

Over the 10-year period (1993–2002), costs for compliance for TAPS vessels will be $232 million. It is estimated that compliance with section 5005 will cost tankers loading cargo at a TAPs facility an average of $47,000 for each cargo load transferred and transported in the Sound during the 10-year period. This will increase unit cost per barrel by approximately 6 cents (or 0.15 cents per gallon). This small price increase would likely have a negligible impact on this market.

PWS Summary of Benefits

OPA 90 places additional requirements on the spill response capability of tankers loading cargo at a TAPS facility. These added requirements are intended to provide additional response capability to protect the unique, environmentally sensitive area of PWS. Specifically, section 5005 of OPA 90 requires: Prepositioned response equipment; establishment of an oil spill removal organization; training of local citizens and fish hatchery employees in oil spill removal techniques; periodic testing and certification of equipment; and exercises to test the capability of the equipment and trained personnel.

Prepositioned equipment, including escort response vessels, improves the effectiveness of offensive operations (i.e., containment and recovery of oil in the general vicinity of the spill site). Prepositioning serves to put containment and removal capability on scene very rapidly, making the response more effective. It has been estimated that prepositioned equipment alone has the capability of recovering up to 256,000 barrels of crude in the first three days following a spill. Quick recovery of oil from the environment has the effect of reducing the net size of the spill, thereby reducing environmental and other harmful consequences, the amount of the

shoreline threatened, and overall cleanup costs.

Quantified benefits for the TAPs traffic in present value were estimated in total barrels of oil recovered. Oil spillage during the period 1993–2002 is projected to be about 285,000 barrels of crude and is based on spill probabilities for the types of vessels and numbers of movements characteristic of TAPS traffic. Of that spillage, it is estimated that prepositioned equipment can recover nearly 58,000 barrels of oil in the three days following a spill.

There are additional benefits which are not quantifiable. Effectiveness of defense operations is enhanced both by the training of citizens and hatchery employees so they may assist in nearshore and onshore operations, and by prepositioning containment and cleanup equipment near where it would be utilized. Also, area drills are expected to improve the proficiency of both offensive and defensive operations.

For the TAPs traffic, quantified benefits in present value from the regulations are estimated at approximately 42,000 barrels of oil recovered over the 10-year study period. Discounted costs over the same period amount to $164 million. This regulation is therefore expected to cost $3,899 for every barrel of oil recovered.

Public Comments on the Draft PWS RE

Most comments questioned the assumptions underlying the costs and benefits. Many of the comments received on the draft VRP RIA may also be applicable to the PWS RE. Several comments were received on the cost and benefits of extending the requirements of Section 5005 of OPA 90 to Non-Taps vessels. As previously noted, non-TAPs vessels are no longer subject to the additional requirements of Section 5005.

One comment stated that the RE significantly underestimated the cost of compliance by failing to consider the costs of response resources that have been added since 1989 to meet the requirements of Section 5005 of OPA 90 and similar legislation in Alaska. Two comments stated that the cost associated with a proposed regulation should be measured from the time of the rule, not from an earlier point, and that the cost that should be assessed to Section 5005 are those that will be incurred after the rules are finalized. As previously discussed in the public comments regarding the VRP RIA, the Coast Guard has included in the RE those costs that industry spent after the Exxon Valdez spill in anticipation of the rule.

One comment stated that the RE has obscured an accurate cost-benefit analysis by including the cost of existing prepositioned response equipment already required by State law and already procured by PWS vessel operators. This comment stated that the costs of implementing the regulations for Section 5005 should be zero because the Federal regulations would impose no additional major expenses to private business beyond what has already been incurred. Another comment argued that no costs should be attributed to the Federal regulations because of the existence of the State of Alaska's regulations.

There is no guarantee that Alaska's state laws will not be amended or repealed in the future. If the Coast Guard were to regard the OPA 90 requirements as having no costs, because of already implemented State response programs, then it would also have to conclude there are no benefits, either. Therefore, the Coast Guard does not agree that the costs should be decreased.

One comment noted that the draft RE did not consider the human health effects in PWS including the psychological and social effects on the community. There are no specific costs and the Coast Guard was unable to quantify these benefits. To the extent that this rule would improve human health, the identifiable benefits would thus outweigh costs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard has considered whether this interim final rule would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This evaluation was carried out as part of the Interim Final RIA and the Interim Final RE for this interim final rule. Copies are available in the docket for inspection or copying where indicated under "ADDRESSES."

Small Entity Impact of Vessel Response Plans

The impact of vessel response plan requirements will be distributed differently across various sectors of the U.S. waterborne oil transportation industry. There are a number of companies meeting the definition of a small business operating in each sector of the industry.

Some small owners or operators of international flag tankers, which call infrequently in U.S. waters, may choose to discontinue U.S. trade. However, they will be able to use their vessels in other trades. The requirements are not expected to place more burdensome financial strains on these operators than on larger independent operators.

Small operators of coastal tankers and tank barges will incur a minor competitive disadvantage versus larger operators. However, the requirement for a response plan, by itself, should not force these companies to exit the business.

These regulations may impact noticeably on small operators of inland barges. The cost to develop plans for the inland barge fleet is considerably lower than for coastal barges. However, costs spread over one or two barges in an individual firm's fleet may comprise a comparatively higher percentage of the total cost of operating these barges. This regulation may further contribute to the current consolidation taking place within this industry. The Coast Guard anticipates that many of these smaller operators will share the costs of plan development on an industry-wide basis, thus reducing their individual costs.

The annual cost of compliance for certain fishing vessels and towing vessels that carry oil in bulk as a secondary cargo is expected to be approximately $1,000. Although the cost per gallon of oil carried as cargo may be relatively high, the total annual cost is relatively small. A number of these operators (particularly of tug/tow boats) may cease to carry oil in bulk as cargo. This would not necessarily prevent them from continuing to operate in their capacity as tug/tow boats. The interim final rule subjects these vessels to reduced requirements in accordance with the recommendation of the Negotiated Rulemaking Committee. It is estimated that the costs to meet these reduced response plan requirements for secondary carriers is 10 percent of the cost to meet the comprehensive standards if the latter were required.

Although the Initial Regulatory Flexibility Analysis indicates that some small businesses may be impacted, the Coast Guard believes that the existing exemption provisions contained in § 155.130 will minimize the impact on small entities. Section 155.130 allows for exemptions or partial exemptions from compliance with any requirement in 33 CFR 155 if among other things, compliance with a specific requirement is economically impractical. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Public Comments With Respect to Small Entities

Several vessel owners on the Great Lakes stated that small businesses would be disproportionately impacted because of the small number of vessel owners available on the Great Lakes to share the costs of supporting the needed oil spill response infrastructure. This situation is aggravated by the large size and relative remoteness of the Great Lakes, and the lack of a preexisting oil spill response network prior to the passage of OPA 90. Several comments were also received from the asphalt industry located on the Great Lakes who stated that the cost of the VRP requirements may require them to abandon the use of small barges to transport asphalt. It is believed that some of the affected barge owners would fall within the classification of small entities.

After considering all comments received on the NPRM, we reassessed our proposed requirements for the Great Lakes. As a result, the interim final rule has been revised to lower the planning requirements for vessels carrying groups I through IV petroleum oil as a primary cargo on the Great Lakes. The worst case discharge caps have been reduced by 50 percent and the corresponding response times have been increased by 6 hours.

The interim final rule also establishes unique planning criteria for vessels carrying group V oil as a primary cargo. The planning requirements for group V oils, which includes asphalt, take into consideration the unique characteristics of these oils and also recognizes that existing response capabilities for these oils are not as well developed as for other oil groups. Caps do not apply to Group V oils. Additionally, most of the required response equipment can be identified in the VRP with the written consent of the provider, eliminating the more costly types of "contract or other approved means". Most of the equipment that must be identified must only be capable of being deployed with 24 hours of discovery of the spill to the nearest port, rather than being on-scene within a shorter time frame.

Taken collectively, the Coast Guard believes that these changes to the interim final rule will reduce at least partly the burden on small entities operating within the Great Lakes. For those vessel owners and operators who still find it physically or economically impracticable to comply with the VRP regulations, they will be permitted under 33 CFR 155.130 to request a compliance exemption from portions of the requirements.

A number of comments were concerned that the cost of the VRP requirements for vessels operating in remote areas might be prohibitively high. The identified areas include the Aleutian Islands and other areas of Alaska, Guam, American Samoa, and other remote areas in the Pacific. It is believed that a number of the vessel owners operating in these remote areas are small entities. As noted above, these small entities will be permitted under 33 CFR 155.130 to request a compliance exemption from portions of the requirements.

Small Entity Impact of Additional Response Plan Requirements for Certain Vessels Operating in Prince William Sound, Alaska

Many operators of TAPS vessels are subsidiaries of large, integrated petroleum companies, such as ARCO Marine, Chevron Shipping, and Exxon Shipping. While other operators are independent ocean carriers, none could be identified whose current employment (including that of corporate affiliates) was below the 500-employee threshold used by the Small Business Administration for identification of small enterprises in deep-sea freight transportation.

Because it expects the impact of section 5005 of OPA 90 to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection of information requirements. The Coast Guard has 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 has approved them. The OMB approvals for each subpart of the interim final rule are discussed separately.

Subpart D Vessel Response Plans

The section numbers are §§ 155.1025, 155.1035, 155.1045, 155.1055, 155.1060, 155.1065, and 155.1070, and the corresponding OMB Control Number 2115–0595. This is a provisional approval which expires on September 30, 1993. The Coast Guard has made several changes to the interim final rule that will reduce the information collection burdens. These changes have been discussed in the preamble. The Coast Guard will consider comments received in response to the interim final rule and may further revise the final rule to reduce the paperwork burden. Final approval will be obtained from OMB prior to publication of the final rule.

As indicated elsewhere in the preamble, commenters submitted extensive comments on the paperwork burden in the rule to OMB and to the docket. Many commenters believe that the paperwork cost burdens were underestimated and as a result, the interim final RIA currently estimates approximately $29 million in initial year costs to the industry (approximately 10 percent of the total first year costs).

Given the statutory deadline for February 18, 1993, it has been difficult to assess the validity of all comments received that would serve to balance the cost of reporting and recordkeeping against the practical utility of the information to the Coast Guard for plan review and by affected companies and individuals in responding to discharges. Many commenters, for example, questioned the usefulness of detailed information required in initial response plans—the detailed list in § 154.1035 of equipment by location, make, model, and effectively daily recovery rates, for example. Where such requirements have been retained in this interim final rule, the Coast Guard believes the information is essential in order to evaluate objectively the adequacy of a response plan. However, the Coast Guard is also working to set in place supplementary procedures that could reduce some of these requirements. To this end, on December 4, 1992, it promulgated Navigation and Vessel Inspection Circular (NVIC) 12–92 entitled, "Guidelines for the Classification and Inspection of Oil Spill Removal Organizations (OSROs)."

There may be cases where owners or operators submitting response plans will not have adequate information regarding the oil spill removal organization(s) or the private personnel and equipment or both by February 18, 1993, to meet all the specific requirements in this interim final rule. In the initial submittal, they should acknowledge what information is lacking, explain why, and request a waiver with regard to submittal of such information. Upon good cause shown in the waiver request, the Coast Guard may grant a waiver for a reasonable period, not to extend beyond August 18, 1993, for submittal of information regarding the oil spill removal organization(s) or the private personnel and equipment or both.

Where owners or operators believe the existing information burdens continue to be unduly burdensome, the Coast Guard actively solicits comments and

suggestions for further amendments that will reduce information collection burdens while meeting the requirements of OPA 90 and the need for adequate information for plan review and discharge response.

Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under "ADDRESSES".

Subpart E Additional Requirements for Certain Vessels Operating in Prince William Sound, Alaska

The section numbers are §§ 155.1125 and 155.1130, and the corresponding OMB Control Number 2115–0594.

As discussed in the "Regulatory History" section of the preamble the additional requirements for PWS now apply only to tankers loading cargo at a TAPs facility. Non-Taps vessels are no longer subject to these additional requirements. As a result, only one oil spill removal organization will be required to provide the additional requirements of this subpart. The effect on the Collection of Information Requirements is a reduction in the number of respondents from 2 to 1, and a reduction in the overall burden estimate. The Coast Guard has submitted a revised collection of information request to OMB reflecting this reduced burden.

Federalism

The Coast Guard has analyzed this interim final rule according to the principles and criteria contained in Executive Order 12612 (Federalism, October 26, 1987), and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Coast Guard received four letters addressing the issue of State-Federal jurisdiction in oil spill contingency planning.

Four comments expressed concern that State planning requirements may overlap, be inconsistent with, or be more stringent than Federal requirements; and encouraged the Coast Guard either to evaluate Federal and State regulations periodically for consistency so that there would not be "conflicting" requirements, or prepare a Federalism Assessment to address issues arising from concurrent State and Federal jurisdiction. The Federalism Executive Order and the FWPCA emphasize the President's and Congress's 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 vessel response plan rules 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's intent that, within three miles of shore, the protection of the marine environment should be a collaborative Federal and State effort. *Chevron et al* v. *Hammond, Governor of the State of Alaska et al,* 726 F2d 483, cert. den., 471 U.S. 1140, 105 S.Ct. 2686 (9th Cir. 1984). For example, section 402 of the statute (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. sections 1342(b), 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, at 164, 98 S.Ct. 988, at 997 (1973) (citations omitted). Also, section 311(o)(3) of the FWPCA contains express nonpreemption language. Therefore, a State standard setting more stringent planning requirements for tank vessel owners and operators in the regulating State's waters 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 vessel response plan rules would not preclude that option. The Federal vessel 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, 83 S.Ct. 1210 (1963).

Two comments asked us to make it clear that the Federal On Scene Coordinator has ultimate authority to direct a Federally-managed spill response. Because we do not address performance criteria in the event of an actual response, this issue is beyond the scope of the vessel response plan rulemaking. The subject is better raised in the context of the Coast Guard and Environmental Protection Agency efforts to revise the National Contingency Plan.

One comment expressed concern that although the Coast Guard intends the vessel response plan rules to set out planning standards, a State may make the standard a performance standard. The comment cites § 88.46.070 Revised Code of Washington (West 1992) as an example of a State statute that allows the State to compel specific performance from an owner or operator under the Federal plan. The Washington State law says that any State-approved prevention or contingency plan is legally binding on the persons submitting it, and may be enforced in the State courts. The interpretation of Washington State laws and regulations is a matter for judicial resolution and is outside the scope of these regulations.

