Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective April 25, 2005.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: February 2, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–3363 Filed 2–22–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 194

[Docket No. RSPA–03–16560; Amdt. No. 194–4]

RIN 2137–AC30

Pipeline Safety: Response Plans for Onshore Transportation-Related Oil Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: On January 5, 1993, the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS) issued an interim final rule establishing oil spill response planning requirements for onshore oil pipelines (49 CFR Part 194). These regulations were issued pursuant to section 1321(j)(5) of the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA 90). OPS is now adopting the interim rule as a final rule. This final rule makes minor amendments to some of the regulations in response to the written public comments received after issuance of the interim final rule and at a public meeting held in 1997 in New Orleans, LA. The amendments also reflect the experience that OPS has gained in implementing the rule; leading spill response exercises; and, responding to actual spills and harmonizes certain OPS requirements with related oil spill response regulations developed by the U.S. Coast Guard. The amendments are generally technical in nature and do not involve additional costs to pipeline operators or the public.

DATES: This rule is effective March 25, 2005.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366–5523, U.S Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Room 2103, 400 Seventh Street, SW., Washington, DC 20590–0001, on the contents of this final rule, or the Dockets Facility, *http://dms.dot.gov*, (202) 366–1918, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, for copies of this final rule or other information in the docket. General information about OPS programs is on our Internet home page at *http://ops.dot.gov*. For information on OPA 90, first click on the ''Initiatives,'' then on ''OPA Initiatives.''

SUPPLEMENTARY INFORMATION:

Background

Section 1321(j)(5) of the FWPCA (33 U.S.C. 1251 *et seq.*), as amended by OPA 90 (Pub. L. 101–380, 104 Stat. 484), requires an operator of an onshore pipeline facility to prepare and submit an oil spill response plan when, because of its location, the facility could reasonably be expected to cause substantial harm to the environment if it were to discharge oil into navigable waters or adjoining shorelines.

On January 5, 1993, OPS published an interim final rule (58 FR 244) that created part 194 of Title 49 of the Code of Federal Regulations. The interim final rule implemented the requirements of OPA 90 and required all onshore oil pipeline operators to submit response plans for pipelines located where they could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging oil.

Under part 194, each response plan must include a core plan that provides an information summary (*e.g.*, operator address; description of response zones; contact information for designated spill response manager), and additional detail on immediate notification procedures; spill detection and mitigation procedures; the applicable response organization; response activities and response resources; government agencies that will provide support; training procedures; equipment testing; drill types, schedules, and procedures; and plan review and update procedures. In addition, each response plan must be consistent with the National Contingency Plan (NCP) (40 CFR part 300) and each applicable Area Contingency Plan (ACP).

Part 194 also requires each operator to identify and ensure, by contract or other approved means, the resources necessary to respond, to the maximum extent practicable, to a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of a worst case discharge.

Furthermore, the part 194 requires each operator to conduct specialized training for its personnel, particularly those responsible for reporting and responding to spills. Each response plan also must address equipment testing and provide for periodic unannounced drills. Operators must participate in any unannounced drills conducted by Federal officials, including activation of the appropriate oil spill removal organization and spill management team identified in the response plan. Since 1993 OPS has led over 100 exercises.

Pipeline facilities subject to part 194 include those that transport any of the following products: crude oil; refined petroleum products (*e.g.*, gasoline, diesel fuel, heating and fuel oils, kerosene, and jet fuel); vegetable and animal oil; sludge; oil refuse; and/or oil mixed with wastes other than dredged spoil. To date, 367 onshore pipeline facilities have submitted response plans in compliance with the interim final rule that established part 194.

There are two categories of onshore pipeline response plans, those involving pipelines capable of causing ''substantial'' harm to the environment and those capable of causing ''significant and substantial'' harm to the environment. OPA 90 does not define substantial harm or significant

and substantial harm. The OPA 90 Conference Report (H.R. Conf. Report No. 653, 101st Cong., 2d Sess., 101, reprinted in 1990 U.S. Code Cong. & Admin. News 779) states that nationwide criteria should be developed to determine those facilities which could reasonably be expected to cause ''substantial harm'' and are therefore required to submit response plans (OPA Conference Report, p. 829). It discussed oil storage capacity, environmentally sensitive areas, and drinking water supplies as relevant factors, and cautioned that facility age and oil storage capacity should not be the only criteria. The report states that the criteria should result in a broad requirement for facility owners and operators to prepare and submit plans, but that only a subset of these plans (*i.e.*, those addressing significant and substantial harm) will be reviewed and approved (OPA Conference Report, p. 829). The criteria for this subset are set forth in 49 CFR 194.103(c).

In order to gain a further understanding on implementing the regulation and on potential revisions to the part 194, OPS conducted a public meeting on January 29, 1997, in New Orleans, LA, to receive comments from interested parties. A copy of the transcript of the public meeting is in the docket for this rulemaking.

In 1999, major pipeline spills occurred in Simpsonville, SC; Atchison, KS; and Knoxville, TN. In 2000, a major pipeline spill occurred in Aquasco, MD. These spills illustrated the importance of spill prevention and response planning; adequate response equipment and workers; and, the mastery and effective use of incident command systems.

Investigations and analyses of major pipeline incidents by the National Transportation Safety Board (NTSB) and OPS have emphasized the importance of protecting people and the environment, particularly in densely populated areas and in areas that are unusually sensitive to environmental damage. This final rule incorporates lessons OPS has learned from reviewing these plans, leading oil spill exercises, and, responding to oil spills, as well as the comments received. The following is a summary of the clarifications and minor changes made by this final rule to the response planning regulations:

(1) Clarifies definition of ''adverse weather'' and makes it more consistent with the U.S. Coast Guard definition;

(2) Deletes four definitions as obsolete because they are not used in the rule;

(3) Deletes expired and no longer significant dates from §§ 194.7(a), (b), (c) and 194.119(e);

(4) Clarifies wording in § 194.101(a) to address which operators are required to submit response plans;

(5) Specifies the secondary containment credits for use of secondary containment and other spill prevention measures when calculating the worst case discharge based on breakout tank capacity in § 194.105(b)(3);

(6) Clarifies the ''substantial threat'' term and requirement in § 194.107(a) and allows operators to incorporate by reference certain procedures from the operator's maintenance and emergencies manuals, required under 49 CFR 195.402, to meet the requirement;

(7) Deletes § 194.107(b) to eliminate English language requirements;

(8) Revised § 194.107(c) to provide additional guidance on consistency of response plans with the NCP and ACPs;

(9) Revises § 194.107(d)(1)(ix) to clarify that the drill requirements can be met by following PREP or developing a functionally equivalent program;

(10) Add new § 194.107(d)(3) to clarify requirements for an operator's Incident Command System (ICS);

(11) Revises §§ 194.109(b)(2) and 194.113(b)(2) to allow operators the additional flexibility to use either the name or the title of the qualified individual. The revised sections also clarify the requirement for operators to list the name or title of an alternate qualified individual;

(12) Revises § 194.111(a) to allow operators to keep response plans where they are most likely to need them;

(13) Revises §§ 194.119(d) and (f) to clarify the authority of OPS to make a final determination where a Federal on-scene coordinator (FOSC) has concerns about the operator's response capability; to clarify that OPS may consider FOSC comments on response techniques, protecting fish, wildlife and sensitive environments and on consistency with the NCP; and to clarify that OPS remains the approving authority for the response plan;

(14) Revises § 194.121(a) to clarify that the resubmission of plans to OPS on a five-year cycle is from the date of submission or from the date of last approval; and

(15) Augments the guidelines in Appendix A with three, web-based government references. Because these changes are minor and technical in nature, and generally reflect existing industry practice, no additional burden will be placed on operators or the public.

Discussion of Comments

A summary of the written comments OPS received in connection with the issuance of the interim rule is available in the docket. OPS received additional comments in response to a notice of public meeting and request for comments held in January 1997 in New Orleans. A transcript of the public meeting is also in the docket.

The comments were generally supportive of the need for oil spill response planning requirements although many suggested modifications to the existing provisions in various sections. OPS reviewed these comments and the records of the public meeting and used them in developing this final rule.

Section 194.1, Purpose

No comments were received on § 194.1 and the section is unchanged.

Section 194.3, Applicability

Several commenters requested that OPS clarify those pipelines that are considered to transport oil under 49 CFR part 194. The commenters questioned the applicability of the response planning regulations to commodities such as natural gas and unstabilized condensate from natural gas wells.

Response

OPS believes a clarification is unnecessary. The FWPCA (33 U.S.C. 1321) does not specify substances considered to be oil. Rather, the FWPCA broadly defines oil and Federal agencies rely on the broad definition to determine substances that are regulated under the Act. The existing definition of ''oil'' in § 194.5 is consistent with this broad definition. Because the definition does not include highly volatile liquids (HVL), natural gas liquids (NGL), liquefied natural gas (LNG), or liquefied petroleum gas (LPG), OPS believes that it is clear that they are not considered to be oil under 49 CFR part 194.