One comment noted that its existing response plans cost approximately $3,400 per vessel, that the State of Virginia charged $3,353 for plan review, and that a State review should be unnecessary once a plan is approved at the Federal level. The Coast Guard has addressed the cost of the vessel response plan rules in its Regulatory Impact Analysis. We note, however, that Congress has encouraged a State-Federal partnership regarding oil pollution prevention and response, and that the Coast Guard has not proposed a user fee for review of Federal response plans.

Environment

The Coast Guard prepared a preliminary Environmental Assessment (EA) for requirements under 311(j) of the FWPCA, and a separate one for Prince William Sound requirements under 5005. 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 Prince William Sound EA was revised entirely when section 352 of the Department of Transportation Appropriations Act dated 6 October 1992, in effect, 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 William Sound, including non-TAPS vessels. The EA prepared for 311(j) requirements was amended when section 5209(b) of the Coast Guard Authorization Act of 1992 date 4 November 1992, declared offshore supply vessels and certain fishing vessels not to be "tank vessels" for purposes of implementing the vessel response plan rule. We received no comments on the EAs.

The Coast Guard has identified and studied the relevant environmental issues and alternatives, and based on its assessment, does not expect this interim 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. They will be revised if necessary based on the final rule.

List of Subjects in 33 CFR Part 155

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

For the reasons discussed in the preamble, the U.S. Coast Guard amends 33 CFR part 155 as follows:

1. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. §§ 155.100–155.130, 155.350–155.400, 155.430, 155.440, 155.470, and 155.1010–155.1070 also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

2. Section 155.140 is added to subpart A of part 155 to read as follows:

§ 155.140 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Marine Environmental Protection Division (G-MEP), room 2100, 2100 Second Street, SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

American Society for Testing and Materials (ASTM) 1916 Race Street, Philadelphia, PA 19103.

ASTM F 631–80 (Reapproved 1985), Standard Method for Testing Full Scale Advancing Spill Removal Devices.	Appendix B.
ASTM F 715–81 (Reapproved 1986), Standard Methods of Testing Spill Control Barrier Membrane Materials.	Appendix B.
ASTM F 808–83 (1988), Standard Guide for Collecting Skimmer Performance Data in Uncontrolled Environments.	Appendix B.
ASTM F 989–86, Standard Test Methods for Spill Control Barrier Tension Members.	Appendix B.

Oil Companies International Marine Forum (OCIMF) 6th Floor, Portland House, Stag Place, London SW1E 5BH England.

Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988	155.1035

3. Part 155 is amended by adding new subparts D and E to read as follows:

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

* * * * *

Subpart D—Response Plans

Sec.

155.1010 Purpose.
155.1015 Applicability.
155.1020 Definitions.
155.1025 Operating restrictions and interim operating authorization.
155.1026 Qualified individual and alternate qualified individual.
155.1030 General response plan requirements.
155.1035 Resonse plan requirements for manned vessels carrying oil as a primary cargo.
155.1040 Response plan requirements for unmanned tank barges carrying oil as a primary cargo.
155.1045 Response plan requirements for vessels carrying oil as a secondary cargo.
155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.
155.1052 Response plan development and evaluation criteria for vessels carrying group V petroleum oil as a primary cargo.
155.1054 Response plan development and evaluation criteria for vessels carrying non-petroleum oil as a primary cargo.
155.1055 Training.
155.1060 Drills.
155.1062 Inspection and maintenance of response resources.
155.1065 Plan submission, approval, and appeal procedures.
155.1070 Plan review, revision, amendment, and appeal procedures for vessels carrying oil as a primary cargo.

Subpart E—Additional Response Plan Requirements for Tankers Loading Cargo at a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

Sec.

155.1110 Purpose and applicability.
155.1115 Definitions.
155.1120 Operating restrictions and interim operating authorization.
155.1125 Additional response plan requirements.
155.1130 Requirements for prepositioned response equipment.
155.1135 Response plan development and evaluation criteria.
155.1140 Tankers contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act.
155.1145 Submission and approval procedures.
155.1150 Plan revision and amendment procedures.

Subpart D—Response Plans

§ 155.1010 Purpose.

The purpose of this subpart is to establish requirements for oil spill response plans for certain vessels. The planning criteria in this subpart are intended for use in response plan development and the identification of resources necessary to respond to the oil spill scenarios prescribed during the planning process. The development of a response plan prepares the vessel owner or operator and the vessel's crew to respond to an oil spill. The specific criteria for response resources and their arrival times are not performance standards. They are planning criteria based on a set of assumptions that may not exist during an actual oil spill incident.

§ 155.1015 Applicability.

(a) Except as provided in paragraph (c) of this section, this subpart applies to each vessel that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that—

(1) Is a vessel of the United States;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil in a port or place subject to the jurisdiction of the United States.

(b) This subpart also applies to vessels which engage in oil lightering operations in the marine environment beyond the baseline from which the territorial sea is measured, when the cargo lightered is destined for a port or

place subject to the jurisdiction of the United States.

(c) This subpart does not apply to the following types of vessels:

(1) Public vessels and vessels deemed public vessels under 14 U.S.C. 827.

(2) Vessels that, although constructed or adapted to carry oil in bulk as cargo or cargo residue, are not storing or carrying oil in bulk as cargo or cargo residue.

(3) Dedicated response vessels when conducting response operations in a response area.

(4) Vessels of opportunity.

(5) Offshore supply vessels as defined in 46 U.S.C. 2101.

(6) Fishing or fishing tender vessels as defined in 46 U.S.C. 2101 of not more than 750 gross tons that transfer oil in bulk, without charge, to a fishing vessel owned by the same person who owns the transferring vessel.

(7) Foreign flag vessels engaged in innocent passage.

(d) Vessels of the United States covered by this subpart that are not operating within the navigable waters or the exclusive economic zone of the United States must meet all requirements of this subpart except for—

(1) Identifying and ensuring, through contract or other approved means, the availability of response resources including the shore based spill management team;

(2) Providing the geographic-specific appendices required in §§ 155.1035, 155.1040, or 155.1045, as appropriate;

(3) Identifying and designating a qualified individual and alternate qualified individual required in § 155.1026.

(e) A foreign flag vessel transiting internal waters of the United States en route to or from a Canadian port is not required to have a United States approved vessel response plan if the vessel—

(1) Is not conducting lightering or other oil transfer operations;

(2) Is not proceeding to or from a United States port or place;

(3) Submits to the United States Coast Guard a vessel response plan which has been approved by the Canadian Government under criteria which are substantially similar to those contained in this subpart; and

(4) Certifies in writing to the United States Coast Guard that—

(i) The Canadian Government has approved the plan;

(ii) The plan covers all geographic areas in the United States in which the vessel intends to transport oil in bulk as cargo; and

(iii) The identified spill response resources are capable and available to respond to a discharge of oil in United States waters.

§ 155.1020 Definitions.

Except as otherwise defined in this section, the definitions in § 155.110 apply to this subpart. For the purposes of this subpart only, the term:

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 significant wave height, ice, temperature, weather-related visibility, and currents within the Captain of the Port (COTP) zone in which the systems or equipment are intended to function.

Average most probable discharge means a discharge of 50 barrels of oil from the vessel during oil transfer operations.

Bulk means any volume of oil carried in an integral tank of the vessel and oil transferred to or from a marine portable tank or independent tank while on board a vessel.

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

Cargo means oil that is transported to and off-loaded at a destination by a vessel. It does not include—

(1) Oil carried in integral tanks, marine portable tanks, or independent tanks for use by machinery, helicopters, and boats carried aboard the vessel, or for use by helicopters that are directly supporting the vessel's primary operations; or

(2) Oil transferred between a towing vessel and a vessel in its tow to operate installed machinery.

Contract or other approved means includes—

(1) A written contractual agreement between a vessel owner or operator and 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 vessel owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the vessel 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 response 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) With the written consent of the oil spill removal organization, the identification of an oil spill removal organization with specified equipment and personnel which are available within stipulated response times in the specified geographic areas. This paragraph is another approved means only for—

(i) A vessel carrying oil as secondary cargo to meet the requirements under § 155.1045(j)(3);

(ii) A barge operating on rivers and canals to meet the requirements for lightering capability under §§ 155.1050(m), 155.1052(g), and 155.1054(g);

(iii) A vessel to meet the salvage and firefighting requirements in §§ 155.1050(l), 155.1052(f), and 155.1054(f); and

(iv) A vessel to meet the resource requirements in §§ 155.1052(c) and 155.1054(c).

Dedicated response vessel means a vessel whose service is limited exclusively to oil and hazardous substance spill response-related activities, including spill recovery and transport, response-related escorting, deployment of spill response equipment, supplies, and personnel, and spill response-related training, testing, drills, and research.

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

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 an area specified in § 155.1050(h).

Inland area means the area shoreward of the boundary lines defined in 46 CFR

part 7, except that in the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) as defined in §§ 80.740 through 80.850 of this chapter. The inland area does not include the Great Lakes or rivers and canals.

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 criteria in this subpart or in a specific plan approved by the Coast Guard.

Maximum most probable discharge means a discharge of—

(1) 2,500 barrels of oil for vessels with an oil cargo capacity equal to or greater than 25,000 barrels; or

(2) 10% of the vessel's oil cargo capacity for vessels with a capacity of less than 25,000 barrels.

Nearshore area means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico, it means the area extending seaward 12 miles from the line of demarcation (COLREG lines) as defined in §§ 80.740 through 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% of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(2) At least 95% of which by volume, distill at a temperature of 370 degrees C (700 degrees F).

Non-petroleum oil means oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils.

Ocean means the open ocean, offshore area, and nearshore area as defined in this subpart.

Offshore area means the area up to 38 nautical miles seaward of the outer boundary of the nearshore area.

Oil spill removal organization means an entity that provides response resources.

On-scene coordinator or OSC means the Federal official predesignated by the Coast Guard or Environmental Protection Agency to coordinate and direct Federal removal efforts at the scene of an oil or hazardous substance discharge as prescribed in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) as published in 40 CFR part 300.

Open ocean means the area from 38 nautical miles seaward of the outer boundary of the nearshore area, to the seaward boundary of the exclusive economic zone.

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.

Operator or vessel operator means any person, including, but not limited to, an owner or a demise charterer, responsible for operation of a vessel. The operator of a towing vessel is not, per se, considered the operator of a vessel being towed.

Owner or vessel owner means any person holding legal or equitable title to a vessel; provided, however, that a person holding legal or equitable title to a vessel solely as security is not the owner. In a case where a Certificate of Documentation has been issued, the owner is the person or persons whose name or names appear on the vessel's Certificate of Documentation provided, however, that where a Certificate of Documentation has been issued in the name of a president or secretary of an incorporated company under 46 U.S.C. 15, such incorporated company is the owner.

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 less than .85.

(2) Group III—specific gravity between .85 and less than .95.

(3) Group IV—specific gravity .95 to and including 1.0.

(4) Group V—specific gravity greater than 1.0.

Qualified individual alternate qualified individual means a shore-based representative of a vessel owner or operator who meets the requirements of 33 CFR 155.1026.

Response area means the area designated by the Federal On-Scene Coordinator in which spill response activities are occurring.

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 bodies of water confined within the outer boundaries of the inland area, including the Intracoastal Waterways and other waterways artificially created for navigation, that have a project depth of 12 feet or less.

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 such a discharge means any incident involving a vessel that may create a significant risk of discharge of cargo oil. Such incidents include, but are not limited to groundings, standings, collisions, hull damage, fire, explosion, loss of propulsion, flooding, on-deck spills, or other similar occurrences.

Tanker means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

Vessels carrying oil as a primary cargo means all vessels except dedicated response vessels carrying oil in bulk as cargo or cargo residue that have a Certificate of Inspection issued under 46 CFR subchapter D, Certification of Compliance, or Tank Vessel Examination Letter.

Vessels carrying oil as a secondary cargo means vessels, other than vessels carrying oil as a primary cargo, carrying oil in bulk as cargo or cargo residue pursuant to a permit issued under 46 CFR subchapter D (30.01–5), 46 CFR subchapter H (70.50–30), or 46 CFR subchapter I (90.05–35), an International Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35; a dedicated response vessel carrying oil as cargo outside a response area; or any uninspected vessel that carries oil in bulk as cargo or cargo residue.

Vessel of opportunity means a vessel engaged in spill response activities that is normally and substantially involved in activities other than spill response and not a vessel carrying oil as a primary cargo.

Worst case discharge means a discharge in adverse weather conditions of a vessel's entire oil cargo.

§ 155.1025 Operating restrictions and interim operating authorization.

(a) Beginning on February 19, 1993, the owner or operator of each vessel to which this subpart applies shall submit or have submitted a response plan meeting the requirements of § 155.1030 prior to—

(1) Handling, storing, or transporting oil on the navigable waters of the United States;

(2) Transferring oil in any other port or place subject to U.S. jurisdiction; or

(3) Engaging in lightering operations in the marine environment beyond the baseline from which the territorial sea is measured, when the cargo lightered is destined for a port or place subject to the jurisdiction of the United States.

(b) Beginning on August 19, 1993, vessels subject to this subpart may not perform the functions listed in paragraph (a) of this section unless operating in compliance with a plan approved under § 155.1065.

(c) Notwithstanding the requirements of paragraph (b) of this section, a vessel may continue to handle, store, transport, transfer, or lighter oil for 2 years after the date of submission of a response plan, pending approval of that plan, if the vessel owner or operator has received written authorization for continued operations from the U.S. Coast Guard. To receive this authorization, the vessel owner or operator must certify in writing to the U.S. Coast Guard that the owner or operator has identified and ensured the availability of, through contract or other approved means, the necessary private response resources to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel as described in §§ 155.1050, 155.1052, or 155.1054, as appropriate.

(d) With respect to paragraph (c) of this section, a vessel may not continue to handle, store, transport, transfer, or lighter oil if—

(1) The U.S. Coast Guard determines that the response resources identified in the vessel's certification statement do not meet the requirements of this subpart;

(2) The contracts or agreements cited in the vessel's certification statement are no longer valid;

(3) The vessel is not operating in compliance with the submitted plan; or

(4) The period of this authorization expires.

(e) An owner or operator of a vessel may be authorized by the applicable COTP to have that vessel make one voyage to transport or handle oil in a port not covered by the vessel's response plan. All requirements of this subpart must be met for any subsequent voyages to that port. To be authorized, the vessel owner or operator shall certify to the COTP in writing, prior to the vessel's entry into the COTP zone, that—

(1) A response plan meeting the requirements of this subpart (except for the applicable geographic specific appendix) or a shipboard oil pollution emergency plan approved by the flag state that meets the requirements of Regulation 26 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78), is aboard the vessel;

(2) The vessel owner or operator has identified and informed the vessel master and the COTP of the designated qualified individual prior to the vessel's entry into the COTP zone; and

(3) The vessel owner or operator has identified and ensured the availability of, through contract or other approved means, the private response resources necessary to respond, to the maximum extent practicable under the criteria in §§ 155.1050, 155.1052, or 155.1054, as appropriate, to a worst case discharge or substantial threat of discharge from the vessel in the applicable COTP zone.

§ 155.1026 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.

(b) The qualified individual and alternate—

(1) speak fluent English;

(2) Except as set out in paragraph (c) of this section, be located in the United States;

(3) Be available on a 24-hour basis;

(4) Be familiar with the implementation of the vessel response plan; and

(5) Be trained in the responsibilities of the qualified individual under the response plan.

(c) For Canadian flag vessels while operating on the Great Lakes or the Strait of Juan de Fuca and Puget Sound, WA, the qualified individual may be located in Canada if he or she meets all other requirements in paragraph (b) of this section.

(d) 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.

(e) The owner or operator of a vessel may designate an organization to fulfill the role of the qualified individual and 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 vessel owner or operator is required to list in the response plan the organization, the person identified as the qualified individual, the person or persons identified as the alternate qualified individual(s).

(f) 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 full authority contained in their designation from the owner or operator of the vessel.

(g) The liability of a qualified individual is considered to be in accordance with the provisions of 33 U.S.C. 1321(c)(4).

§ 155.1030 General response plan requirements.

(a) The plan must cover all geographic areas of the United States in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas.

(b) The plan must be written in English and, if applicable, in a language that is understood by the crew members with responsibilities under the plan.

(c) A response plan for a vessel carrying oil as a primary or a secondary cargo under §§ 155.1035 and 155.1045 and a response plan for an unmanned tank barge under § 155.1040 must be divided into the following sections:

(1) General information and introduction.

(2) Notification procedures.

(3) Shipboard spill mitigation procedures.

(4) Shore-based response activities.

(5) List of contacts.

(6) Training procedures.

(7) Drill procedures.

(8) Plan review and update procedures.

(9) Onboard notification checklist and emergency procedures (unmanned tank barges only).

(10) Geographic-specific appendix for each COTP zone in which the vessel operates.

(11) For vessels carrying oil as a primary cargo and unmanned tank barges, an appendix for vessel-specific information for each vessel covered by the plan.

(d) A vessel owner or operator with multiple vessels may submit one plan with a separate vessel-specific appendix for each vessel covered by the plan and a separate geographic-specific appendix for each COTP zone in which the vessel(s) will operate.

(e) The required contents for each section of the plan are contained in §§ 155.1035, 155.1040, and 155.1045 as applicable to the type or service of the vessel.

(f) The response plan for a dedicated response vessel operating outside of the response area must follow the same format as that for a vessel carrying oil as a secondary cargo under § 155.1045.

(g) A response plan must be divided into the sections described in paragraph (c) of this section unless the plan was submitted on or before February 18, 1993. A plan submitted on or before February 18, 1993 that is not divided into the sections described in paragraph (c) of this section must be supplemented with a cross-reference table to identify the location of the information required by this subpart.

(h) The information contained in a response plan must be consistent with the—

(1) National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) in effect on the date six months prior to the submission date of the response plan; or

(2) More recent NCP and ACP(s).

(i) Copies of the submitted and approved response plan must be available as follows:

(1) The owner or operator of all vessels, except for unmanned tank barges, shall ensure that one English language copy of the plan sections listed in paragraph (c) (1), (2), (3), (5), (10) and (11) of this section and the U.S. Coast Guard approval letter are maintained aboard the vessel. If applicable, additional copies of the required plan sections must be in the language understood by crew members with responsibilities under the plan and maintained aboard the vessel. The owner or operator of all unmanned tank barges shall ensure that one English language copy of the plan section listed in paragraph (c)(9) of this section and the U.S. Coast Guard approval letter are maintained aboard the barge.

(2) The vessel owner or operator shall maintain a current copy of the entire plan, and ensure that each person identified as a qualified individual and alternate qualified individual in the plan has a current copy of the entire plan.

(j) An owner or operator may address the provisions of Regulation 26 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL) if the owner or operator—

(1) Develops a vessel response plan under § 155.1030 and §§ 155.1035, 155.1040, or 155.1045 of subpart D, as applicable;

(2) Expands the plan to cover discharges of all oils defined under MARPOL, including fuel oil (bunker) carried onboard. The owner or operator is not required to include these additional oils in calculating the planning volumes that are used to determine the quantity of response resources that the owner or operator must ensure through contract or other approved means;

(3) Provides the information on authorities or persons to be contacted in the event of an oil pollution incident as required by Regulation 26. This information must include—

(i) An appendix containing coastal State contacts for those coastal States the exclusive economic zone of which the vessel regularly transits. The appendix should list those agencies or officials of administrations responsible for receiving and processing pollution incident reports; and

(ii) An appendix of port contacts for those ports at which the vessel regularly calls; and

(4) Expands the plan to include the procedures and point of contact on the ship for coordinating shipboard activities with national and local authorities in combating an oil spill incident. The plan should address the need to contact the coastal State for authorization prior to undertaking mitigating actions.

§ 155.1035 Response plan requirements for manned vessels carrying oil as a primary cargo.

(a) *General information and introduction.* This section of the response plan must include—

(1) The vessel's name, country or registry, call sign, and official number. If the plan covers multiple vessels, this information must be provided for each vessel;

(2) The name, address, and procedures for contacting the vessel's owner or operator on a 24-hour basis;

(3) A list of the COTP zones in which the vessel intends to handle, store, or transport oil;

(4) A table of contents or index of sufficient detail to permit personnel with responsibilities under the response plan to locate the specific sections of the plan; and

(5) A record of change(s) page to record information on plan reviews, updates or revisions.

(b) *Notification procedures.* This section of the response plan must include the following notification information:

(1) A checklist with all notifications in order of priority to be made by shipboard or shore-based personnel and the information required for those notifications. Notifications must include those required by—

(i) MARPOL 73/78 and 33 CFR part 153; and

(ii) Any applicable State.

(2) Identification of the person(s) to be notified of a discharge or substantial threat of a discharge of oil. If the notifications vary due to vessel location, the persons to be notified also must be identified in a geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by shipboard personnel; and

(ii) The individual(s) or organization(s) to be notified by shore-based personnel.

(3) The procedures for notifying the qualified individual(s) designated by the vessel's owner or operator.

(4) Descriptions of the primary and, if available, secondary communications methods by which the notifications will be made.

(5) The information that is to be provided in the initial and any followup notifications required by paragraph (b)(1) of this section.

(i) The initial notification may be submitted in accordance with IMO Resolution A648(16) "General Principles for Ship Reporting Systems and Ship Reporting Requirements". It must include at least the following information:

(A) Vessel name, country of registry, call sign, and official number (if any);

(B) Date and time of the incident;

(C) Location of the incident;

(D) Course, speed, and intended track of vessel;

(E) Radio station(s) and frequencies guarded;

(F) Date and time of next report;

(G) Type and quantity of oil onboard;

(H) Nature and detail of defects, deficiencies, and damage (e.g. grounding, collision, hull failure, etc.);

(I) Details of pollution, including estimate of oil discharged or threat of discharge;

(J) Weather and sea conditions on scene;

(K) Ship size and type;

(L) Actions taken or planned by persons on scene;

(M) Current conditions of the vessel; and

(N) Number of crew and details of injuries, if any.

(ii) After the transmission of the initial notification, as much as possible of the information essential for the protection of the marine environment as is appropriate to the incident must be reported in a follow-up report. This information must include—

(A) Additional details on the type of cargo onboard;

(B) Additional details on the condition of the vessel and ability of transfer cargo, ballast, and fuel;

(C) Additional details on the quantity, extent and movement of the pollution

and whether the discharge is continuing;

(D) Any changes in the on-scene weather or sea conditions; and

(E) Actions being taken with regard to the discharge and the movement of the ship.

(6) Identification of the person(s) to be notified of a vessel casualty potentially affecting the seaworthiness of a vessel and the information to be provided by the vessel's crew to shore-based personnel to facilitate the assessment of damage stability and stress.

(c) *Shipboard spill mitigation procedures.* This section of the response plan must include—

(1) Procedures for the crew to mitigate or prevent any discharge or a substantial threat of such discharge of oil resulting from shipboard operational activities associated with internal or external cargo transfers. Responsibilities of vessel personnel should be identified by job title. These procedures must address personnel actions in the event of a—

(i) Transfer system leak;

(ii) Tank overflow; or

(iii) Suspected cargo tank or hull leak;

(2) Procedures in the order of priority for the crew to mitigate or prevent any discharge or a substantial threat of such a discharge in the event of the following casualties or emergencies:

(i) Grounding or stranding.

(ii) Collision.

(iii) Explosion or fire, or both.

(iv) Hull failure.

(v) Excessive list.

(vi) Equipment failure (e.g. main propulsion, steering gear, etc.).

(3) Damage stability and hull stress considerations when performing shipboard mitigation measures. This section must identify and describe—

(i) Activities in which the crew is trained and qualified to execute absent shore-based support or advice; and

(ii) The information to be collected by the vessel's crew to facilitate shore-based assistance;

(4) Location of vessel plans necessary to perform salvage, stability, and hull stress assessments. A copy of these plans must be maintained ashore by either the vessel owner or operator or the vessel's recognized classification society unless the vessel has prearranged for a shore-based damage stability and residual strength calculation program with the vessel's baseline strength and stability characteristics pre-entered. The response plan must indicate the shore location and 24-hour access procedures of the calculation program or the following plans:

(i) General arrangement plan.

(ii) Midship section plan.

(iii) Lines plan or table of offsets.

(iv) Tank tables.

(v) Load line assignment.

(vi) Light ship characteristics;

(5) The procedures for both internal and ship-to-ship transfers of cargo in an emergency:

(i) The format and content of the ship-to-ship transfer procedures must be consistent with the Ship to Ship Transfer Guide (Petroleum) published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF).

(ii) The procedures must identify the response resources necessary to carry out the transfers, including—

(A) Fendering equipment (ship-to-ship only);

(B) Transfer hoses and connection equipment;

(C) Portable pumps and ancillary equipment;

(D) Lightering and mooring masters (ship-to-ship only); and

(E) Vessel and barge brokers (ship-to-ship only).

(iii) Reference can be made to a separate oil transfer procedure and lightering plan carried aboard the vessel, provided that safety considerations are summarized in the response plan.

(iv) The location of all equipment and fittings, if any, carried aboard the vessel to perform such transfers must be identified;

(6) The procedures and arrangements for emergency towing, including the rigging and operation of any emergency towing equipment aboard the vessel;

(7) The location, crew responsibilities, and procedures for use of shipboard equipment which may be carried to mitigate an oil discharge;

(8) The crew responsibilities, if any, for recordkeeping and sampling of spilled oil. Any requirements for sampling must address safety procedures to be followed by the crew; and

(9) The crew's responsibilities, if any, to initiate a response and to supervise shore-based response resources.

(d) *Shore-based response activities.* This section of the response plan must include the following information:

(1) The qualified individual's responsibilities and authority, including immediate communication with the Federal OSC and notification of the oil spill removal organization(s) identified in the plan.

(2) If applicable, procedures for transferring responsibility for direction of response activities from vessel personnel to the shore-based spill management team.

(3) The procedures for coordinating the actions of the vessel owner or operator or qualified individual with the predesignated Federal On-Scene Coordinator responsible for overseeing or directing those actions.

(4) The organizational structure that will be used to manage the response actions, including—

(i) Command and control;

(ii) Public information;

(iii) Safety;

(iv) Liaison with government agencies;

(v) Spill response operations;

(vi) Planning;

(vii) Logistics support; and

(viii) Finance.

(5) The responsibilities and duties of each oil spill management team member within the organizational structure identified in paragraph (d)(4) of this section.

(e) *List of contacts.* The name, location, and 24-hour contact information for the following key individuals and organizations must be included in this section of the response plane or, if more appropriate, in a geographic-specific appendix and referenced in this section of the plan:

(1) Vessel owner or operator.

(2) Qualified individual and alternate qualified individual for the vessel's area of operation.

(3) Applicable insurance representatives or surveyors for the vessel's area of operation.

(4) The vessel's local agent(s) for the vessel's area of operation.

(5) Person(s) to notify for activation of the oil spill removal organization(s) and the spill management team for the three spill scenarios identified in paragraph (i)(5) of this section for the vessel's area of operation.

(6) Person(s) to obtain the equipment listed in paragraph (c)(5)(ii) of this section.

(f) *Training procedures.* This section of the response plan must address the training procedures and programs of the vessel owner or operator to meet the requirements in § 155.1055.

(g) *Drill procedures.* This section of the response plan must address the drill program to be carried out by the vessel owner or operator to meet the requirements in § 155.1060.

(h) *Plan review and update procedures.* This section of the response plan must address—

(1) The procedures to be followed by the vessel owner or operator to meet the requirements of § 155.1070; and

(2) The procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(i) *Geographic-specific appendices for each COTP zone in which a vessel operates.* A geographic-specific

appendix must be included for each COTP zone identified. The appendices must include the following information:

(1) A list of the geographic areas (port areas, rivers and canals, Great Lakes, inland, nearshore, offshore, and open ocean areas) in which the vessel intends to handle, store, or transport oil within the applicable COTP zone.

(2) The volume and type of oil on which the required level of response resources are calculated if different from that identified in § 155.1035(j)(3).

(3) Required Federal or State notifications applicable to the geographic areas in which a vessel operates.

(4) Identification of the qualified individuals.

(5) Identification of the oil spill removal organization(s) and the spill management team that are identified and ensured available, through contract or other approved means, to respond to the following spill scenarios:

(i) Average most probable discharge.

(ii) Maximum most probable discharge.

(iii) Worst case discharge.

(6) The organization(s) identified to meet the requirements of paragraph (i)(5) of this section must be capable of providing the equipment and supplies necessary to meet the requirements of §§ 155.1050, 155.1052, and 155.1054, as appropriate, and sources of trained personnel to continue operation of the equipment and staff the oil spill removal organization(s) and spill management team identified for the first 7 days of the response.

(7) The appendix must list the response resources and related information required under §§ 155.1050, 155.1052, 155.1054, and 155.1125 and appendix B of this part, as appropriate.

(8) If an oil spill removal organization(s) has been evaluated by the Coast Guard and their capability has been determined to equal or exceed the response capability needed by the vessel, the appendix may identify only the organization and their applicable classification and not the information required in paragraph (i)(7) of this section.

(9) The appendix must also separately list the companies identified to provide the salvage, vessel firefighting, lightering, and, if applicable, dispersant capabilities required in this subpart.