Section 194.5, Definitions

Coastal Zone/Inland Zone/Inland Area/ Response Area

Several commenters noted that the terms Coastal zone, Inland area, Inland zone, and Response area are defined, but that these terms are not used in the regulations.

Response

OPS agrees and is removing these definitions as obsolete.

Adverse Weather

Some commenters stated that OPS should provide more specific guidelines or criteria on what constitutes adverse weather, noting that the U.S. Coast Guard (USCG) and the Environmental Protection Agency (EPA) have specific

criteria for significant wave height within the area in which recovery equipment and booms are expected to operate.

Response

In the interests of interagency consistency, OPS is adopting, in modified form, the USCG definition of adverse weather in 33 CFR 154.1020.

Contract or Other Approved Means

OPS received comments discussing the definition of contract or other approved means for insuring that the operator will have oil spill response resources. Some commenters said the definition was too restrictive.

Response

OPS disagrees and believes that the existing definition is consistent with the intent of the law. A fundamental requirement in response planning is to establish the operator's ability to have the personnel and equipment to respond to a discharge of oil or a substantial threat of a discharge of oil on to the navigable waters. Requiring an operator to have a written or other legally binding agreement between the operator and a response contractor or other spill response organization identifying is consistent with this intent.

Environmentally Sensitive Areas

OPS received several comments on the definition of environmentally sensitive areas. Commenters suggested that the term should be revised to reflect the specific areas that would be especially sensitive to oil discharges. Some commenters stated that the definition should be limited to areas where spills are likely to create significant long-term environmental harm. Others suggested that the definition should be consistent with the National Contingency Plan (NCP).

Response

In the years since Part 194 was established, all of the Area Contingency Plans (ACPs) have been published. The Area Contingency Plans include detailed information about resources in the area. OPS believes that the NCP and ACPs provide sufficient guidance to operators on environmentally sensitive areas. Because the definition is consistent with the ACP's and the NCP, OPS is not making any changes based on these comments.

High-Volume Areas

OPS received several comments stating that the existing definition of high-volume areas (HVAs) did not make clear whether high volume areas must have both high river velocity and heavy vessel traffic or only one of the listed criteria. One commenter stated that the interim final rule did not have enough information for an operator to determine what constitutes an HVA and suggested that the current definition be modified to allow operators to use their discretion. One commenter suggested that the concept was inappropriate because it was developed for vessel response plans and assumed that the risk of a spill was greater in busy ports with more vessel traffic. Another commenter suggested that the concept of HVA does not relate to the likelihood of a discharge.

Response

OPS believes the list of specific high-volume rivers in Appendix B of 49 CFR Part 194 provides sufficient guidance to pipeline operators. The list includes areas that not only have high vessel traffic and high river velocity but also have concentrations of pipelines. The list differs from the USCG list of high volume port areas in 33 CFR 154.1020 because the OPS list also includes the concentrations of pipelines.

Major River

OPS received three comments on the definition of ''major river.'' Two commenters stated that OPS should list major rivers in an appendix to the rule rather than refer to a list in a book. One of the commenters noted that the referenced book was not readily available.

Response

OPS agrees. We are deleting the definition of major river. A listing of major rivers can be found in Appendix B, High Volume Areas.

Maximum Extent Practicable

One commenter noted that the definition of ''maximum extent practicable'' should consider the economics involved and the intent of Congress to create a system in which the private sector provided most of the response resources.

Response

The definition in this rule is similar to the definition in the USCG and EPA's response planning rules. By maintaining the definition from the interim final rule, we are being consistent with the response planning regulations of other Federal agencies. No change is made to this definition.

Navigable Waters

One commenter suggested that the definition of ''navigable waters'' was too broad and would result in an increase in pipeline operational and administrative costs, including costs to the Federal Government associated with implementing these regulations. There was also concern that the broad definition of ''navigable waters'' in Part 194 would be applied to 49 CFR Part 195.412(b), requiring costly inspection and increased risk to pipeline personnel associated with inspecting pipeline crossings in navigable waterways.

Two commenters said that waters used for recreation should not be included in the definition. One commenter suggested that referring to waters with vessel traffic leads to a belief that a risk exists only where watercraft and pipelines are both present. The commenter also stated that part 194 should not attempt to address all areas of risk but only those where pipelines and vessels coexist. The commenters stated that the full intent of OPA 90 can be met by eliminating the definition of ''navigable waters'' and by focusing on areas where the environment or public drinking water supply can be damaged.

Two commenters stated that OPS should publish a list of navigable waters or major streams. One commenter stated that the definition was inconsistent with the preamble language and the definition was ambiguous because of the use of the terminology ''recreation'' and ''waters from which fish or shell fish are taken and sold.'' They suggested using the USCG definition in 33 CFR 2.05–25 because that definition is tied to the FWPCA and the regulated community is familiar with that definition. One commenter stated that the terms ''recreation'' and ''fisheries'' should be removed or considered under the definition of sensitive areas.

Response

The definition of navigable waters in part 194 is a slightly modified version of the EPA definition in the NCP at 40 CFR 300.5 and 40 CFR part 110. OPS believes that the regulated community understands this definition because it is based on the FWPCA definition of navigable waters at 33 U.S.C. 1362. OPS will not develop a list of navigable waters because it is well established that Congress intended to broadly define navigable waters in the FWPCA. In addition, the OPA 90 Conference Report reflects the intent of Congress that facilities near sensitive areas such as public drinking water supplies generally should not be omitted from spill response planning requirements (Conference Report 101–653, p. 829). Accordingly, OPS has decided to retain the current definition.

Oil

Several commenters suggested that the definition of ''oil'' be limited to crude oil and petroleum products that could be recovered. These commenters further suggested excluding petroleum or petroleum products classified as HVLs, NGLs, LNG, or LPG. One commenter suggested that the definition should remain largely unchanged. Another commenter stated that the current definition does not include all the products that Congress intended to fall within the OPA 90 definition.

Several commenters stated that highly volatile liquids such as propane and butane should not be considered oil. Another commenter stated that the definition should be clarified to exclude trace amounts of condensate in gas pipelines. Another commenter stated that OPS should not use the USCG definition and resulting list of substances considered to be oils because the variety of products shipped by barge is much greater than oil products transported by pipeline.

Response

In February 1995, the USCG prepared a list of substances considered oil for response planning. Because HVLs, NGLs, LNG, and LPG are absent from the USCG's list, OPS concluded that these substances are not considered oil under the FWPCA. OPS also believes that in the course of implementing the provisions of part 194, operators gained an understanding of the substances considered to be oil under the rule. OPS is not changing this definition.

Oil Spill Removal Organization

OPS received three comments on the definition of the term ''oil spill removal organization'' (OSRO). One commenter stated that the terminology may imply that OPS is referring to USCG-classified OSROs. Another commenter suggested that because many small contractors have response resources, the definition should be revised to include only those entities engaged exclusively in spill response. Another stated that the definition should be amended to include companies that will use their own resources, and that the definition should refer to ''for profit, nonprofit, and in-house resources.''

Response

OPS is retaining the definition because it is sufficiently flexible to apply to different types of organizations that may be called on to respond to a discharge of oil. Narrowing the definition could exclude organizations that can help respond effectively.

Pipeline

Three commenters addressed the definition of ''pipeline.'' One commenter stated that the definition of pipeline in these regulations should encompass all parts of an onshore pipeline facility OPS regulates.

Response

OPS believes that this definition is sufficiently inclusive. The current definition of pipeline includes all parts of an onshore pipeline facility through which oil moves including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. OPS notes that some tanks are used as breakout tanks even though the pipelines transporting oil to and from the tanks have different operators. These tanks are still subject to part 194 under a 1971 Memorandum of Understanding (MOU) between EPA and DOT (36 FR 24080; December 18, 1971). Therefore, OPS is not changing the definition of ''pipeline''.

Qualified Individual

Two commenters stated that the definition of ''qualified individual'' should be identical to that in 33 CFR 154.1026.

Response

OPS is not revising the definition of qualified individual to be identical to the 33 CFR.154.1026 because the current definition meets the intent of the statute. However, OPS is revising § 194.113(b)(2) to allow the operator to identify one qualified individual and one alternate qualified individual either by title or by name, and list their 24-hour telephone numbers.

Response Zones

OPS received several comments on the definition of ''response zones.'' One commenter endorsed the response zone concept, which he said was an excellent method of tracking responsibilities and resources. Another commenter said that geographic response plans are valuable because they can contain specific response activities and strategies throughout the geographic area. One commenter suggested that a response zone should be defined in terms of response needs and that the linear distance should be limited to 500 miles. Another commenter suggested that a response zone should be defined by response strategy (the type of response necessary to contain and cleanup the spill). Another commenter suggested that the response zone should be defined by using the time requirements established in the response planning regulations for mobilizing response resources. One commenter suggested that the definition was satisfactory as currently provided in the regulation. Another commenter noted that he had prepared facility-specific response plans for three different Federal agencies and requested that OPS consider allowing a facility to prepare an overall geographic response plan that would facilitate the preparation of shorter response plans specific to the personnel and characteristics of each region. Another commenter endorsed the value of response zones and expressed support for the Integrated Contingency Plan (ICP) format to plan for multiple facilities within a given geographic area or under a single qualified individual but asked for additional flexibility in determining the need for multiple response zones.

Response

OPS intent is to give operators as much flexibility as possible in developing facility response plans. This approach is reflected in the current definition of a response zone. ''Response zone means a geographic area either along a length of pipeline or including multiple pipelines, containing one or more adjacent line sections, for which the operator must plan for the deployment of, and provide, spill response capabilities. The size of the zone is determined by the operator after considering available capability, resources, and geographic characteristics.'' Although OPS appreciates the logic associated with the preparation of purely geographic plans, OPS believes that the flexibility provided by the definition has proven to be effective in plan development. Therefore, OPS is not revising the definition of response zone.

Worst Case Discharge

OPS received comments on the definition of ''worst case discharge.'' These comments are summarized in the discussions on § 194.105.

Section 194.7, Operating Restrictions and Interim Operating Authorization

No comments were received on § 194.7. However, the February 18 and August 18, 1993, dates listed are no longer significant. As an administrative measure, OPS is removing dates from the section.

Section 194.101, Operators Required To Submit Plans

OPS received numerous comments seeking clarification on which oil pipelines were subject to part 194's response planning requirements. One commenter contended that the current language in § 194.101(a) was confusing and subject to misinterpretation. OPS received nine comments on the exceptions from plan preparation in paragraph (b) for small and distant pipelines. Two of these commenters expressed concern about the distant pipeline exception, stating that if containment can not be accomplished within four hours for larger lines and twelve hours for smaller lines, the result is likely to be contamination of environmentally sensitive areas and public drinking water supplies obtained from ground water sources—regardless of the distance.

One commenter suggested that OPS define one of the criterion associated with the exception in paragraph (b)(1), the term ''proximity to navigable waters''. Another commenter suggested that OPS eliminate the proximity criterion because under the current definition of navigable waters, almost any small pipeline will be in proximity to navigable waters.

One commenter disagreed with the 1,000 barrel discharge within five years criterion and suggested eliminating it because a discharge of 1,000 barrels could cause significant and substantial harm to the environment. Another commenter took issue with using historical spill records as a criterion. He contended that the absence of large spills over five or ten years is not a good measure of the risk of future spills given the age of some pipeline systems. One commenter recommended that § 194.101(b)(1)(ii) be revised to grant an exception to a pipeline that has not had two or more releases greater than 50 barrels resulting in polluting any stream, river, lake, reservoir, or similar body of water that violated applicable water quality standards. Other commenters suggested that inspection and repair records be included as criteria for exemption from preparing a response plan.

Response

OPS agrees that the scope of the exceptions for small and distant pipelines is very limited. With regard to small pipelines, the OPA 90 Conference Report states that the basic requirement to prepare and submit response plans should be broadly applied because under certain circumstances ''even discharges from small facilities can result in considerable damage to the environment'' (Conference Report 101–653, p. 829). Regardless of their size, the only pipelines that are unlikely to cause substantial harm to navigable waters, adjoining shorelines, public drinking water supplies, and other environmentally sensitive areas in the event of a worst case discharge are pipelines that are not in proximity to these areas. In practice, this means that the small pipeline exception can only apply if the small pipeline is also a distant pipeline. With regard to distant pipelines, the OPA 90 Conference Report pointed out that even ''unregulated, low pressure pipelines have leaked significant quantities of oil into our Nation's waterways.'' Locations that appear to be distant from open waters may be in proximity to various water resources including drinking water supplies and other sensitive areas and as a result, are likely to cause substantial harm in the event of a worst case discharge. Therefore, consistent with the intent of the statute, the small and distant pipeline exceptions must be narrowly construed and virtually all onshore oil pipelines are considered at least ''substantial harm'' facilities for purposes of part 194. Accordingly, all onshore oil pipeline operators, with the rare exception of those who can prove that their pipelines meet the strict criteria in § 194.101(b)(1) and (2), are required to prepare and submit oil spill response plans to OPS/OPS in accordance with § 194.119(a).

Although OPS modified paragraph (a) to clarify this point, OPS does not anticipate additional plan submissions because OPS believes all affected operators have already submitted response plans.

FOSC Requests

OPS received 11 comments on the handling of a Federal on-scene coordinator's (FOSC) request that OPS require a response plan be prepared and submitted for a pipeline or line section that would otherwise be exempt from 49 CFR part 194. These comments are addressed in connection with the discussion on submission and approval procedures in § 194.119 below.

Section 194.103, Significant and Substantial Harm: Operator's Statement

Although, as discussed above, all onshore oil pipeline operators are expected to develop and submit response plans, under OPA 90 only those plans for pipeline facilities that pose both a significant and substantial threat of harm to the environment require OPS approval. Under § 194.103(a), if an operator expects any line section in a response zone to cause both significant and substantial harm, then the operator must submit a statement with its response plan listing the significant and substantial harm line sections. This statement by the operator facilitates our identification of those plans requiring OPS approval. The OPA 90 Conference Report directed the RSPA Administrator to establish criteria by which those plans requiring prior approval would be selected. Report language discussed oil storage capacity, environmentally sensitive areas, and drinking water supplies as relevant factors, and cautioned that facility age and oil storage capacity should not be the only criteria. The significant and substantial harm criteria are currently set forth in § 194.103(c)(1) through (5). Several commenters took issue with various aspects of these criteria.

Historical Spill Data

With respect to § 194.103(c)(1) and (2), we received four comments on the use of historical spill data in determining significant and substantial harm. One commenter recommended that references to historical incidents contained in § 194.103(c)(1) and (2) be omitted because they have little bearing on spill harm or consequence. Another commenter noted that some consideration should be given to the type of corrective action taken as a result of previous spills.

Response

In our view, however, historical spill data is an appropriate factor for us to consider when deciding which response plans are appropriate for the approval process, because it aids in focusing our limited resources on reviewing those plans associated with facilities where known risks may be present.

Electric Resistance Welded Pipe

With respect to § 194.103(c)(3), one commenter contended that there was no scientific basis for establishing significant and substantial harm on the basis of the presence of electric resistance welded (ERW) pipe manufactured prior to 1970, operating at certain stress levels.

Response

OPS disagrees. Our accident statistics clearly show that at certain stress levels, ERW pipe manufactured before 1970 is inherently susceptible to fracture and preferential corrosion. Two studies, along with our accident data for liquid and natural gas transmission pipelines, show that failures in older ERW pipes greatly outnumber those in ERW pipe produced after 1970. Since 1970, pipe

manufacturers have changed to high frequency current for fusion heat and improved quality control for ERW pipes. These changes led to a significant decrease in the number of ERW pipe seam failures. This decrease is so significant that it cannot be attributed to any factors other than the change to high frequency current and quality control improvements. Therefore, we are retaining this criterion.

Buffer Zone Dimensions

Six comments were received regarding the criterion in § 194.103(c)(4) and (5) establishing ''significant and substantial harm'' to include a line section located within certain linear distances from drinking water intakes and environmentally sensitive areas. Three of the comments concerned the role of this criterion in the significant and substantial harm determination. One commenter asserted that drinking water intakes and environmentally sensitive areas should be equally protected, noting that the OPA 90 Conference Report made no distinction between the two and requires that both be protected in the event of a spill. This commenter recommended that an operator of any oil pipeline located within 5 miles of an environmentally sensitive area be required to prepare and submit a response plan. One commenter contended that the distances from drinking water intakes and environmentally sensitive areas should only be relevant when the line section crosses a major river or waterway. Another commenter noted that an oil discharge from a pipeline can also affect ground waters and that this should be taken into account in determining the level of harm that could reasonably be expected in the event of a discharge and taken into account for determining which plans should require approval.

Response

In our view, the clear intent of OPA 90 requires us to recognize the potential harmful effects of oil discharges on environmentally sensitive areas and drinking water sources. The fact that most pipelines are located underground, and contamination of ground waters can ultimately impact surface waters and adjoining areas indicates that a response plan must contain response strategies to protect drinking water sources and environmentally sensitive areas. Moreover, the FWPCA requires these areas be identified in the relevant ACP(s) and response plans be consistent with these ACPs. Accordingly, we are retaining the linear distance criteria in § 194.103(c)(4) and (5). Overall, we believe that the § 194.103(c) criteria for determining whether a line section can be expected to cause significant and substantial harm, are appropriate at this time. We may consider revising these criteria in the future if experience indicates that such a change is needed. We reserve the right to check all pipeline facility response plans for completeness, regardless of the level of harm the operator designates.