(j) *Appendices for vessel-specific information.*.This section of the response plan must include for each vessel covered by the plan the following information:

(1) List of the vessel's principal characteristics.

(2) Capacities of all cargo, fuel, lube oil, ballast, and fresh water tanks.

(3) The total volume and type(s) of oil cargo that would be involved in the—

(i) Maximum most probable discharge; and

(ii) Worst case discharge.

(4) Diagrams showing location of all tanks.

(5) General arrangement plan (can be maintained separately aboard the vessel providing the response plan identifies the location).

(6) Midships section plan (can be maintained separately aboard the vessel providing the response plan identifies the location).

(7) Cargo and fuel piping diagrams and pumping plan, as applicable (can be maintained separately aboard the vessel providing the response plan identifies the location).

(8) Damage stability data (can be maintained separately providing the response plan identifies the location).

(9) Location of cargo and fuel stowage plan for vessel (normally maintained separately aboard the vessel).

(10) Location of information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the oil cargo aboard the vessel. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, cargo information required by 33 CFR 154.310, or equivalent will meet this requirement and can be maintained separately.

§ 155.1040 Response plan requirements for unmanned tank barges carrying oil as a primary cargo.

(a) *Onboard notification checklist and emergency procedures.* This portion of the response plan must be maintained in the documentation container aboard the unmanned barge. The complete response plan, including the additional sections described in paragraphs (b) through (k) of this section may be maintained elsewhere. The owner or operator of an unmanned tank barge subject to this section shall provide the personnel of the towing vessel, fleeting area, or facility that the barge may be moored at with the information required by this paragraph (a) and the responsibilities that the plan indicates will be carried out by these personnel. The onboard notification checklist and emergency procedures must include—

(1) The name, address, and procedure for contacting the vessel's owner or operator on a 24-hour basis;

(2) The name and procedures for contacting a primary qualified individual and at least one alternate on a 24-hour basis;

(3) The toll-free number of the National Response Center;

(4) The list of information to be provided in the notification by the reporting personnel; and

(5) A statement of responsibilities of and actions to be taken by reporting personnel after an oil discharge or substantial threat of such discharge.

(b) *General information and introduction.* This section of the response plan must include—

(1) A list of tank barges covered by the plan and their official numbers;

(2) The name, address, and procedures for contacting the barge's owner or operator on a 24-hour basis;

(3) A list of the COTP zones in which the tank barges covered by the plan intend to handle, store, or transport oil;

(4) A table of contents or index of sufficient detail to permit personnel with responsibilities under the response plan to locate the specific sections of the plan; and

(5) A record of change(s) page used to record information on plan reviews, updates or revisions.

(c) *Notification procedures.* This section of the response plan must include the following notification information:

(1) A checklist with all notifications in the order of priority and the information required for those notifications to be made by the—

(i) Towing vessel;

(ii) Vessel owner or operator; or

(iii) Qualified individual.

The checklist must include notifications required by 33 CFR part 153 and any applicable State.

(2) Identification of the person(s) to be notified of a discharge or substantial threat of a discharge of oil. If the notifications vary due to the location of the barge, the persons to be notified also must be identified in a geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by the towing vessel; and

(ii) The individual(s) or organization(s) to be notified by the barge owner or operator.

(3) The procedures for notifying the qualified individuals designated by the barge's owner or operator.

(4) Identification of the primary and, if available, secondary communications methods by which the notifications will be made.

(5) The information that is to be provided in the initial and any follow-up notifications required by paragraph (c)(1) of this section.

(i) The initial notification information must include at least the following information:

(A) Towing vessel name (if applicable);
(B) Tank barge name, country of registry, and official number;
(C) Date and time of the incident;
(D) Location of the incident;
(E) Course, speed, and intended track of towing vessel (if applicable);
(F) Radio station(s) frequencies guarded by towing vessel (if applicable);
(G) Date and time of next report;
(H) Type and quantity of oil onboard;
(I) Nature and details of defects, deficiencies, and damage (e.g., grounding, collision, hull failure etc.);
(J) Details of pollution, including estimate of oil discharged or threat of discharge;
(K) Weather and sea conditions on scene;
(L) Barge size and type;
(M) Actions taken or planned by persons on scene;
(N) Current condition of the barge; and
(O) Details of injuries, if any.
(ii) After the transmission of the initial notification, as much as possible of the information essential for the protection of the marine environment as is appropriate to the incident must be reported in a follow-up report. This information must include:
(A) Additional details on the type of cargo onboard;
(B) Additional details on the condition of the barge and ability to transfer cargo, ballast, and fuel;
(C) Additional details on the quantity, extent and movement of the pollution and whether the discharge is continuing;
(D) Any changes in the on-scene weather or sea conditions; and
(E) Actions being taken with regard to the discharge and the movement of the ship.

(d) *Shipboard spill mitigation procedures.* This section of the response plan must include—
(1) Procedures to be followed by the tankerman, as defined in 46 CFR 35.35–1, to mitigate or prevent any discharge or a substantial threat of such a discharge of oil resulting from operational activities and casualties. These procedures must address personnel actions in the event of a—
(i) Transfer system leak;
(ii) Tank overflow; or
(iii) Suspected cargo tank or hull leak;
(2) Procedures in the order of priority for the towing vessel or barge owner or operator to mitigate or prevent any discharge or a substantial threat of such a discharge of oil in the event of the following casualties or emergencies:
(i) Grounding or stranding.
(ii) Collision.
(iii) Explosion or fire, or both.
(iv) Hull failure.
(v) Excessive list.
(3) Damage stability, if applicable, and hull stress considerations when performing onboard mitigation measures. This section must identify and describe—
(i) Activities in which the towing vessel crew or tankerman is trained and qualified to execute absent shore-based support or advice;
(ii) The individuals who shall be notified of a casualty potentially affecting the seaworthiness of the barge; and
(iii) The information that must be provided by the towing vessel to facilitate the assessment of damage stability and stress;
(4) Location of barge plans necessary to perform salvage, stability, and hull stress assessments. A copy of these barge plans must be maintained ashore by either the barge owner or operator or the vessel's recognized classification society. The response plan must indicate the shore location and 24-hour access procedures of the following plans:
(i) General arrangement plan.
(ii) Midship section plan.
(iii) Lines plan or table of offsets, as available.
(iv) Tank tables;
(5) The procedures for both internal and ship-to-ship transfers of cargo in an emergency;
(i) The procedures must identify the response resources necessary to carry out the transfers, including—
(A) Fendering equipment (ship-to-ship only);
(B) Transfer hoses and connection equipment;
(C) Portable pumps and ancillary equipment; and
(D) Lightering vessels (ship-to-ship only).
(ii) Reference can be made to separate oil transfer procedures or a lightering plan provided that safety considerations are summarized in the response plan.
(iii) The location of all equipment and fittings, if any, to perform such transfers must be identified;
(6) The procedures and arrangements for emergency towing, including the rigging and operation of any emergency towing equipment aboard the barge;
(7) The location and procedures for use of equipment stowed aboard either the barge or towing vessel to mitigate an oil discharge; and
(8) The responsibilities of the towing vessel crew and facility or fleeting area personnel, if any, to initiate a response and supervise shore-based response resources.

(e) *Shore-based response activities.* This section of the response plan must include the following information:
(1) The qualified individual's responsibilities and authority, including immediate communication with the Federal On-Scene Coordinator (OSC) and notification of the oil spill removal organization(s) identified in the plan.
(2) The procedures for coordinating the actions of the barge owner or operator or qualified individual with the action of the predesignated Federal OSC responsible for overseeing or directing those actions.
(3) The organizational structure that will manage the barge owner or operator's response actions including—
(i) Command and control;
(ii) Public information;
(iii) Safety;
(iv) Liaison with government agencies;
(v) Spill response operations;
(vi) Planning;
(vii) Logistics support; and
(viii) Finance.
(4) The responsibilities and duties of each oil spill management team member within the organizational structure identified in paragraph (e)(3) of this section.

(f) *List of contacts.* The name, location, and 24-hour contact information for the following key individuals and organizations must be included in this section of the response plan or, if more appropriate, in a geographic-specific appendix and referenced in this section of the plan:
(1) Barge owner or operator.
(2) Qualified individual and alternate qualified individual for the tank barge's area of operation.
(3) Applicable insurance representatives or surveyors for the barge's area(s) of operation.
(4) Person(s) to notify for activation of the response resources identified in paragraph (j)(5) of this section for the barge's area(s) of operation.
(5) Person(s) to obtain the equipment listed in paragraph (d)(5)(ii) of this section.

(g) *Training procedures.* This section of the response plan must address the training procedures and programs of the barge owner or operator to meet the requirements in § 155.1055.

(h) *Drill procedures.* This section of the response plan must address the drill program carried out by the barge owner or operator to meet the requirements in § 155.1060.

(i) *Plan review and update procedures.* This section of the response plan must address—
(1) The procedures to be followed by the barge owner or operator to meet the requirements of § 155.1070; and

(2) The procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(j) *Geographic-specific appendices for each COTP zone in which a tank barge operates.* A geographic-specific appendix must be included for each COTP zone identified. The appendices must include the following information:

(1) A list of the geographic areas (port areas, rivers and canals, Great Lakes, inland, nearshore, offshore, and open ocean areas) in which the barge intends to handle, store, or transport oil within the applicable COTP zone.

(2) The volume and type of oil on which the required level of response resources are calculated if different from that identified in § 155.1040(k)(2).

(3) Required Federal or State notifications applicable to the geographic areas in which the barge operates.

(4) Identification of the qualified individuals.

(5) Identification of the oil spill removal organization(s) and spill management team that are identified and ensured available, through contract or other approved means, to provide the response resources necessary to respond to the following spill scenarios;

(i) An average most probable discharge.

(ii) A maximum most probable discharge.

(iii) A worst case discharge to the maximum extent practicable.

(6) The organization(s) identified to meet the provisions of paragraph (j)(5) of this section must be capable of providing the equipment and supplies necessary to meet the provisions of §§ 155.1050, 155.1052, and 155.1054 of this subpart, as appropriate, and sources of trained personnel to continue operation of the equipment and staff the oil spill removal organization(s) and spill management team identified for the first seven days of the response.

(7) The appendix must list the response resources and related information required under §§ 155.1050, 155.1052, 155.1054 and appendix B of this part, as appropriate.

(8) If the oil spill removal organization(s) providing the necessary response resources has been evaluated by the Coast Guard and their capability has been determined to equal or exceed the response capability needed by the vessel, the appendix may identify only the organization and their applicable classification and not the information required in paragraph (j)(7) of this section.

(9) The appendix must also separately list the companies identified to provide the salvage, barge firefighting, lightering, and, if applicable, dispersant capabilities required in this subpart.

(k) *Appendices for barge-specific information.* Because many of the tank barges covered by a response plan may be of the same design, this information does not need to be repeated provided the plan identifies the tank barges to which the same information would apply. The information must be part of the response plan unless specifically noted. This section of the plan must include for each barge covered by the plan the following information:

(1) Capacities of all cargo, fuel, lube oil, and ballast tanks.

(2) The total volumes and types(s) of oil cargo that would be involved in the—

(i) Maximum most probable discharge; and

(ii) Worst case discharge.

(3) Diagrams showing location of all tanks aboard the barge.

(4) General arrangement plan (can be maintained separately providing that the location is identified).

(5) Midships section plan (can be maintained separately providing that the location is identified).

(6) The organization(s) identified to meet the provisions of paragraph (j)(5) of this section must be capable of providing the equipment and supplies necessary to meet the provisions of §§ 155.1050, 155.1052, and 155.1054 of this subpart, as appropriate, and sources of trained personnel to continue operation of the equipment and staff the oil spill removal organization(s) and spill management team identified for the first seven days of the response.

(7) Damage stability data, if applicable.

(8) Location of cargo and fuel stowage plan for barge(s) (normally maintained separately).

(9) Location of information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the oil cargo aboard the barge. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, cargo information required by 33 CFR 154.310, or equivalent will meet this requirement and can be maintained separately.

§ 155.1045 Response plan requirements for vessels carrying oil as a secondary cargo.

(a) The vessel owner or operator must develop their plan based on the total volume of oil carried in bulk as cargo. For vessels that transfer a portion of their fuel as cargo, 25% of the fuel capacity of the vessel plus the capacity of any oil cargo tank(s) will be assumed to be the cargo volume for determining applicable response plan requirements unless the vessel owner or operator indicates otherwise. A vessel owner or operator can use a volume less than 25% if he or she submits historical data with the plan that substantiates the transfer of a lower percentage of its fuel capacity between refuelings.

(b) *General information and introduction.* This section of the response plan must include—

(1) The vessel's name, country of registry, call sign, and official number. If the plan covers multiple vessels, this information must be provided for each vessel;

(2) The name, address, and procedures for contacting the vessel's owner or operator on a 24-hour basis;

(3) Identification of the geographic areas covered by the plan. The plan must identify the COTP zones that it covers. The plan must cover all COTP zones in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas within the exclusive economic zone. A geographic-specific appendix must be included for each COTP zone identified;

(4) A table of contents or index of sufficient detail to permit personnel with responsibilities under the response plan to locate the specific sections of the plan; and

(5) A record of change(s) page used to record information on plan updates or revisions.

(c) *Notification procedures.* This section of the response plan must include the following notification information:

(1) A checklist with all notifications in the order of priority to be made by shipboard or shore-based personnel and the information required for those notifications. Notifications must include those required by—

(i) MARPOL 73/78 and 33 CFR part 153; and

(ii) Any applicable State.

(2) Identification of the person(s) to be notified of a discharge or substantial threat of discharge of oil. If notifications vary due to vessel location, the person(s) to be notified also must be identified in a geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by shipboard personnel; and

(ii) The individual(s) or organization(s) to be notified by shore-based personnel.

(3) The procedures for notifying the qualified individual and alternate qualified individual.

(4) Descriptions of the primary and, if available, secondary communication methods by which the notifications will be made.

(5) The information that is to be provided in the initial and any follow-up notifications required by paragraph (c)(1) of this section.

(i) The initial notification may be submitted in accordance with IMO Resolution A648(16) "General Principles for Ship Reporting Systems and Ship Reporting Requirements". It must include at least the following information:

(A) Vessel name, country of registry, call sign, and official number (if any);

(B) Date and time of the incident;

(C) Location of the incident;

(D) Course, speed, and intended track of vessel;

(E) Radio station(s) and frequencies guarded;

(F) Date and time of next report;

(G) Type and quantity of oil onboard;

(H) Nature and detail of defects, deficiencies, and damage (e.g. grounding, collision, hull failure etc.);

(I) Details of pollution, including estimate of oil discharged or threat of discharge;

(J) Weather and sea conditions on scene;

(K) Ship size and type;

(L) Actions taken or planned by persons on scene;

(M) Current conditions of the vessel; and

(N) Number of crew and details of injuries, if any.