Treatment of Response Zones

Under § 194.103(b), if an operator expects a line section in a response zone to cause significant and substantial harm, then the entire response zone must be treated as if it could cause significant and substantial harm. Two comments were received stating that § 194.103(b) should be revised. The commenters contended that pipeline operators should not be burdened with planning for areas within a response zone but relatively distant from the pipeline sections capable of causing significant and substantial harm. Two other commenters questioned the criterion. They suggested that only the line section that met the criterion, rather than the zone, be so designated.

Response

OPS disagrees that a revision is warranted. Response zones are based on geographic and regional considerations including topography, hydrology, climate, and population. OPS requires operators to submit a response plan for each pipeline, not for each line section and requires a separate appendix for each response zone. OPS expects operators to fully analyze the potential impact of a spill throughout each response zone.

Section 194.105, Worst Case Discharge

Secondary Containment Credits

RSP/OPS received numerous comments on the practice of reducing the worst case discharge calculation from breakout tanks that have secondary containment dikes, and other prevention measures.

One commenter stated that Washington State does not allow operators to take credit for secondary containment and that the worst case discharge calculation is only to establish a planning volume. Another commenter stated that it was inappropriate to allow for a reduction of the maximum drainage volume calculation because a review of incidents associated with storage tanks shows it is not uncommon to experience at least a partial failure of containment systems.

Commenters also suggested varying amounts of credit for secondary containment, some up to 100 percent, depending on the spill prevention measures an operator has in place. Others opposed predetermined credits, arguing instead that operators should use site-specific risk assessment methods to establish the appropriate containment credit.

Response

In 49 CFR 194.105(b)(3), the rule allows operators to reduce the calculated worst case discharge from a breakout tank due to secondary containment. Reductions in the calculated worst case discharge are referred to as credits. The interim final rule is not specific as to how much credit an operator is allowed.

In 40 CFR Part 112, EPA allows up to 20 percent secondary containment credit in certain cases for tanks under its jurisdiction. Since 1994, our policy has allowed operators to claim up to a 50 percent secondary containment credit in calculating their worst case discharge for facilities with breakout tanks. The 50 percent credit policy was based on examining tank accident statistics and a 1992 position paper from the American Petroleum Institute.

Under certain circumstances, we approved claims for credit of up to 75 percent where operators were able to demonstrate that more spill prevention measures were in place. OPS believes, based on our analysis, that routine spill prevention credits higher than 75 percent are not justified.

OPS reviewed incidents from 1987 to 1999 involving spills from breakout tanks. During that period, 189 breakout tank spills were reported. Of the 179,606 barrels of oil spilled, 139,015 barrels of oil were recovered. A variety of factors may have contributed to the amount of oil lost, including oil volatility and whether there was a fire. However, over 12 years, only 77 percent of the oil spilled from breakout tanks was recovered. In addition, although secondary containment at breakout tanks generally prevented loss of the entire tank volume, there are documented cases of accidents in which the secondary containment system partially failed.

OPS's goal is to focus breakout tank operators' efforts on prevention, so that there are fewer spills. OPS believes that if the credits for preventing spills from breakout tanks are too small, operators may shift their planning emphasis from higher-risk areas along their rights-of-way, to tank farms that may pose smaller environmental risks.

Accordingly, the following table which specifies the amount of prevention credit an operator can

routinely claim has been incorporated as a new subparagraph (b)(4).

Prevention measure	Standard	Credit (percent)
Secondary containment > 100%	NFPA 30	50
Built/repaired to API standards	API RP 620/650/653	10
Overfill protection standards	API RP 2350	10
Testing/cathodic protection	API RP 650/651/653	5
Maximum allowable credit		75

OPS will entertain higher credits only on a case-by-case basis upon petition for waiver by a pipeline operator.

Supervisory Control

A commenter suggested OPS consider giving pipelines equipped with a supervisory control and data acquisition (SCADA) systems with a leak detection capability containment credits on a tiered basis, noting that since the use of SCADA systems was not mandatory, tiered credits would promote the use of such systems.

Response

OPS is not granting specific credit for reducing worst case discharge based on the use of SCADA systems because these systems are highly variable in their leak detection capabilities. In addition, the SCADA systems are for data collection and system control rather than part of a secondary containment system. However, we have seen significant improvement in these systems since they were first introduced. Operator's may now use leak detection systems enhancements as a mitigative measure in their integrity management programs and we may revisit the issue of granting response planning credits pending further advances in leak detection.

Weather

OPS received several comments on the role of weather in calculating the worst case discharge. One commenter noted that weather conditions would have a great effect on response capability. Other commenters noted that although the basic method for calculating worst case discharge was satisfactory, the rule should also include specific guidelines for planning for discharges that occur in adverse weather, at night, or that result from natural disasters, such as hurricanes and earthquakes.

Response

The current definition of worst case discharge requires consideration of adverse weather conditions. Although we have not specified how these effects must be weighed, operators are required to consider the weather history for the area surrounding the pipeline and the effects of adverse weather on the time needed to shut down a pipeline. OPS does not find a benefit by adding the new or additional terminology.

Maximum Drainage Volume/Maximum Shutdown Response Time

OPS received several comments on maximum drainage volume and maximum shutdown response time calculations. These calculations are based on historic discharge date or, in the absence of such historic data, the operator's best estimate, multiplied by the maximum flow rate. One commenter requested definitions for ''maximum shutdown response time'' and ''maximum drainage volume'' be inserted into part 194.

Response

OPS believes the existing rule has clear procedures for calculating worst case discharge volumes from line sections and the text explains that worst case means the largest volume. OPS does not find a benefit by adding the new or additional terminology.

Section 194.107, General Response Plan Requirements

OPS received several comments requesting clarification on the requirement for each response plan to identify resources for responding to a worst case discharge or a substantial threat of a worst case discharge. Commenters noted an NTSB report on the 1994 San Jacinto Flood recommended that OPS require liquid pipeline operators to address substantial threats in their facility response plans.

Response

On January 24, 1997, OPS issued a Pipeline Safety Alert Notice (ALN 97–01) to remind the regulated community of the importance of planning not only for a worst case discharge but also for a substantial threat of a worst case discharge. Although OPS does not require response planning for less than a worst case discharge, an operator may nevertheless benefit from planning responses to smaller discharges because they are more likely to occur, and may require different types and quantities of response equipment. OPS is revising § 194.107(a) as a result of these comments.

In order to minimize the burden on the regulated community, operators may incorporate by reference, procedures developed under 49 CFR 195.402 to address these requirements. Operators may refer to the appropriate section of their operations and maintenance manuals required under § 195.405(a). Operators need not submit their entire procedural manuals developed under § 195.402. However, OPS reserves the right to request a copy of the relevant portion of the procedural manual as part of the response plan review.

Other Than English

OPS received one comment requesting that criteria be specified for determining when it is necessary to develop a response plan in a language other than English.

Response

The intent of this provision is to ensure that personnel implementing response plans are able to read the plan. If the personnel implementing a plan can read in English, there is no need to produce the plan in more than one language. If a plan were written in more than one language, only the English version would need to be submitted to us. OPS has not received any plan in a language other than English and expects that response plans will continue to be submitted in English. OPS is deleting § 194.107(b) because it is not necessary.

Consistent With NCP/ACP

We received several comments and many operator requests for clarification on how an operator can certify that a plan is consistent with NCP and applicable ACPs.

Response

In the course of OPS' iterative plan review process we identified detailed information for determining consistency with the NCP and applicable ACPs. We are modifying the text of paragraph (c)

and adding a redesignated paragraph (b) to reflect this information.

As a minimum, to be consistent with the NCP a facility response plan must: (1) Demonstrate an operator's clear understanding of the function of the Federal response structure, for example, the plan must contain a procedures to notify the National Response Center and set forth the relationship between the role of the operator's response organization and the role of the FOSC in pollution response; (2) establish provisions to ensure the safety at the response site; and (3) identify the procedures to obtain any required Federal and State permissions for using alternative response strategies, such as in-situ burning and dispersants as provided for in the applicable ACPs.

At a minimum, to be consistent with the applicable ACP, the plan must: (1) Address the removal of a worst case discharge and the mitigation or prevention of a substantial threat of a worst case discharge; (2) identify environmentally and economically sensitive areas; (3) describe the responsibilities of the operator and of Federal, State and local agencies in removing a discharge and in mitigating or preventing a substantial threat of a discharge; and (4) establish the procedures for obtaining an expedited decision on use of dispersants or other chemicals.

Drills and Exercises

OPS received several comments on § 194.107(d)(1)(ix) covering drills and exercises; and on ''Guidelines for Developing and Evaluating an Oil Spill Response Exercise: A Handbook for Preparedness for Response Exercises (PREP),'' which was developed to support operator compliance with this paragraph. Two commenters wrote that § 194.107(d)(1)(ix) should specifically refer to the PREP guidelines. Two commenters requested that more guidance documents be made available, especially on how to conduct an exercise program. One commenter requested guidance on conducting exercises for multi-zone response plans.

Response

OPS is not making the PREP guidelines mandatory. However, OPS is revising § 194.107(d)(1)(ix) and redesignating this as new paragraph (c) to clarify that an operator will satisfy the requirement for drills by following PREP guidelines. An operator choosing not to follow PREP guidelines must have a drill program that is equivalent to PREP. The operator must describe the drill program in the response plan and OPS will determine if the program is equivalent to PREP. This revision is consistent with the USCG exercise requirements in 33 CFR Part 154. OPS is also providing response plan guidelines in Appendix A by adding a reference to the PREP guidelines.

Integrated Contingency Plan

OPS received two comments on using the National Response Team's Integrated Contingency Plan (ICP) format published in the **Federal Register** on June 5, 1996 (61 FR 28642). (See discussion under § 194.119 for more comments on ICP format. One commenter stated that OPS should reword or reorganize the format of a response plan to be more consistent with ICP guidelines. He suggested that § 194.107(d) be revised to use the ICP concepts of response plan, core plan, and appendices rather than addressing each zone independently. Another commenter encouraged consistency with the ICP and stated that a format similar to the ICP should simplify the demand on facilities.

Response

OPS strongly endorses using the ICP format to organize a response plan. OPS believes the ICP is a highly functional document that can be used in a variety of emergencies to meet several agencies' requirements, including Part 194. Although the ICP format is the preferred method of response planning to meet federal spill contingency planning regulations using the ICP format is not mandatory because OPS believes an operator should have the flexibility to organize their response in the manner which best fits their operational situation. Operators using the ICP format must include a cross-reference in their response plan. OPS does not find a benefit by adding the new or additional terminology.

National Interagency Incident Management System

A commenter suggested that OPS adopt the National Interagency Incident Management System (NIIMS) and require operators to be trained in NIIMS. The NCP (40 CFR 300.150) requires that response actions comply with the Occupational Health and Safety Administration (OSHA) provisions for worker health and safety in 29 CFR 1910.120(q)(3). The OSHA rule requires implementing an incident command system (ICS), which is further explained in Section 6, Appendix C of 29 CFR 1910.120.

Response

As part of the requirement to be consistent with the NCP and the ACPs, OPS requires operators to use incident command systems (ICS), including unified command system procedures for spill response. OSHA previously required training in the ICS appropriate to the role the participant plays. OPS does not require training in ICS.

OPS fully endorses NIIMS (now called the National Incident Management System (NIMS), but will accept other ICSs if they adequately address the following five functional areas: finance, logistics, operations, planning, and command. More information on NIMS is available on the USCG's Web site, *http://www.uscg.mil/USCG.shtm*. OPS is adding a new § 194.107(c)(3) to clarify a facility response plan must include a description of the operator's response management system including the five functional areas. The plan must also demonstrate the operator's response management system uses common terminology and has a manageable span of control, a clearly defined chain of command, and sufficient trained personnel to fill each position.

Section 194.107(d)(2), which lists the information required in a response zone appendix, has also been modified to reflect the change from § 194.107(d) to § 194.107(c). Although not the subject of a specific comment, RSPA is also clarifing that an operator submitting a response plan for a single response zone does not have to have a core plan and a response zone appendix. The operator of a single response zone onshore pipeline shall have a single summary in the plan that contains the required information in § 194.113.

Section 194.109, Submission of State Response Plans

OPS received four comments on submitting State response plans and on the plan's format. One commenter requested that OPS retain the provisions that allow operators to submit a response plan originally developed to meet State requirements. The commenter requested that OPS allow a State plan to be submitted to us even before the State approves the plan. Another commenter endorsed using approved State plans and commended our efforts to streamline the response planning requirements. One commenter noted that State agencies may complain that a plan is too large, and requested that OPS consider this criticism when streamlining the plan process. Another commenter stated that all plans should be required to follow the same format to ensure consistency, ease of review and ease of use. He noted that when a pipeline operator submits a State response plan, the supplementary

information should follow a consistent format.

Response

OPS is retaining § 194.109 and will continue to accept a response plan prepared for a State when the State plan has equivalent or greater environmental protection, in order to provide maximum flexibility to operators in preparing response plans. Although not the subject of a specific comment, OPS is also revising § 194.109(b)(2) to be consistent with the change to § 194.113(b)(2).

Section 194.111, Response Plan Retention

OPS received several comments on retaining response plans. One commenter noted that the requirement to retain a copy of the plan at the operator's headquarters is confusing because there are many different levels of headquarters offices. He suggested that a plan be retained at a designated office of record for the affected facilities and at designated locations where the plan will be activated. One commenter noted that EPA required a plan at the nearest field office. Two commenters noted that it was unnecessary to keep a plan at a pump station because many pump stations were unmanned. One commenter suggested that the regulations be amended to require a plan only at a manned pump station or pipeline facility. Another commenter agreed, adding that requiring a plan at unmanned locations where response activity might take place would be impractical and burdensome. Three commenters suggested that a core plan and appendices be kept at the location from which operator personnel would be dispatched. Another commenter stated that the qualified individual should not be required to have a copy of a plan if copies are available at the locations listed in § 194.111(a). One commenter questioned the need for a qualified individual to have a copy of the entire plan when the qualified individual is responsible for only a portion of the facility.

Response

OPS is revising § 194.111 by deleting § 194.111(a) and its subsections (1),(2), and (3). We are replacing these with a new subsection (a) requirement for operators to maintain relevant portions of their response plans at headquarters and at other locations from which response activities may be conducted, such as in field offices, supervisors' vehicles or spill response trailers. This change will allow operators the discretion to determine the most appropriate locations for copies of the plan.

Section 194.113, Information Summary

OPS received 10 comments on the information summary required in § 194.113. One commenter noted that § 194.113(a)(2) should be revised to eliminate the listing of one or more line sections meeting the requirements for significant and substantial harm. Instead, he suggested replacing it with a list and description of the response zones, including all counties and States that each zone encompasses and the level of harm the operator's pipeline poses in that zone.

Two commenters suggested that § 194.113(b)(1) be revised to remove the requirement that the response zone appendix contain the information summary sheet for the core plan. Another commenter took issue with the statement in the preamble to the interim final rule, on the need for an operator to provide a duplicate copy of the information summary sheet from the core plan with each response zone appendix.

Three commenters requested that § 194.113(b)(2) be revised to require only the title of the qualified individual, so that the operator would not have to update the plan when personnel changed. Two commenters stated that the plan should list the name and telephone number of an alternate qualified individual in addition to those of the qualified individual. Another commenter stated that naming specific individuals, along with their phone numbers, contractors, and employees would do little to enhance the pipeline operator's response capability.

Response

OPS believes that the information summary concerns expressed by the commenters are largely resolved through the iterative process of plan review and generally do not require further clarification or change. OPS agrees that the summary should require only the title of the qualified individual, so that the operator would not have to update the plan when personnel change. The plan should also list the name and telephone number of an alternate qualified individual in addition to those of the qualified individual. We are revising §§ 194.113(b)(2) accordingly.

Section 194.115, Response Resources

OPS received 22 comments on § 194.115. Several comments concerned the tiering of response resources. Tiering is the concept of having a certain amount of personnel and response equipment on-scene within a specified amount of time. Each increment of time, with its associated level of resources, is called a tier.

Current regulations require operators to identify in their spill response plan the resources that are available to respond for three tiers, that is, within 12, 36, and 60 hours, respectively. For high volume areas, the response times for the three tiers are 6, 30, and 54 hours, respectively. Five commenters endorsed the concept of tiers, including the concept of high volume areas. Another commenter noted that the tier requirements should be planning standards rather than performance standards, because on the day of a discharge circumstances may be different. Another commenter noted that the tiered approach should represent the minimum amount of resources that would be acceptable.

Several commenters offered alternative response times, such as Tier 1, 12 to 24 hours; Tier 2, 30 to 48 hours; and Tier 3, 60 to 80 hours. Another commenter stated that the preamble to the interim final rule offered an example of the tiered approach but that the regulatory text in § 194.115 did not have criteria. He suggested that § 194.115 should clearly explain our approach. Another commenter suggested that operators should have the discretion to identify personnel and equipment to meet the tiered response for the worst case discharge.

Another commenter noted that operators in remote areas need a different strategy because the areas may not be adequately protected under the regulation. One commenter noted that ACPs should be used as a reference in establishing the amount and type of response resources. He said that using ACPs for this task is appropriate because the ACPs would be kept up-to-date and consistency with ACPs is required. Another commenter responded to a statement in the interim final rule preamble on limitations for particular response zones including limitations on the types of equipment suitable for response in ACPs.