(ii) After the transmission of the initial notification, as much as possible of the information essential for the protection of the marine environment as is appropriate to the incident must be reported in a follow-up report. This information must include:

(A) Additional details on the type of cargo onboard;

(B) Additional details on the condition of the vessel and ability to transfer cargo, ballast, and fuel;

(C) Additional details on the quantity, extent and movement of the pollution and whether the discharge is continuing;

(D) Any changes in the on-scene weather or sea conditions; and

(E) Actions being taken with regard to the discharge and the movement of the ship.

(d) *Shipboard spill mitigation procedures.* This section of the response plan must identify the vessel's total volumes of oil carried in bulk as cargo and meet the applicable requirements of this paragraph (d).

(1) For vessels carrying 100 barrels or less of oil in bulk as cargo, the plan must include a basic emergency action checklist for vessel personnel including notification and actions to be taken to prevent or mitigate any discharge or substantial threat of such a discharge of oil from the vessel.

(2) For vessels carrying over 100, but less than 1,000 barrels of oil in bulk as cargo, the plan must include—

(i) General information on actions to be taken by vessel personnel to prevent or mitigate any discharge or substantial threat of such a discharge of oil from the vessel due to operational activities or casualties;

(ii) General information on damage control procedures to be followed by vessel personnel;

(iii) General information on procedures for internal or external transfer of oil in bulk as cargo in an emergency; and

(iv) Procedures for use of any equipment carried aboard the vessel for spill mitigation.

(3) For vessels carrying from 1,000 to 5,000 barrels of oil in bulk as cargo, the plan must include—

(i) Detailed information on actions to be taken by vessel personnel to prevent or mitigate any discharge or substantial threat of such a discharge of oil from the vessel due to operational activities or casualties;

(ii) Detailed information on damage control procedures to be followed by vessel personnel;

(iii) Detailed procedures for internal or external transfer of oil in bulk as cargo in an emergency; and

(iv) Procedures for use of any equipment carried aboard the vessel for spill mitigation.

(4) For vessels carrying over 5,000 barrels of oil as a secondary cargo, the plan must provide the information required by § 155.1035(c) for shipboard spill mitigation procedures.

(5) For all vessels, the plan must include responsibilities and actions to be taken by vessel personnel, if any, to initiate a response and supervise shore-based response resources.

(e) *Shore-based response activities.* This section of the response plan must include the following information:

(1) The qualified individual's responsibilities and authority, including immediate communication with the Federal OSC and notification of the oil spill removal organization(s) identified in the plan.

(2) The procedures for coordinating the actions of the vessel owner or operator with the actions of the predesignated Federal OSC responsible for overseeing or directing those actions.

(3) The spill management team to be used by the vessel owner or operator to manage response plan implementation.

(f) *List of contacts.* The name, location, and 24-hour contact information for the following key individuals or organizations must be included in this section of the response plan or, if more appropriate, in a geographic-specific appendix and referenced in this section of the plan:

(1) Vessel owner or operator, and, if applicable, charterer.

(2) Qualified individual and alternate qualified individual for the vessel's area of operation.

(3) Vessel's local agent(s), if applicable, for the vessel's area of operation.

(4) Applicable insurance representatives or surveyors for the vessel's area of operation.

(5) Person(s) to notify for activation of the oil spill removal organization(s) identified in paragraph (j)(3) of this section for the vessel's area of operation.

(g) *Training procedures.* This section of the response plan must address the training procedures and programs of the vessel owner or operator. The vessel owner or operator shall ensure that—

(1) All personnel with responsibilities under the plan receive training in their assignments and refresher training as necessary, and participate in drills required under paragraph (h) of this section. Documented work experience can be used instead of training; and

(2) Records of this training are maintained aboard the vessel, at the U.S. location of the spill management team, or with the qualified individual. The plan must specify where the records are located.

(h) *Drill procedures.* This section of the response plan must address the drill program carried out by the vessel owner or operator to evaluate the ability of vessel and shore-based personnel to perform their identified functions in the plan. The required drill frequency for each category of vessel is as follows:

(1) For vessels carrying 100 barrels or less of oil as cargo—

(i) Onboard spill mitigation procedures and qualified individual notification drills must be conducted annually; and

(ii) Shore-based oil spill removal organization drills must be conducted biennially.

(2) For vessels carrying over 100 barrels and up to 5,000 barrels of oil in bulk as cargo—

(i) Onboard emergency procedures and qualified individual notification drills must be conducted quarterly; and

(ii) Shore-based oil spill removal organization drills must be conducted annually.

(3) Vessels carrying over 5,000 barrels of oil in bulk as cargo mut meet the drill requirements of § 155.1060.

(i) *Plan review, update, and appeal procedures.*

(1) The owner or operator of a vessel covered by this section shall resubmit the plan to the U.S. Coast Guard for approval—

(i) Whenever there is a significant change in the vessel's configuration affecting the cargo capacity or layout of the vessel;

(ii) Six months before the end of the Coast Guard approval period identified in § 155.1065(b); and

(iii) Whenever there is a change in the owner or operator of the vessel, if that owner or operator provided the certifying statement required by § 155.1065(a). If this occurs, a new statement certifying that the plan continues to meet the applicable requirements of subparts D and E of this part must be submitted.

(2) The owner or operator of a vessel covered by this section shall notify the U.S. Coast Guard and other plan holders, and provide updated information as appropriate when significant changes occur in any of the following:

(i) Cargo systems.

(ii) Operating area.

(iii) Qualified individuals.

(iv) Identified response resources.

(v) Emergency response procedure.

(vi) Nature of vessel's operations.

(3) The U.S. Coast Guard may require a vessel owner or operator to revise a response plan at any time if it is determined that the response plan does not meet the requirements of this subpart. The U.S. Coast Guard will notify the vessel owner or operator in writing of any deficiencies.

(i) Deficiencies must be corrected within the time period specified in the written notice provided by the Coast Guard. If deficiencies are not corrected within the specified time period, the plan will be declared invalid and any further storage, transfer, handling, transporting or lightering of oil in areas subject to the jurisdiction of the United States will be in violation of section 311(j)(5)(E) of the FWPCA.

(ii) A vessel owner or operator must advise the U.S. Coast Guard office that provided the initial notice when a deficiency has been corrected.

(4) A vessel owner or operator who disagrees with a deficiency determination may submit a request for reconsideration within the time period required for compliance or within 7 days from the date of receipt of the U.S. Coast Guard notice, whichever is less. After considering all relevant material presented, the U.S. Coast Guard will notify the vessel owner or operator of the final decision.

(i) Unless the vessel owner or operator petitions for a review of the U.S. Coast Guard decision, the vessel's owner or operator must correct the response plan deficiencies within the period specified in the Coast Guard's final determination.

(ii) If the vessel owner or operator petitions the District Commander, the effective date of the U.S. Coast Guard notice may be delayed pending a decision by the District Commander. Petitions to the District Commander must be submitted in writing, via the U.S. Coast Guard official who issued the requirement to amend the response plan, within five days of receipt of the notice.

(j) *Geographic-specific appendices for each COTP zone in which a vessel operates.* A geographic-specific appendix must be included for each COTP zone identified. The appendix must include the following information:

(1) Required Federal or State notifications applicable to the geographic areas in which a vessel operates.

(2) Identification of the qualified individuals.

(3) A list of the oil spill removal organization(s) available to respond to the vessel's worst case oil discharge in each COTP zone in which a vessel operates. The oil spill removal organization(s) identified must be capable of commencing oil spill containment and on-water recovery within the response times listed for tier 1 in § 155.1050(g) of this subpart; providing temporary storage of recovered oil; and conducting shoreline protection and cleanup operations. An oil spill removal organization may not be identified in the plan unless the organization has provided written consent to being identified in the plan as an available resource.

§ 155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.

(a) The following criteria must be used to evaluate the operability of response resources identified in the response plan for the specified operating environment:

(1) Table 1 of appendix B of this part.

(i) The criteria in table 1 of appendix B of this part are to be used solely for identification of appropriate equipment in a response plan.

(ii) 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 vessel operations.

(2) Limitations that are identified in the Area Contingency Plans for the COTP zones in which the vessel operates, including—

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges; and

(iv) Weather-related visibility.

(b) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be identified in the applicable Area Contingency Plan. Reclassifications may be to—

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

(2) 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% of the year.

(c) Response equipment must—

(1) Meet or exceed the criteria listed in table 1 of appendix B of this part;

(2) Be capable of functioning in the applicable operating environment; and

(3) Be appropriate for the petroleum oil carried.

(d) The owner or operator of a vessel that carries groups I through IV petroleum oil as a primary cargo shall identify in the response plan and ensure the availability of, through contract or other approved means, the response resources that will respond to the vessel's average most probable discharge.

(1) For a vessel that carries groups I through IV petroleum oil as its primary cargo, the response resources must include—

(i) Containment boom in a quantity equal to twice the length of the largest vessel involved in the transfer and capable of being deployed at the site of oil transfer operations within one hour of detection of a spill; and

(ii) Oil recovery devices and recovered oil storage capacity capable of being at the transfer area within two hours of the detection of a spill during transfer operations.

(2) For locations of multiple vessel transfer operations, a vessel may identify the same equipment as identified by other vessels, provided that each vessel has ensured access to the equipment through contract or other approved means.

(3) The owner or operator of a vessel conducting transfer operations at a facility required to submit a response plan under 33 CFR 154.1017 is not required to identify and ensure the availability of the response resources

required in paragraph (d)(1) of this section.

(e) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, the response resources necessary to respond to a discharge up to the vessel's maximum most probable discharge volume.

(1) These resources must be positioned such that they can arrive at the scene of a discharge within—

(i) 12 hours of the discovery of a discharge in higher volume port areas and the Great Lakes;

(ii) 24 hours of the discovery of a discharge in all rivers and canals, inland, nearshore and offshore areas; and

(iii) 24 hours of the discovery of a discharge plus travel time from shore for open ocean areas.

(2) The necessary response resources include sufficient containment boom, oil recovery devices, and storage capacity for any recovery of up to the maximum most probable discharge planning volume.

(3) The response plan must identify the storage location, make, model, and effective daily recovery capacity of each oil recovery device that is identified for plan credit.

(4) The response resources identified for responding to a maximum most probable discharge must be positioned to be capable of meeting the planned arrival times in this paragraph (e). The COTP with jurisdiction over the area in which the vessel is operating must be notified whenever the identified response resources are not capable of meeting the planned arrival times.

(f) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, the response resources necessary to respond to the worst case discharge volume of the oil cargo to the maximum extent practicable.

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

(2) The response resources must be appropriate for—

(i) The capacity of the vessel;

(ii) Group(s) of petroleum oil carried as cargo; and

(iii) The geographic area(s) of vessel operation.

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

(4) The response plan must identify the storage location, make, model, and effective daily recovery capacity of each oil recovery device that is identified for plan credit.

(5) The guidelines in appendix B to part 155 of this chapter 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.

(6) When determining response resources necessary to meet the requirements of paragraph (f), 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) Open ocean—none.

(ii) Offshore—10 percent.

(iii) Nearshore, inland, Great Lakes, and rivers and canals—20 percent.

(g) Response equipment identified to respond to a worst case discharge must be capable of arriving on scene within the times specified in paragraph (g) 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	Tier 2	Tier 3
Higher volume port area (except tankers in Prince William Sound covered by § 155.1135).	12 hrs	36 hrs	60 hrs.
Great lakes	18 hrs	42 hrs	66 hrs.
All other rivers & canals, inland, nearshore, and offshore areas.	24 hrs	48 hrs	72 hrs.
Open Ocean (plus travel time from shore).	24 hrs+ ...	48 hrs+ ...	72 hrs+

(h) The following areas are designated as higher volume port areas. These areas include any water area within 50 nautical miles seaward of the entrance(s) to the specified port:

(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. Note: Vessels destined for, departing from, or offloading at the Louisiana Offshore Oil Port are not considered to be operating in this higher volume port area.

(7) Lake Charles, LA.

(8) Sabine-Neches River, TX.

(9) Galveston Bay and Houston Ship Channel, TX.

(10) Corpus Christi, TX.

(11) Los Angeles/Long Beach Harbor, CA.

(12) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA.

(13) Strait of Juan De Fuca at Port Angeles, WA, to and including Puget Sound, WA.

(14) Prince William Sound, AK.

(i) For the purposes of arranging for response resources through contract or other approved means, response equipment identified for tier 1 plan credit must be capable of being mobilized and en route to the scene of a discharge within two hours of notification. The notification procedures identified in the plan must provide for notification and authorization for 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.

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

(k) The response plan for a vessel carrying group II or III persistent petroleum oils as a primary cargo that operates in areas with year-round pre-approval for dispersant use may request a credit against up to 25 percent of the on-water oil recovery capability for each worst case discharge tier necessary to meet the requirements of this subpart in 1993. To receive this credit, the vessel owner or operator shall identify in the response plan and ensure, through contract or other approved means, the availability of necessary resources to apply dispersants appropriate for the type of oil carried and to monitor the effectiveness of the dispersants. The extent of the credit will be based on the volumes of dispersant available to sustain operations at manufacturers' recommended dosage rates. Resources identified for plan credit must be capable of being on scene within 12 hours of discovery of a discharge.

Note: 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 National Contingency Plan and the applicable Area Contingency Plan.

(l)(1) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, the following resources:

(i) A salvage company with expertise and equipment.

(ii) A company with vessel firefighting capability that will respond to casualties in the area(s) in which the vessel will operate.

(2) Vessel owners or operators must identify intended sources of the resources required under paragraph (l)(1) of this section capable of being deployed to the areas that the vessel will operate in. Provider(s) of these services may not be listed in the plan unless they have provided written consent to be listed in the plan as an available resource.

(3) To meet this requirement in a response plan submitted for reapproval on or after February 18, 1998, the identified resources must be capable of being deployed to the port nearest to the area that the vessel operates within 24 hours of notification.

(m) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, certain response resources required by § 155.1035(c)(5)(ii) or § 155.1040(d)(5)(i), as appropriate.

(1) These resources must include—

(i) Fendering equipment;

(ii) Transfer hoses and connection equipment; and

(iii) Portable pumps and ancillary equipment necessary to offload the vessel's largest cargo tank in 24 hours of continuous operation.