Another commenter noted that the regulations do not identify the level of capability that OPS would consider sufficient within the tiers. As a result, operators and response contractors may not be clear on what is required of them. One commenter noted that although the preamble to the interim final rule says that many of the recommendations of the USCG Response Planning Negotiated Rulemaking Committee were adopted, OPS departed from the Committee's recommendations on response times and response equipment. Several commenters stated that OPS

should adopt the tiered concept and specify the amount of response equipment required under each tier from the USCG's or the EPA's response planning regulations.

Two commenters addressed the subject of caps on the amount of required equipment that must be under contract, as developed in the USCG's Response Planning Negotiated Rulemaking and used in the USCG and the EPA's response plan rules. Both commenters endorsed the concept but one suggested doubling the caps in the USCG's regulations. The other commenter suggested that because resources may be insufficient in many areas of the country, OPS should specify caps for response resources that must be under contract.

OPS received several comments on specific equipment requirements under § 194.115. One commenter questioned how OPS defines sufficient resources and asked us to define reasonable levels of resources for each of the three tiers. OPS received four comments calling for adopting standards for measuring the adequacy of an operator's response equipment. One commenter noted that adopting requirements parallel to the USCG's and EPA's would be appropriate. Another commenter said that the USCG's and EPA's guidance on response resources were inappropriate because they were developed for industries regulated by those agencies. Some industry representatives suggested that operators should have the discretion to identify personnel and equipment to meet the tiered response for the worst case discharge. They oppose adopting the USCG's response planning standards, because they believe it would result in conflicting and confusing requirements.

Response

In the interim final rule, OPS referred to the USCG Navigation and Vessel Inspection Circular (NAVIC) No. 7–92, Appendix A, as a method an operator could use to determine the type and amount of response resources needed to respond to a worst case discharge. OPS also noted in the interim final rule that many pipeline operators deal with diverse spill risks and response considerations, which is reflected by the comments above. OPS does not believe it is necessary to specify the amount of response resources instead of allowing operators to determine and demonstrate sufficient response resources in their response plans.

The NAVIC included guidance on the tiers of response resources, defined environments in which response equipment must be capable of operating, and accounted for the physical effects of the environment on types of oil. The NAVIC set specific minimum amounts of equipment, and specified times of arrival at the scene of a worst case discharge for which an operator must plan.

Many of the concepts used in the NAVIC are in the USCG's rule for marine transportation-related facility response plans (33 CFR Part 154, Subpart F and Appendix C). Similarly, EPA adopted many of the planning concepts concerning the type and amount of response equipment from the NAVIC and from the USCG Negotiated Rulemaking Committee in its response planning regulation for non-transportation-related facilities (40 CFR Part 112, Appendix E).

OPS recognizes that some pipelines are in remote areas where relatively few response resources are available. If an operator is unable to meet the prescribed tier times in § 194.115(b), it should document why it cannot meet the prescribed tier times and propose alternative tier times. OPS allows an operator to propose alternative response tiers and response resources, methods and strategies to respond to the worst case discharge to the maximum extent practicable. OPS will assess the proposed alternative tier times according to available response contractors, mutual aid resources, feasible pre-staged containment and recovery equipment, and appropriate response techniques in the operator's response plan and corresponding information in the applicable ACP.

Many response plans for pipelines submitted to OPS are complex facility response plans that also address the USCG and the EPA response plan regulations. OPS notes that many of these complex facility response plans, including plans for pipelines only, are already using the USCG's and EPA's methods for planning response resources for a worst case discharge. OPS accepts the use of the assessment method specified in USCG's facility response planning regulations at Appendix C to 33 CFR part 154.

OPS encourages using USCG-classified oil spill response organizations (OSROs). An operator contracting with USCG-classified OSROs in order to have sufficient response resources to respond to the worst case discharge will not have to describe the response resources or the response equipment maintenance program of the USCG-Classified OSROs. Also, the operator will not be required to demonstrate how the equipment will be mobilized to meet the response tier times established in § 194.115, although the operator should take into account the time required for the USCG-Classified OSRO to respond to the spill from wherever the contractor is based.

OPS believes that many of the issues raised by the commenters are resolved through its iterative plan review process, drills, and responses to actual spills. Based upon this belief, OPS is not amending § 194.115 at this time. However, OPS may reexamine this issue.

Use of Spill Scenarios

OPS received comments endorsing the use of hypothetical spill scenarios to determine whether a response plan identifies sufficient response resources. One commenter noted that using scenarios is the best gauge of the capability to respond to a worst case discharge because a scenario gives an idea of what resources are available.

Another commenter suggested that scenarios would be helpful for assessing the ability to respond to a worst case discharge. Another stated that drafting multiple scenarios would be burdensome and would only make the plans larger. One commenter suggested that scenario-based analysis be used with the tiered approach. Two commenters stated that a scenario-based review is preferable to the tiered approach.

Response

OPS recognizes that other Federal and State agencies allow scenarios to be used. However, OPS finds the increased burden of mandatory scenario development in a response plan is not justified by any corresponding increase in response preparedness. OPS is not adopting a scenario-based approach.

Section 194.117, Training

OPS received several comments on the training requirements in § 194.117. Three commenters suggested revisions to § 194.117(a)(1) regarding how operators should train personnel to know their responsibilities under the plan. Three commenters noted that the training should be limited to personnel engaged in response or reporting. Two commenters noted that training should be related to each person's role under the response plan and one noted that only OSHA should have across-the-board training requirements. One commented that reporting personnel need only the items enumerated under § 194.117(a)(2) and did not need to know the specific information.

Two commenters requested that § 194.117(b)(1) be revised to require that records for personnel be maintained at a designated office of record for the

affected facilities, because this may not be the same as the operator's headquarters.

Another commenter noted that OPS should coordinate the training requirements with the USCG and the EPA to ensure required training performed for one agency will meet the training requirements for all agencies.

Response

OPS is not amending § 194.117. Following the publication of the IFR and the public meeting, the four Federal agencies responsible for implementing OPA 90 worked together to develop the Training Reference for Oil Spill Response (August 1994). Although this document is not a regulation, operators may review it along with specific agency requirements on training. This reference can be found on the USCG's Web page, *http://www.CoastGuard.mil,* and it is also available from the Government Printing Office, GPO stock number 050–12–00364–5. OPS believes the commenters concerns have been addressed through this document.

Training Credit

One commenter requested that training credit be allowed for responses.

Response

Under the PREP program, RAPS/OPS allows operators to take training credit for responses when the operator can demonstrate the specific training requirements under § 194.117, including individual responsibilities under the plan, were accomplished during the response and that appropriate records are maintained.

Section 194.119, Submission and Approval Procedures

Submission

Although not the subject of a specific comment OPS made minor clarifications to § 194.119 (a), notifying the operators that submission in electronic format is preferred; and to clarify § 194.119 (e), removing dates that were no longer necessary.

FOSC Role

Six comments were on the role of the FOSC in requesting and reviewing a facility response plan for a pipeline. Several commenters took exception to the implication that a FOSC could object to a OPS plan approval because authority to review and approve pipeline response plans was delegated to OPS. Two commenters were concerned about significant delays in plan approval in the event that a FOSC was reviewing a plan. A commenter endorsed the principle of a FOSC reviewing a response plan for a pipeline in the FOSC's area of responsibility, but said that final approval authority should remain with OPS. Two commenters stated that OPS should develop criteria for FOSC determinations of whether to request OPS require a plan submittal.

Response

OPS is committed to interagency cooperation and will continue to allow FOSCs to review response plans under § 194.119(f). OPS takes into consideration comments from a FOSC on response techniques, protecting fish, wildlife, and sensitive environments, and consistency with ACPs. However, OPS remains the approving authority for pipeline facility response plans. OPS determined that it is not necessary to develop criteria governing FOSC reviews of response plans. OPS believes that the requirements of Part 194 are sufficient to guide FOSCs in requesting a response plan be submitted or in reviewing plans. However, OPS made minor modification to §§ 194.119(d) and 194.119(f) to clarify OPS's authority.

Incident Command System for Complex Facilities

Three commenters supported using the National Response Team's ICP format at a facility that was required to prepare and submit a response plan to several Federal agencies. One commenter correctly noted that review and approval should remain with each Federal agency for the portion of the facility over which the agency has jurisdiction. Another commenter suggested that the three agencies involved in response plan review, EPA, OPS and the USCG, should develop an MOU under which only one agency would review and approve response plans for such ''complex'' facilities.

Response

OPS endorses the National Response Team's ICP as the preferred method of developing response plans (61 FR 28642; June 5, 1996). However, the ICP does not replace Federal agency requirements, redefine agency jurisdiction, or redefine or modify what constitutes a minimally adequate response plan. In addition, RSPA/OPA believes that it is appropriate for another Federal agency to review a response plan governing that portion of a facility over which the agency has expertise and jurisdiction.