(2) These resources must be capable of reaching the locations in which the vessel operates within the stated times following notification:

(i) Inland (except tankers in Prince William Sound covered by (§ 155.1130), nearshore, and Great Lakes waters—12 hours.

(ii) Offshore waters and rivers and canals—18 hours.

(iii) Open ocean waters—36 hours.

(3) For barges operating on rivers and canals as defined in this subpart, the requirements of this paragraph (m) may be met by listing resources capable of meeting the response times in paragraph (m)(2) of this section. Such resources may not be identified in a plan unless the response organization has provided written consent to be listed in a plan as an available resource.

(n) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, response resources necessary to perform shoreline protection operations.

(1) The response resources must include the quantities of boom listed in table 2 of appendix B of this part, based on the areas in which the vessel operates.

(2) Vessels that intend to offload their cargo at the Louisiana Offshore Oil Port (LOOP) marine terminal are not required to comply with the requirements of this paragraph (m) when they are within the offshore area and under one of the following conditions:

(i) Approaching or departing the LOOP marine terminal within the LOOP Shipping Safety Fairway, as defined in 33 CFR 166.200.

(ii) Moored at the LOOP marine terminal for the purposes of cargo transfer operations or anchored in the designated anchorage area awaiting discharge.

(o) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo that operates in offshore, nearshore, inland, or rivers and canal areas, the response plan must identify and ensure the availability of, through contract or other approved means, an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified petroleum oil to be planned for in shoreline cleanup operations.

(1) The shoreline cleanup resources required must be determined as described in appendix B of this part.

(2) Vessels that intend to offload their cargo at the Louisiana Offshore Oil Port (LOOP) marine terminal are not required to comply with the requirements of this paragraph (o) when they are within the offshore area and under one of the following conditions:

(i) Approaching or departing the LOOP marine terminal within the LOOP Shipping Safety Fairway as defined in 33 CFR 166.200.

(ii) Moored at the LOOP marine terminal for the purposes of cargo transfer operations or anchored in the designated anchorage area awaiting discharge.

(p) Appendix B of this part sets out caps that recognize the practical and technical limits of response capabilities that an individual vessel owner or operator can contract for in advance. Table 6 in appendix B lists the contracting caps that will apply on February 18, 1993 and February 18, 1998. Caps for 2003 will be developed during a subsequent review process. The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo, whose required daily recovery capacity exceeds the applicable contracting caps in Table 6, shall identify sources of additional equipment equal to twice the cap listed in tier 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The equipment so identified, must be capable of arriving on scene no later than the tier 3 response times contained in § 155.1050(g). A response plan must identify the specific sources, locations, and quantities of this additional equipment. No contract is required.

(q) 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 remains practicable, and will also establish a specific cap for 2003. The review shall include but is not limited to:

(i) Increases in skimming efficiencies and design technology.

(ii) Oil tracking technology.

(iii) High rate response techniques.

(iv) Other applicable response technologies.

(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 on February 18, 1998 and 2003 unless the review of the additional requirements have not been completed by the Coast Guard. If this occurs, the changes will not be effective until 90 days after publication of a **Federal Register** Notice with the results of the review.

§ 155.1052 Response plan development and evaluation criteria for vessels carrying group V petroleum oil as a primary cargo.

(a) Owners and operators of vessels that carry group V petroleum oil as a primary cargo must provide information in their 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 vessel carrying group V petroleum oil as a

primary cargo 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 vessel operates using the criteria in table 1 of appendix B of this part. When evaluating the operability of equipment, the vessel owner or operator must consider limitations that are identified in the Area Contingency Plans for the COTP zones in which the vessel operates, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a vessel carrying group V petroleum oil as a primary cargo must identify in the response plan and ensure, through contract or other approved means, the availability of required equipment, including—

(1) Sonar, sampling equipment, or other methods for locating the oil on the bottom or suspended in the water column;

(2) Containment boom, sorbent boom, silt curtains, or other methods for containing oil that may remain floating on the surface or to reduce spreading on the bottom;

(3) Dredges, pumps, or other equipment necessary to recover 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 oil carried.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of being deployed within 24 hours of discovery of a discharge to the port nearest the area where the vessel is operating. An oil spill removal organization may not be listed in the plan unless the oil spill removal organization has provided written consent to be listed in the plan as an available resource.

(e) The owner or operator of a vessel carrying group V petroleum oil as a primary cargo shall identify in the response plan and ensure the availability of the following resources through contract or other approved means—

(1) A salvage company with appropriate expertise and equipment; and

(2) A company with vessel firefighting capability that will respond to casualties in the area(s) in which the vessel is operating.

(f) Vessel owners or operators must identify intended sources of the resources required under paragraph (e) of this section capable of being deployed to the areas that the vessel will operate in. A company may not be listed in the plan unless the company has provided written consent to be listed in the plan as an available resource. To meet this requirement in a response plan submitted for approval or reapproval on or after February 18, 1998, the vessel owner or operator must identify both the intended sources of this capability and demonstrate that the resources are capable of being deployed to the port nearest to the area where the vessel operates within 24 hours of discovery of a discharge.

(g) The owner or operator of a vessel carrying group V petroleum oil as a primary cargo shall identify in the response plan and ensure the availability of certain resources required by §§ 155.1035(c)(5)(ii) and 155.1040(d)(5)(i) as applicable, through contract or other approved means.

(1) Resources must include—

(i) Fendering equipment;

(ii) Transfer hoses and connection equipment; and

(iii) Portable pumps and ancillary equipment necessary to offload the vessel's largest cargo tank in 24 hours of continuous operation.

(2) Resources must be capable of reaching the locations in which the vessel operates within the stated times following notification:

(i) Inland, nearshore, and Great Lakes waters—12 hours.

(ii) Offshore waters and rivers and canals—18 hours.

(iii) Open ocean waters—36 hours.

(3) For barges operating in rivers and canals as defined in this subpart, the requirements of this paragraph (g) may be met by listing resources capable of being deployed in an area within the response times in subparagraph (2) of this paragraph. A vessel owner or operator may not identify such resources in a plan unless the response organization has provided written consent to be identified in a plan as an available resource.

§ 155.1054 Response plan development and evaluation criteria for vessels carrying non-petroleum oil as a primary cargo.

(a) Owners and operators of vessels that carry non-petroleum oil as a primary cargo must provide information in their plan that identifies—

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

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

(b) An owner or operator of a vessel carrying non-petroleum oil as a primary cargo 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 vessel operates using the criteria in table 1 of appendix B of this part. When evaluating the operability of equipment, the vessel owner or operator must consider limitations that are identified in the Area Contingency Plans for the COTP zones in which the vessel operates, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a vessel carrying non-petroleum oil as a primary cargo must identify in the response plan and ensure, through contract or other approved means, the availability of required equipment including—

(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 non-petroleum oil carried; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of non-petroleum oil carried.

(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 applicable tier 1 response times in § 155.1050(g) of this subpart. An oil spill removal organization may not be listed in the plan unless the oil spill removal organization has provided written consent to be listed in the plan as an available resource.

(e) The owner or operator of a vessel carrying non-petroleum oil as a primary cargo must identify in the response plan and ensure the availability of the following resources through contract or other approved means:

(1) A salvage company with appropriate expertise and equipment.

(2) A company with vessel firefighting capability that will respond to casualties in the area(s) in which the vessel is operating.

(f) Vessel owners or operators must identify intended sources of the resources required under paragraph (e) of this section capable of being deployed to the areas that the vessel will operate in. A company may not be listed in the plan unless the company has provided written consent to be listed in the plan as an available resource. To meet this requirement in a response plan submitted for approval or reapproval on or after February 18,

1998, the vessel owner or operator must identify both the intended sources of this capability and demonstrate that the resources are capable of being deployed to the port nearest to the area where the vessel operates within 24 hours of discovery of a discharge.

(g) The owner or operator of a vessel carrying non-petroleum oil as a primary cargo must identify in the response plan and ensure the availability of certain resources required by § 155.1035(c)(5)(ii) and § 155.1040(d)(5)(i) as applicable, through contract or other approved means.

(1) Resources must include—

(i) Fendering equipment;

(ii) Transfer hoses and connection equipment; and

(iii) Portable pumps and ancillary equipment necessary to offload the vessel's largest cargo tank in 24 hours of continuous operation.

(2) Resources must be capable of reaching the locations in which the vessel operates within the stated times following notification:

(i) Inland, nearshore, and Great Lakes waters—12 hours.

(ii) Offshore waters and rivers and canals—18 hours.

(iii) Open ocean waters—36 hours.

(3) For barges operating in rivers and canals as defined in this subpart, the requirements of this paragraph (g) may be met by listing resources capable of being deployed in an area within the response times in paragraph (g)(2) of this section. A vessel owner or operator may not identify such resources in a plan unless the response organization has provided written consent to be identified in a plan as an available resource.

§ 155.1055 Training.

(a) A response plan submitted to meet the requirements of § 155.1035 must identify the training to be provided to members of the vessel crew having responsibilities under the plan, the qualified individual, and the spill management team. A response plan submitted to meet the requirements of § 155.1040 must identify the training to be provided to the spill management team, the qualified individual, and other personnel in § 155.1040 with specific responsibilities under the plan. The training program must differentiate between that training provided to vessel personnel and that training provided to shore-based personnel.

(b) A vessel owner or operator shall ensure the maintenance of records sufficient to document this training and make them available for inspection upon request by the U.S. Coast Guard. Records must be maintained for 3 years following completion of training. The response plan must identify the location of training records, which must be—

(1) Aboard the vessel;

(2) With the qualified individual; or

(3) At a U.S. location of the spill management team.

(c) A vessel owner or operator may identify equivalent work experience which fulfills specific training requirements.

(d) The vessel owner or operator shall ensure that any oil spill removal organization identified in a response plan to meet the requirements of this part maintain records sufficient to document training for the organization's personnel. These records must be available for inspection upon request by the U.S. Coast Guard. Records must be maintained for 3 years following completion of training.

(e) Nothing in this section relieves the vessel owner or operator from the responsibility to ensure that all private shore-based response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120.

§ 155.1060 Drills.

(a) A vessel owner or operator required by §§ 155.1035 and 155.1040 to have a response plan shall conduct drills as necessary to ensure that the plan will function in an emergency. Both announced and unannounced drills must be included. The response plan submitted to meet the requirements of this subpart must identify the planned drill program. The following are the required drill frequencies for vessels covered by this section:

(1) Manned vessel onboard emergency procedures and qualified individual notification drills must be conducted monthly.

(2) Unmanned barge emergency procedures and notification of the qualified individual drills must be conducted quarterly.

(3) Shore-based spill management team tabletop drills must be conducted yearly.

(4) Oil spill removal organization field equipment deployment drills must be conducted yearly.

(b) Drills may be designed by the vessel owner or operator to exercise either components of or the entire response plan. The vessel owner or operator shall conduct a drill that exercises the entire plan at least once every three years.

(c) The vessel owner or operator shall ensure the maintenance of adequate records of drills. The following records are required:

(1) All drills conducted aboard the vessel must be documented in the ship's log.

(2) Records of any off-vessel drills of the response organization and resources identified in the response plan must be maintained at the United States location of either the qualified individual, spill management team, the vessel owner or operator, or the response organization. Response plans must indicate the location of these records.

(3) Records must be maintained and available to the Coast Guard for three years following completion of the drills.

(d) A vessel owner or operator shall participate in unannounced drills as directed by the applicable COTP. During these drills, the oil spill removal organization and spill management team identified in the vessel's response plan shall be activated to the extent required by the COTP. A vessel owner or operator need not participate if he or she has participated in an unannounced Federal or State oil spill response drill within the last 24 months, and the vessel owner or operator shall immediately provide records of this drill to the Coast Guard COTP.

(e) The requirements in paragraphs (a)(3) and (a)(4) of this section are met if the oil spill removal organization identified in the response plan participates in an equipment deployment exercise and is drilled during the period required to conduct such drills.

§ 155.1062 Inspection and maintenance of response resources.

(a) The owner or operator of a vessel 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 inspections and maintenance are documented and that these records are maintained for three 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 existence 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 through the written consent of an Oil Spill Removal Organization, as provided for in the definition of "contract or other approved means."

§ 155.1065 Plan submission, approval, and appeal procedures.

(a) An owner or operator of a vessel to which this subpart applies shall submit two complete English language copies of a vessel response plan to Commandant (G–MEP–6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. All plans submitted on or after August 19, 1993 must be submitted at least 60 days before the vessel intends to handle, store, transport, transfer, or lighter oil in areas subject to the jurisdiction of the United States. The owner or operator shall include a statement certifying that the plan meets the applicable requirements of subparts D and E of this part.

(b) If the U.S. Coast Guard determines that the plan meets all requirements of this subpart, the U.S. Coast Guard will notify the vessel owner or operator and return one copy of the approved plan along with an approval letter. The plan will be valid for a period of up to five years from the date of approval.

(c) If the U.S. Coast Guard reviews the plan and determines that it does not meet all of the requirements, the U.S. Coast Guard will notify the vessel owner or operator of the response plan's deficiencies. The vessel owner or operator must then resubmit two copies of the revised plan, or corrected portions of the plan, within 45 days.

(d) For those vessels temporarily authorized under § 155.1025 to operate without an approved plan pending formal Coast Guard approval, the deficiency provisions of § 155.1070 (c) and (d) will also apply.

(e) Within 21 days of notification that a plan is not approved, the vessel owner or operator may appeal that determination to the Chief, Office of Marine Safety, Security and Environmental Protection. This appeal must be submitted in writing to Commandant (G–M), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

§ 155.1070 Plan review, revision, amendment, and appeal procedures for vessels carrying oil as a primary cargo.

(a) A vessel response plan must be reviewed annually by the owner or operator.

(1) This review must occur within one month of the anniversary date of U.S. Coast Guard approval of the plan.

(2) The owner or operator shall submit any plan amendments to the U.S. Coast Guard for information or approval.

(3) Any required changes must be entered in the plan and noted on the record of changes page. The completion of the annual review must also be noted on the record of changes page.

(b) The entire plan must be resubmitted to the Coast Guard for re-approval 6 months before the end of the Coast Guard approval period identified in § 155.1065(b).

(c) Revisions or amendments to an approved response plan must be submitted for approval by the vessel's owner or operator whenever there is—

(1) A change in the owner or operator of the vessel, if that owner or operator provided the certifying statement required by § 155.1065(a). If this occurs, a new statement certifying that the plan continues to meet the applicable requirements of subparts D and E of this part must be submitted;

(2) A change in the vessel's operating area that includes ports or geographic area(s) not covered by the previously approved plan. A vessel may operate in an area not covered in a previously approved plan if a new geographic-specific appendix is submitted for approval and the vessel's owner or operator provides the certification required in § 155.1025(c);

(3) A significant change in the vessel's configuration that affects the information included in the response plan;

(4) A change in the type of oil cargo carried aboard (oil group) that affects the required response resources;

(5) A change in the identification of the oil spill removal organization(s) required by § 155.1050, 155.1052 or 155.1054, as appropriate;

(6) A significant change in the vessels's emergency response procedures; or

(7) Any other significant changes that affect the implementation of the plan.