Section 194.121, Response Plan Review and Update Procedures

OPS received several comments on § 194.121. OPS received four comments concerning the time allowed to revise a plan and submit the revised plan. The commenters stated that 30 days was insufficient time to revise a plan. One commenter suggested that 90 days was sufficient and three commenters suggested 120 days.

Another commenter noted that the lists of changes in operating conditions requiring resubmission are not equally significant. For example, the commenter stated that a change in the OSRO would be considered a substantial change and should require a more rapid revision of the plan. Another commenter suggested that operators should not be required to resubmit a plan because of a change in the qualified individual. Another commenter asked us to clarify whether the entire plan had to be resubmitted or only the affected portions. Another commenter suggested that § 194.121(b)(3) be changed to state that the plan must be resubmitted when a change in the type of oil transported affects the response resources.

Response

Under current regulation, each operator reviews its response plan at least every 5 years from the date of submission and modifies the plan to address new or different operating conditions or information included in the plan. OPS is revising § 194.121(a) to clarify operators are to resubmit the plans to OPS. For significant and substantial harm plans, the approval date is the date on the letter OPS approving the plan. For substantial harm facilities, operators must resubmit the plan to OPS for review five years after the most recent date of submission, because OPS does not issue approval letters to substantial harm facilities.

OPS believes that the concerns raised by these commenters is resolved through the iterative process of plan reviews. OPS requires that significant changes be submitted in accordance with § 194.121(b). An operator need not submit the entire plan if only portions of the plan have changed. If an operator requests an extension, OPS may grant an extension of up to 120 days for operators to submit changes in their plans. OPS notes that operators are required to immediately modify their plans in the event new or different operating conditions or information occur that would substantially affect implementing the response plan.

Appendix A

OPS is supplementing the plan preparation guidance in Appendix A by adding references to publications and materials as follows:

This appendix provides a recommended format for the

preparation and submission of the response plans required by 49 CFR Part 194. Operators are referenced to the most current version of the guidance documents listed below. Although these documents contain guidance to assist in preparing response plans, their use is not mandatory:

(1) The ''National Preparedness for Response Exercise Program (PREP) Guidelines,'' which can be found at the USCG's PREP Web page, *http://www.uscg.mil;*

(2) The ''National Response Team's Integrated Contingency Plan Guidance,'' which can be found at the National Response Center's Web site, *http://www.nrt.org;* and

(3) 33 CFR Part 154, Appendix C, ''Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans.''

The PREP guidelines were published in August of 2002. The Integrated Contingency Plan Guidance was published June 5, 1996, and corrected June 19, 1996.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This action is considered a significant regulatory action under section 3(f) of Executive Order 12866 (''Regulatory Planning and Review'') (58 FR 51735; Oct. 4, 1993) and DOT's regulatory policies and procedures (44 FR 11034; Feb. 26, 1979) because of substantial Congressional and public interest in preventing and mitigating oil spills. This rule was therefore forwarded to the Office of Management and Budget for review. While the technical amendments made by this final rule to the existing response planning regulations in 49 CFR part 194 are not considered to be significant and involve no new costs to regulated entities or the public, because part 194 was established by an interim rule containing only a preliminary regulatory impact analysis, a full up-to-date analysis of the economic impact of the response planning requirements was warranted and prepared in connection with this final rule adopting the interim rule. The Final Regulatory Evaluation is available in the docket. The following section summarizes the Final Regulatory Evaluation's findings with respect to the overall costs and benefits of the oil spill response planning regulations in part 194.

With regard to the costs associated with response planning, operators of onshore oil pipelines incur costs for developing and maintaining a response plan; maintaining the capability to respond to the worst case discharge in each response zone; and conducting training, drills, and exercises related to spill response. The cost analysis in the Final Regulatory Evaluation contains two separate estimates of compliance costs associated with DOT's rule: a retrospective assessment of costs incurred from 1993 through 2004 in response to the interim final rule; and a prospective assessment of the costs likely to be incurred from January 1, 2005 onward in response to the final rule. The costs associated with implementation of the interim final rule, on an annualized basis, were estimated to be $29.1 million. Looking forward, the analysis indicates that the costs associated with implementation of the final rule will be $28.2 million per year.

With respect to benefits, the response plan requirements are designed to reduce the magnitude and severity of spills, thereby reducing the environmental damages and potential human health impacts that spills may cause. The benefits analysis uses historical data on spills to estimate that the response plan requirements reduced the quantity of oil spilled by an average of approximately 806,000 gallons per year. The analysis values this reduction in the quantity of oil spilled in several ways. First, spills can cause a variety of ecological damages (*e.g.*, fish kills, bird kills) and may influence human use of natural resources (*e.g.*, recreational use). The benefits analysis incorporates information from past natural resource damage assessments to characterize the economic benefits associated with avoiding these types of damages. Second, a reduction in the quantity of oil spilled reduces the costs associated with spill cleanup. Finally, by helping to reduce the volume of oil released in the event of a spill, the response plan requirements reduce the economic losses associated with the value of the lost product. The quantitative annual benefits estimates developed for averted natural resource damages, cleanup costs, and product losses range from $10.4 million to $63.6 million, with a best estimate of about $37.0 million. Averted cleanup costs account for the largest share of the quantified benefits. These estimates do not incorporate several additional categories of benefits (reduced impacts on drinking water systems, reduced health risks, and reduced third party damages) that could not be readily quantified.

In assessing the net cost-effectiveness of the response plan requirements, the Final Regulatory Evaluation compared the estimated annual costs of the rule relative to the estimated annual reduction in the quantity of oil spilled (806,000 gallons per year), using a costs range of approximately $35 to $36 per gallon reduction in the quantity of oil released. Specifically, the net economic effect of the response plan requirements was gauged by comparing the present value of the retrospective and prospective costs to the present value of the retrospective and prospective benefits. The estimated benefits of the response plan requirements exceed the estimated costs in both the retrospective and prospective periods. The net benefits (*i.e.*, benefits minus costs) in the retrospective period total approximately $59 million, while net benefits in the prospective period are roughly $125 million. Considering both periods together, the estimated net benefit of the response planning requirements is approximately $184 million.

No additional costs are associated with the technical amendments made by this final rule to the existing response planning regulations. For additional detail on the costs, benefits, and other economic impacts of response planning, see the Final Regulatory Evaluation available in the docket.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act, RSPS/OPS must consider whether a rulemaking would have a significant economic impact on a substantial number of small entities. This final rule was developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') (67 FR 53461; Aug. 16, 2002) and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act and ensure that potential impacts of draft rules on small entities are properly considered.

This final rule adopts an interim rule as final and makes minor amendments to existing requirements for facility response plans for onshore oil pipelines. This rule does not expand the number of small entities subject to part 194. More detailed information on small business impacts can be found in Chapter 6 of the Final Regulatory Evaluation which is available for copying and review in the public docket for this final rule.

Based on the facts available which indicate the anticipated minimal impact of this rulemaking action, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking action will not have a significant economic impact

on a substantial number of small entities.

C. Executive Order 13132

This rule will not have substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. Therefore, in accordance with the Executive Order 13132 (''Federalism'') (64 FR 43255; Aug. 10, 1999), OPS has determined that the action does not have sufficient Federalism implications to warrant consultation with the States.

D. Executive Order 13175

This rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'') (63 FR 27655; Nov. 9, 2000). Because this rule will not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

E. Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532–1538). It does not result in costs of $120,700,000 or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

The interim final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163; May 22, 1995) (PRA). At the time the interim rule was issued, pursuant to 44 U.S.C. 3507(d), DOT submitted a copy of its initial PRA analysis to OMB. Every three years OPS resubmits its PRA analysis of this collection to OMB for review. The OMB control number is 2137–0589. As part of developing this final rule, OPS examined its earlier PRA analyses to assess the accuracy of the earlier estimates. Based on improved data collection, OPS revised its burden estimates. The increased burden estimates, however, reflect an adjustment in producing the estimates rather than a change in the spill response planning requirements.

Therefore, this final rule adds no additional paperwork requirements to those imposed by the interim final rule. Below is a summary of the PRA analysis. The complete PRA analysis can be found in Chapter 7 of the Final Regulatory Evaluation which is available for copying and review in the public docket for this final rule.

Title: Response Plans for Onshore Oil Pipelines.

OMB Number: 2137–0589.

Type of Request: Renewal of an existing information collection.

Respondents: Oil pipeline operators.

Estimated Number of Respondents: 367.

Estimated Total Annual Burden on Respondents: 50,186 hours.

Comments concerning this information collection should include the docket number of this rule. They should be sent within 30 days of the publication of this notice directly to: Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation. Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

According to the Paperwork Reduction Act, no persons are required to respond to a collection of information unless a valid OMB control number is displayed.