(d) The U.S. Coast Guard may require a vessel owner or operator to revise a response plan at any time if it is determined that the response plan does not meet the requirements of this subpart. The U.S. Coast Guard will notify the vessel owner or operator in writing of any deficiencies.

(1) Deficiencies must be corrected within the time period specified in the written notice provided by the Coast Guard or the plan will be declared invalid and any further storage, transfer, handling, transporting or lightering of oil in areas subject to the jurisdiction of the United States will be in violation of section 311(j)(5)(E) of the FWPCA.

(2) Vessel owners or operators must advise the U.S. Coast Guard office that provided the initial notice when a deficiency has been corrected.

(e) A vessel owner or operator who disagrees with a deficiency determination may submit a request for reconsideration within the time period required for compliance or within 7 days from the date of receipt of the U.S. Coast Guard notice, whichever is less. After considering all relevant material presented, the U.S. Coast Guard will notify the vessel owner or operator of the final decision.

(1) Unless the vessel owner or operator petitions for a review of the U.S. Coast Guard decision, the vessel's owner or operator must correct the response plan deficiencies within the period specified in the Coast Guard's final determination.

(2) If the vessel owner or operator petitions the District Commander, the effective date of the U.S. Coast Guard notice may be delayed pending a decision by the District Commander. Petitions to the District Commander must be submitted in writing, via the U.S. Coast Guard official who issued the requirement to amend the response plan, within five days of receipt of the notice.

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

Subpart E—Additional Response Plan Requirements for Tankers Loading Cargo at a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

§ 155.1110 Purpose and applicability.

(a) This subpart establishes oil spill response planning requirements for an owner or operator of a tanker loading cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. 165 *et seq.*) in Prince William Sound, Alaska, in addition to the requirements of subpart D 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 in this subpart must be included in a Prince William Sound geographic-specific appendix to the vessel response plan required by subpart D of this part.

§ 155.1115 Definitions.

Except as provided in this section, the definitions in § 155.1015 apply to this subpart.

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 Rock.

§ 155.1120 Operating restrictions and interim operating authorization.

The owner or operator of a tanker to which this subpart applies may not load cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act unless the requirements of this subpart and § 155.1025 have been met. The owner or operator of such a tanker shall certify to the U.S. Coast Guard that they have provided, through an oil spill removal organization required by § 155.1125, 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, AK.

§ 155.1125 Additional response plan requirements.

(a) The owner or operator of a tanker subject to this subpart shall include the requirements of this section in the Prince William Sound geographic-specific appendix required by subpart D of this part.

(1) The response plan must include 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;

(F) Fish hatcheries located at Port San Juan, Main Bay, Esther Island, Cannery Creek, and Solomon Gulch; and

(G) Other locations in Prince William Sound, to be determined by the COTP;

(iii) Consist of sufficient numbers of trained personnel with the necessary technical skills to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater;

(iv) Provide a plan for training sufficient numbers of additional personnel to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater; and

(v) Address the responsibilities required in § 155.1035(d)(4).

(2) The response plan must include drill procedures that must—

(i) Provide two drills of the oil spill removal organization each year to ensure prepositioned equipment and trained personnel required under this subpart perform effectively;

(ii) Provide for both announced and unannounced drills; and

(iii) Provide for drills that test either the entire appendix or individual components.

(3) The response plan must identify a testing, inspection, and certification program for the prepositioned response equipment required in § 155.1130 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 of all electrical motors, pumps, power packs, air compressors, internal combustion engines, and oil recovery devices; and

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

(ii) Records of equipment tests and inspection; and

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

(4) The response plan must identify and give the location of the prepositioned response equipment required in § 155.1130 including the make, model, and effective daily recovery rate of each oil recovery resource.

(b) The owner or operator shall submit to the COTP for approval, no later than September 30th of each calendar year, 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 U.S. Coast Guard and must be maintained for a period of 3 years.

§ 155.1130 Requirements for prepositioned response equipment.

Except as permitted under § 155.1140, the owner or operator of a tanker subject to this subpart shall provide the following prepositioned response equipment, located within Prince William Sound, in addition to that required by § 155.1035:

(a) On-water recovery equipment with a minimum effective daily recovery capacity of 30,000 barrels, capable of being on scene within 6 hours of notification of a discharge.

(b) On-water storage capacity of 100,000 barrels, capable of being on scene within 6 hours of notification of a discharge.

(c) Additional on-water recovery equipment with a minimum effective daily recovery capacity of 40,000 barrels capable of being on scene within 18 hours of notification of a discharge.

(d) On-water storage capacity of 300,000 barrels for recovered oily material, capable of being on scene within 24 hours of notification of a discharge.

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

(f) Equipment as identified below, for the locations identified in § 155.1125(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) Sorbents including booms, sweeps, pads, blankets, drums and plastic bags;

(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; and

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

(g) For each oil-laden tanker, two escort vessels, one of which is fitted with skimming an onboard storage capabilities practicable for the oil recovery planned for a cleanup operation, as identified by the oil spill removal organization.

(h) Ligthering resources required in § 155.1050(m) capable of arriving on scene within 6 hours of notification of a discharge.

§ 155.1135 Response plan development and evaluation criteria.

For tankers subject to this subpart, the following response times must be used in determining the on-scene arrival time in Prince William Sound, for the

response resources required by § 155.1050:

	Tier 1	Tier 2	Tier 3
Prince William Sound.	12 hrs ...	24 hrs ...	36 hrs.

§ 155.1140 Tankers contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act.

A tanker owner or operator may meet some or all of the requirements of this subpart by contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act. The extent to which these requirements are met by the contractual arrangement will be determined by the COTP.

§ 155.1145 Submission and approval procedures.

An appendix prepared under this subpart must be submitted and approved in accordance with § 155.1065.

§ 155.1150 Plan revision and amendment procedures.

An appendix prepared and submitted under this subpart must be revised and amended, as necessary, in accordance with § 155.1070.

4. Part 155 is amended by adding an appendix B to read as follows:

Appendix B to Part 155—Guidelines for Determining and Evaluating Required Response Resources for Vessel 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 subparts D and E of this part. These guidelines will be used by the vessel owner or operator in preparing the response plan and by the Coast Guard to review vessel response plans.

2. Equipment Operability and Readiness

2.1 All equipment identified in a response plan must be capable of operating in the conditions expected in the geographic area in which a vessel operates. These conditions vary widely based on the location and season. Therefore, it is difficult to identify a single stockpile of response equipment that will function effectively in every geographic location.

2.2 Vessels storing, handling, or transporting oil in more than one operating environment as indicated in table 1 must identify equipment capable of successfully functioning in each operating environment. For example, vessels moving from the ocean to a river port must identify appropriate equipment designed to meet the criteria for ocean, inland, and rivers and canals. This may be equipment that is designed to operate in all of these environments or, more likely, different equipment designed for use in each area.

2.3 When identifying equipment for response plan credit, a vessel owner or operator must consider the inherent limitations in the operability of equipment components and response systems. The criteria in table 1 must be used for evaluating the operability in a given environment. These criteria reflect the general conditions in certain operating areas.

2.4 Table 1 lists criteria for oil recovery devices and boom. All other equipment necessary to sustain or support response operations in a geographic area 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. 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.

2.5 A vessel owner or operator must refer to the applicable Area Contingency Plan to determine if ice, debris, and weather-related visibility are significant factors in evaluating the operability of equipment. The Area Contingency Plan will also identify the average temperature ranges expected in a geographic area in which a vessel operates. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 The requirements of subparts D and E of this part establish response resource mobilization and response times. The location that the vessel operates farthest from the storage location of the response resources must be used to determine whether the resources are capable of arriving on scene within the time required. A vessel owner or operator shall include the time for notification, mobilization, and travel time of resources identified to meet the maximum most probable discharge and tier 1 worst case discharge requirements. Tier 2 and 3 resources must be notified and mobilized as necessary to meet the requirements for arrival on scene. An on-water speed of 5 knots and a land speed of 35 miles per hour is assumed unless the vessel owner or operator can demonstrate otherwise.

2.7 In identifying equipment, the vessel owner or operator shall list the storage location, quantity, and manufacturer's make and model, unless the oil spill removal organization(s) providing the necessary response resources has been evaluated by the Coast Guard and their capability has been determined to equal or exceed the response capability needed by the vessel. 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) must be included. A vessel 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 vessel owner or operator shall identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to the 50 barrel average most probable discharge at the point of an oil transfer involving a vessel that carries oil as a primary cargo. The equipment must be designed to function in the operating environment at the point of oil transfer. These resources must include:

3.1.1 Containment boom in a quantity equal to twice the length of the largest vessel involved in the transfer capable of being deployed within 1 hour of the detection of a spill at the site of oil transfer operations.

3.1.2 Oil recovery devices with an effective recovery capacity of 50 barrels per day or greater available at the transfer site within two hours of the detection of an oil discharge.

3.1.3 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 vessel owner or operator shall identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to discharges up to the maximum most probable discharge volume for that vessel. This will require resources capable of containing and collecting up to 2,500 barrels of oil. All equipment identified must be designed to operate in the applicable operating environment specified in table 1.

4.2 To determine the maximum most probable discharge volume to be used for planning, use the lesser of—

4.2.1 2500 barrels; or

4.2.2 10% of the total oil cargo capacity.

4.3 Oil recovery devices necessary to meet the applicable maximum most probable discharge volume planning criteria must be located such that they arrive on scene within 12 hours of the discovery of a discharge in higher volume port areas and the Great Lakes, 24 hours in all other rivers and canals, inland, nearshore, and offshore areas, and 24 hours plus travel time from shore in all open ocean areas.

4.3.1 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% of the planning volume applicable for the vessel as determined in section 4.2 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 vessel owner or operator must identify in the response plan and ensure the availability of, through contract or other approved means, sufficient boom available within the required response times for oil collection and containment, and for protection of shoreline areas. While the regulation does not set required quantities of boom for oil collection and containment, the owner or operator of a vessel must still identify in a response plan and ensure, through contract or other

approved means, 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 requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, 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 vessel's cargo capacity is 10,000 barrels, thus the planning volume is 10 percent or 1,000 barrels. The effective daily recovery capacity must be 50% of this, or 500 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 capacity as indicated in section 9 of this appendix, or 1000 barrels per day. This is the information the vessel owner or operator would use to identify and ensure the availability of, through contract or other approved means, the required response resources. The vessel owner would also need to identify how much boom was available for use.

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

5.1 A vessel owner or operator shall identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to the worst case discharge of oil cargo to the maximum extent practicable. Section 7 of this appendix describes the method to determine the required response resources.

5.2 Oil spill recovery devices identified 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 time specified for the applicable response tier listed in § 155.1050(g).

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 vessel owner or operator shall identify the storage locations of all equipment that must be used to fulfill the requirements for each tier.

5.4 A vessel 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 vessel 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) Open ocean—none.

(ii) Offshore—10 percent.

(iii) Nearshore, inland, Great Lakes, and rivers and canals—20 percent.

5.6 In addition to oil spill recovery devices and temporary storage capacity, a vessel owner or operator shall identify in the response plan and ensure the availability of, through contract or other approved means, sufficient boom that can 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. Table 2 lists the minimum quantities of additional boom required for shoreline protection that a vessel owner or operator shall identify in the response plan and ensure the availability of through contract or other approved means.

5.7 A vessel or operator shall also identify in the response plan and ensure, by contract or other approved means, the availability of an oil spill removal organization capable of responding to a shoreline cleanup operation involving the calculated volume of emulsified oil that might impact the affected shoreline. The volume of oil that should be planned for is calculated through the application of factors contained in tables 3 and 4. The volume calculated from these tables is intended to assist the vessel owner or operator in identifying a contractor with sufficient resources. 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 vessel owner or operator must be identified by manufacturer, model, and effective daily recovery capacity. These capacities must be used to determine whether there is sufficient total 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 purposes of determining the effective daily recovery capacity of oil recovery devices, the following method 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×24×E

R—Effective daily recovery capacity
T—Throughput rate in barrels per hour (nameplate capacity)
E—20% efficiency factor (or lower factor as determined by the Coast Guard)

6.2.2 For those devices in which the pump limits the throughout 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 data provided by the manufacturer on the nameplate rated capacity for the device.

6.2.4 Vessel owners or operators including in the response plan oil recovery devices whose throughput is not measurable using a pump capacity or belt/mop capacity may provide information to support an alternative method of calculation. This information must be submitted following the procedures in paragraph 6.5 of this appendix.

6.3 As an alternative to section 6.2 of this appendix, a vessel 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 F808, 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×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 vessel owner or operator can document capability to operate equipment under spill conditions. Ten hours per day must be used unless a vessel owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

6.4 A vessel owner or operator submitting a response plan shall provide data that supports the effective daily recovery capacities 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 gpm=381 barrels per hour
R=381×24×.2=1,829 barrels per day

After testing using ASTM procedures, the skimmer's oil recovery rate is determined to be 220 gpm. The vessel owner or operator identifies sufficient resources available to support operations 12 hours per day.
220 gpm=314 barrels per hour
R=314×12=3,768 barrels per day

A vessel owner or operator will be able to use the higher capacity if sufficient temporary oil storage capacity is available.

6.5 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. Oil spill removal organizations or equipment manufacturers may submit required information on behalf of multiple vessels owners or operators.

7. Calculating the Worst Case Discharge Planning Volumes

7.1 A vessel owner or operator shall plan for a response to a vessel's worst case discharge volume of oil cargo. The planning for on-water recovery must take into account

a loss of some oil to the environment due to evaporations 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 vessel owner or operator for determining required on-water recovery capacity:

7.2.1 The following must be determined: The total volume of oil cargo carried, the appropriate cargo group for the type of petroleum oil carried [persistent (groups II, III, IV) or non-persistent (group I)], and the geographic area(s) in which the vessel operates. For vessels carrying mixed cargoes from different petroleum oil groups, each group must be calculated separately. This information is to be used with table 3 to determine the percentages of the total cargo volume to be used for removal capacity planning. This table divides the cargo 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 4.

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in table 5 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 within 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 12, 36, and 60 hours of the discovery of an oil discharge. For the Great Lakes, these tiers are 18, 42, and 66 hours. For all other rivers and canals, inland, nearshore, offshore areas these tiers are 24, 48, and 72 hours. For the open ocean area, these tiers are 24, 48, and 72 hours with an additional travel time allowance of one hour for every additional 5 nautical miles from shore.

7.2.4 The resulting on-water recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable geographic area. The equipment must be capable of sustaining operations for the time period specified in table 3. A vessel owner or operator shall identify and ensure the availability of, through contract or other approved means, sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap described in table 6, then a vessel owner or operator must contract only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in § 155.1050(p). The owner or operator of a vessel whose planning volume exceeds the cap in 1993 should plan for additional capacity to be under contract by 1998 or 2003, as appropriate. For a vessel that carries multiple groups of oil, the required effective daily recovery capacity for each group is calculated and summed 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 total volume of oil cargo carried; the appropriate cargo group for the type of petroleum oil carried [persistent (groups II, III, IV) or non-persistent (group I)]; and the geographic area(s) in which the vessel operates. For a vessel carrying cargoes from different oil groups, each group must be calculated separately. Using this information, table 3 must be used to determine the percentages of the total cargo 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 of this appendix.

7.3.3 The resulting volume will be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

7.4 The following is an example of the procedure described above:

A vessel with a 100,000 barrel capacity for #6 oil (specific gravity .96) will move from a higher volume port area to another area. The vessel's route will be 70 miles from shore.

Cargo carried: 100,000 bbls. Group IV oil
Emulsification factor (from Table 4): 1.4
Areas transited: Inland, Nearshore, Offshore, Open ocean
Planned % on-water recovery (from Table 3): Inland 50%; Nearshore 50%; Offshore 40%; Open ocean 20%
Planned % oil onshore recovery (from Table 3): Inland 70%; Nearshore 70%; Offshore 30%; Open ocean 30%

General formula to determine planning volume:

(planning volume) = (capacity) × (% from table 3) × (emulsification factor from table 4)

Planning volumes for on water recovery:
Inland 100,000×.5×1.4=70,000 bbls
Nearshore 100,000×.5×1.4=70,000 bbls
Offshore 100,000×.4× 1.4=56,000 bbls
Open ocean 100,000×.2× 1.4=28,000 bbls

Planning volumes for on shore recovery:
Inland 100,000×.7×1.4=98,000 bbls
Nearshore 100,000×.77× 1.4=98,000 bbls
Offshore 100,000×.3×1.4=42,000 bbls

The vessel owner or operator must contract with a response resource capable of managing a 98,000 barrel shoreline cleanup in those areas where the vessel comes closer than 50 miles to shore.

Determine required resources for on water recovery for each tier using mobilization factors: (Barrel per day on water recovery requirements) = (on water planning volume as calculated above) × (mobilization factor from table 5).

			Tier 1	Tier 2	Tier 3
Inland/Nearshore	70,000	×	.15	.25	.40
Offshore	56,000	×	.10	.165	.21
Open ocean	28,000	×	.06	.10	.12
			equals (barrels per day)		
Inland/Nearshore			10,500	17,500	28,000
Offshore			5,600	9,240	11,760
Open ocean			1,680	2,800	3,360

Since the requirements for tier 1 for inland and nearshore exceed the caps, the vessel owner would only need to contract for 10,000 bpd for tier 1. No additional equipment would be required to be identified because the required tier 3 resources are below the tier 3 caps.

10% of the on-water recovery capability for off shore, and 20% of the capability for inland/nearshore, for all tiers, must be capable of operating in water with a depth of 6 feet or less.

The vessel owner or operator would also be required to identify or contract for quantities of boom identified in table 2 for the areas in which the vessel operates.

8. Determining the Availability of High-Rate Response Methods

8.1 Response plans for a vessel carrying group II or III persistent oil as a primary cargo that operates in an area with year-round pre-approval for dispersant use may receive credit for up to 25 percent of their required on-water recovery capacity in that area in 1993 if the availability of these resources are ensured by contract or other approved means. For response plan credit, these resources must be capable of being on scene within 12 hours of the discovery of a discharge.

8.2 To receive credit against any required on-water recovery capacity, a response plan must identify the locations of dispersant stockpiles, methods of transporting to a shoreside staging area, and appropriate aircraft or vessels 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 maintained by the U.S. 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 such that it can be mobilized to shoreside staging areas to meet the time requirements in 8.1 of this appendix. Sufficient equipment capacity and sources of appropriate dispersants must be identified to sustain dispersant operations for at least 3 days.

8.2.3 Credit against on-water recovery capacity in pre-approved areas will be based on the ability to treat oil at a rate equivalent to this credit. For example, a 2,500 bbls/day credit against the tier one 10,000 bbls/day on-water cap would require the vessel owner or operator to demonstrate the ability to treat 2,500 bbls/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 750 bbls of dispersants that would be available on scene at a rate of 250 bbls per day and the ability to apply the dispersant at that daily rate for 3 days in the area in which the vessel operates. 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 vessel owner or operator shall identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable Local and Area Contingency Plans.

8.4 Identification of the 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 Local or Area Contingency Plan.

8.5 In addition to the credit identified above, a vessel owner or operator that operates in an area pre-approved for dispersant use may reduce their required on water recovery cap increase for 1998 and 2003 by up to 50% 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. Use of this or other alternative high-rate methods for a portion of the required cap increase in 1998 will be determined during the cap increase review 1996.

9. Additional Equipment Necessary To Sustain Response Operations

9.1 A vessel owner or operator is responsible for ensuring that sufficient numbers of trained personnel and boats, aerial spotting aircraft, 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 vessel owner or operator is not required to list these resources in the response plan, but shall certify their availability.

9.2 A vessel 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 capacity required on scene. This temporary storage capacity may be reduced if a vessel owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant water, or the availability of alternative temporary storage or disposal locations in the area(s) the vessel will operate will reduce the overall volume of oily material storage requirements.

9.3 A vessel owner or operator shall ensure that their planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable Area Contingency Plan.

BILLING CODE 4910-14-M

TABLE 1

RESPONSE RESOURCE OPERATING CRITERIA

OIL RECOVERY DEVICES

Operating Environment	Significant Wave Height[1]	Sea State
Rivers & Canals	≤ 1 foot	1
Inland	≤ 3 feet	2
Great Lakes	≤ 4 feet	2-3
Ocean	≤ 6 feet	3-4

BOOM

Boom Property	Use			
	Rivers & Canals	Inland	Great Lakes	Ocean
Significant Wave[1] Height (feet)	≤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

[1] 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

Shoreline Protection Requirements

PERSISTENT OILS

Location	Boom ensured by contract or other approved means (ft.)	Availability hours	
		Higher Volume Port Area	Other Areas
Open Ocean	/	/	/
Offshore	15,000	24	48
Nearshore/ Inland/ Great Lakes	30,000	12	24
Rivers & Canals	25,000	12	24

NON-PERSISTENT OILS

Open Ocean	/	/	/
Offshore	/	/	/
Nearshore/ Inland/ Great Lakes	10,000	12	24
Rivers & canals	15,000	12	24

Spill Location	Nearshore/Inland/ Great Lakes			River		
Sustainability of on-water oil recovery	4 days			3 days		
Oil Group	% Natural Dissipation	% Recovered Floating oil	% Oil on shore	% Natural Dissipation	% Recovered Floating oil	% Oil on shore
I Non-persistent oils	80	20	10	80	10	10
II Light crudes and fuels	50	50	30	40	15	45
III Medium crudes and fuels	30	50	50	20	15	65
IV Heavy crudes /residual fuels	10	50	70	5	20	75

Note: Percentage may not sum to 100; reflects enhanced on-water recovery capacity

Table 3 Removal Capacity Planning Table

Spill Location	Open ocean			Offshore		
Sustainability of on-water oil recovery	10 days			6 days		
Oil Group	% Natural Dissipation	% Recovered Floating oil	% Oil on shore	% Natural Dissipation	% Recovered Floating oil	% Oil on shore
I Non-persistent oils	100	/	/	95	5	/
II Light crudes	90	10	/	75	25	5
III Medium crudes and fuels	75	20	[5]*	60	40	20
IV Heavy crudes /residual fuels	50	20	[30]*	50	40	30

* Included in table for continuity; no planning required.

Table 3 Removal Capacity Planning Table

TABLE 4

EMULSIFICATION FACTORS FOR PETROLEUM OIL CARGO GROUPS

NON-PERSISTENT OIL	
GROUP I	1.0
PERSISTENT OIL	
GROUP II	1.8
GROUP III	2.0
GROUP IV	1.4

TABLE 5

ON-WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS

Area	Tier 1	Tier 2	Tier 3
Rivers & Canals	.30	.40	.60
Inland/Nearshore/Great Lakes	.15	.25	.40
Offshore	.10	.165	.21
Ocean	.06	.10	.12

Note: These mobilization factors are for total resources mobilized, not incremental resources.

TABLE 6

RESPONSE CAPABILITY CAPS BY GEOGRAPHIC AREA

	Tier 1	Tier 2	Tier 3
February 18 1993			
All except rivers & canals & Great Lakes	10K bbls/day	20K bbls/day	40K bbls/day
Great Lakes	5K bbls/day	10K bbls/day	20K bbls/day
Rivers & canals	1,500 bbls/day	3,000 bbls/day	6,000 bbls/day
February 18 1998			
All except rivers & canals, & Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day
Great Lakes	6.35K bbls/day	12.3K bbls/d	25K bbls/day
Rivers & canals	1,875 bbls/day	3,750 bbls/day	7,500 bbls/day
February 18 2003			
All except rivers & canals, & Great Lakes	TBD	TBD	TBD
Great Lakes	TBD	TBD	TBD
Rivers & canals	TBD	TBD	TBD

Note: The caps show cumulative overall effective daily recovery capacity, not incremental increases.

TBD = To Be Determined

BILLING CODE 4910-14-C

Dated: January 19, 1993.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 93–1709 Filed 2–1–93; 12:33 pm]

BILLING CODE 4910–14–M

federal register

Friday
February 5, 1993

Part IV

The President

Memorandums of January 22, 1993—The Title X "Gag Rule", Federal Funding of Fetal Tissue Transplantation Research, and Importation of RU–486

Federal Register
Vol. 58, No. 23
Friday, February 5, 1993

Presidential Documents

Title 3—

The President

Memorandum of January 22, 1993

The Title X "Gag Rule"

Memorandum for the Secretary of Health and Human Services

Title X of the Public Health Services Act provides Federal funding for family planning clinics to provide services for low-income patients. The Act specifies that Title X funds may not be used for the performance of abortions, but places no restrictions on the ability of clinics that receive Title X funds to provide abortion counseling and referrals or to perform abortions using non-Title X funds. During the first 18 years of the program, medical professionals at Title X clinics provided complete, uncensored information, including nondirective abortion counseling. In February 1988, the Department of Health and Human Services adopted regulations, which have become known as the "Gag Rule," prohibiting Title X recipients from providing their patients with information, counseling, or referrals concerning abortion. Subsequent attempts by the Bush Administration to modify the Gag Rule and ensuing litigation have created confusion and uncertainty about the current legal status of the regulations.

The Gag Rule endangers women's lives and health by preventing them from receiving complete and accurate medical information and interferes with the doctor-patient relationship by prohibiting information that medical professionals are otherwise ethically and legally required to provide to their patients. Furthermore, the Gag Rule contravenes the clear intent of a majority of the members of both the United States Senate and House of Representatives, which twice passed legislation to block the Gag Rule's enforcement but failed to override Presidential vetoes.

For these reasons, you have informed me that you will suspend the Gag Rule pending the promulgation of new regulations in accordance with the "notice and comment" procedures of the Administrative Procedure Act. I hereby direct you to take that action as soon as possible. I further direct that, within 30 days, you publish in the **Federal Register** new proposed regulations for public comment.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 22, 1993.

[FR Doc. 93-2973
Filed 2-3-93; 1:16 pm]
Billing code 3195-01-M

Editorial note: The Secretary of Health and Human Services is publishing documents relating to this memorandum in Part V of this issue. For the President's remarks on signing this memorandum, see p. 85 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Memorandum of January 22, 1993

Federal Funding of Fetal Tissue Transplantation Research

Memorandum for the Secretary of Health and Human Services

On March 22, 1988, the Assistant Secretary for Health of Health and Human Services ("HHS") imposed a temporary moratorium on Federal funding of research involving transplantation of fetal tissue from induced abortions. Contrary to the recommendations of a National Institutes of Health advisory panel, on November 2, 1989, the Secretary of Health and Human Services extended the moratorium indefinitely. This moratorium has significantly hampered the development of possible treatments for individuals afflicted with serious diseases and disorders, such as Parkinson's disease, Alzheimer's disease, diabetes, and leukemia. Accordingly, I hereby direct that you immediately lift the moratorium.

You are hereby authorized and directed to publish this memorandum in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, January 22, 1993.

[FR Doc. 93–2974
Filed 2–3–93; 1:17 pm]
Billing code 3195–01–M

Editorial note: The Secretary of Health and Human Services is publishing a document relating to this memorandum in Part V of this issue. For the President's remarks on signing this memorandum, see p. 85 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Memorandum of January 22, 1993

Importation of RU–486

Memorandum for the Secretary of Health and Human Services

In Import Alert 66–47, the Food and Drug Administration ("FDA") excluded the drug Mifepristine—commonly known as RU–486—from the list of drugs that individuals can import into the United States for their "personal use," although the drugs have not yet been approved for distribution by the FDA. (*See* FDA Regulatory Procedures Manual, Chapter 9–71.) Import Alert 66–47 effectively bans the importation into this Nation of a drug that is used in other nations as a nonsurgical means of abortion.

I am informed that in excluding RU–486 from the personal use importation exemption, the FDA appears to have based its decision on factors other than an assessment of the possible health and safety risks of the drug. Accordingly, I hereby direct that you promptly instruct the FDA to determine whether there is sufficient evidence to warrant exclusion of RU–486 from the list of drugs that qualify for the personal use importation exemption. Furthermore, if the FDA concludes that RU–486 meets the criteria for the personal use importation exemption, I direct that you immediately take steps to rescind Import Alert 66–47.

In addition, I direct that you promptly assess initiatives by which the Department of Health and Human Services can promote the testing, licensing, and manufacturing in the United States of RU–486 or other antiprogestins.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 22, 1993.

[FR Doc. 93–2975
Filed 2–3–93; 1:20 pm]
Billing code 3195–01–M

Editorial note: The Secretary of Health and Human Services is publishing a document relating to this memorandum in Part V of this issue. For the President's remarks on signing this memorandum, see p. 85 of the *Weekly Compilation of Presidential Documents.*