G. National Environmental Policy Act

We analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and determined that this action will not significantly affect the quality of the human environment. An Environmental Assessment (EA) is in the docket. Notice of the availability of this EA was published in the **Federal Register** on August 30, 1999 (64 FR 47228).

OPS received only one comment on the EA. It addressed issues specific to the Trans-Alaska Pipeline System (TAPS) that were outside the scope of the EA. OPS made a Finding of No Significant Impact based on the EA published in the **Federal Register** on October 26, 1999 (64 FR 57694).

Because this final rule makes only administrative and clarification changes to the response planning regulations, this final rule will not have a significant impact on the environment. OPS has prepared a Finding of No Significant Impact and placed it in the public docket.

H. Non-Petroleum Oils

The Edible Oil Regulatory Reform Act (33 U.S.C. 2720) requires that regulations establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease under any Federal law must differentiate between petroleum and non-petroleum oils. This rule does not differentiate between petroleum oils and non-petroleum oils because OPS is not aware of any onshore transportation-related pipelines transporting non-petroleum oils. Should OPS learn of such pipelines, OPS will amend the rule to differentiate between petroleum and non-petroleum oils.

List of Subjects in 49 CFR Part 194

Environmental protection, Hazardous materials transportation, Oil pollution, Petroleum, Pipeline safety, Pipelines, Reporting and recordkeeping requirements, Transportation, Water pollution control.

n Accordingly, the interim rule amending 49 CFR part 194 which was published at 58 FR 244 on January 5, 1993, is adopted as a final rule with the following amendments:

PART 194—RESPONSE PLANS FOR ONSHORE OIL PIPELINES

n 1. The authority citation for part 194 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

n 2. Amend § 194.5 by removing the definitions of *Coastal zone, Inland area, Inland zone,* and *Response area* and revising the definition of *Adverse weather* to read as follows:

§ 194.5 Definitions.

Adverse weather means the weather conditions that the operator will consider when identifying response systems and equipment to be deployed in accordance with a response plan. Factors to consider include ice conditions, temperature ranges, weather-related visibility, significant wave height as specified in 33 CFR Part 154, Appendix C, Table 1, and currents within the areas in which those systems or equipment are intended to function.

* * * * *

n 3. Revise § 194.7 to read as follows:

§ 194.7 Operating restrictions and interim operating authorization.

(a) An operator of a pipeline for which a response plan is required under § 194.101, may not handle, store, or transport oil in that pipeline unless the operator has submitted a response plan meeting the requirements of this part.

(b) An operator must operate its onshore pipeline facilities in accordance with the applicable response plan.

(c) The operator of a pipeline line section described in § 194.103(c), may continue to operate the pipeline for two years after the date of submission of a response plan, pending approval or disapproval of that plan, only if the operator has submitted the certification required by § 194.119(e).

n 4. Amend § 194.101 by revising paragraph (a) to read as follows:

§ 194.101 Operators required to submit plans.

(a) Except as provided in paragraph (b) of this section, unless OPS grants a request from an Federal On-Scene Coordinator (FOSC) to require an operator of a pipeline in paragraph (b) to submit a response plan, each operator of an onshore pipeline facility shall prepare and submit a response plan to PHMSA as provided in § 194.119. A pipeline which does not meet the criteria for significant and substantial harm as defined in § 194.103(c) and is not eligible for an exception under § 194.101(b), can be expected to cause substantial harm. Operators of substantial harm pipeline facilities must prepare and submit plans to PHMSA for review.

* * * * *

n 5. Amend § 194.105 by adding a new paragraph (b)(4) and a table to read as follows:

§ 194.105 Worst case discharge.

* * * * *

(b) * * *

(4) Operators may claim prevention credits for breakout tank secondary containment and other specific spill prevention measures as follows:

Prevention measure	Standard	Credit (percent)
Secondary containment >100%	NFPA 30	50
Built/repaired to API standards	API RP 620/650/653	10
Overfill protection standards	API RP 2350	10
Testing/cathodic protection	API RP 650/651/653	5
Maximum allowable credit		75

n 6. Revise § 194.107 to read as follows:

§ 194.107 General response plan requirements.

(a) Each response plan must include procedures and a list of resources for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge. The ''substantial threat'' term is equivalent to abnormal operations outlined in 49 CFR 195.402(d). To comply with this requirement, an operator can incorporate by reference into the response plan the appropriate procedures from its manual for operations, maintenance, and emergencies, which is prepared in compliance with 49 CFR 195.402.

(b) An operator must certify in the response plan that it reviewed the NCP and each applicable ACP and that its response plan is consistent with the NCP and each applicable ACP as follows:

(1) As a minimum to be consistent with the NCP a facility response plan must:

(i) Demonstrate an operator's clear understanding of the function of the Federal response structure, including procedures to notify the National Response Center reflecting the relationship between the operator's response organization's role and the Federal On Scene Coordinator's role in pollution response;

(ii) Establish provisions to ensure the protection of safety at the response site; and

(iii) Identify the procedures to obtain any required Federal and State permissions for using alternative response strategies such as in-situ burning and dispersants as provided for in the applicable ACPs; and

(2) As a minimum, to be consistent with the applicable ACP the plan must:

(i) Address the removal of a worst case discharge and the mitigation or prevention of a substantial threat of a worst case discharge;

(ii) Identify environmentally and economically sensitive areas;

(iii) Describe the responsibilities of the operator and of Federal, State and local agencies in removing a discharge and in mitigating or preventing a substantial threat of a discharge; and

(iv) Establish the procedures for obtaining an expedited decision on use of dispersants or other chemicals.

(c) Each response plan must include:

(1) A core plan consisting of—

(i) An information summary as required in § 194.113,

(ii) Immediate notification procedures,

(iii) Spill detection and mitigation procedures,

(iv) The name, address, and telephone number of the oil spill response organization, if appropriate,

(v) Response activities and response resources,

(vi) Names and telephone numbers of Federal, State and local agencies which the operator expects to have pollution control responsibilities or support,

(vii) Training procedures,

(viii) Equipment testing,

(ix) Drill program—an operator will satisfy the requirement for a drill program by following the National Preparedness for Response Exercise Program (PREP) guidelines. An operator choosing not to follow PREP guidelines must have a drill program that is equivalent to PREP. The operator must describe the drill program in the response plan and OPS will determine if the program is equivalent to PREP.

(x) Plan review and update procedures;

(2) An appendix for each response zone that includes the information required in paragraph (c)(1)(i)–(ix) of this section and the worst case discharge calculations that are specific to that response zone. An operator submitting a response plan for a single response zone does not need to have a core plan and a response zone appendix. The operator of a single response zone onshore pipeline shall have a single summary in the plan that contains the required information in § 194.113.7; and

(3) A description of the operator's response management system including the functional areas of finance, logistics, operations, planning, and command. The plan must demonstrate that the operator's response management system uses common terminology and has a manageable span of control, a clearly defined chain of command, and sufficient trained personnel to fill each position.

n 7. Amend § 194.109 by revising paragraph (b)(2) to read as follows:

§ 194.109 Submission of State response plans.

* * * * *

(b) * * *

(2) List the names or titles and 24-hour telephone numbers of the qualified individual(s) and at least one alternate qualified individual(s); and

* * * * *

n 8. Amend § 194.111 by revising paragraph (a) to read as follows:

§ 194.111 Response plan retention.

(a) Each operator shall maintain relevant portions of its response plan at the operator's headquarters and at other locations from which response activities may be conducted, for example, in field offices, supervisors' vehicles, or spill response trailers.

* * * * *

n 9. Amend § 194.113 by revising paragraph (b)(2) to read as follows:

§ 194.113 Information summary.

* * * * *

(b) * * *

(2) The names or titles and 24-hour telephone numbers of the qualified individual(s) and at least one alternate qualified individual(s);

* * * * *

n 10. Amend § 194.119 by revising paragraphs (a), (d), (e) and (f) to read as follows:

§ 194.119 Submission and approval procedures.

(a) Each operator shall submit two copies of the response plan required by this part. Copies of the response plan shall be submitted to: Pipeline Response Plans Officer, Pipeline and Hazadous Material Safety Administraion, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Note: Submission of plans in electronic format is preferred.

* * * * *

(d) For response zones of pipelines described in § 194.103(c) OPS will approve the response plan if OPS determines that the response plan meets all requirements of this part. OPS may consult with the U.S. Environmental Protection Agency (EPA) or the U.S. Coast Guard (USCG) if a Federal on-scene coordinator (FOSC) has concerns about the operator's ability to respond to a worst case discharge.

(e) If OPS has not approved a response plan for a pipeline described in § 194.103(c), the operator may submit a certification to OPS that the operator has obtained, through contract or other approved means, the necessary personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge. The certificate must be signed by the qualified individual or an appropriate corporate officer.

(f) If OPS receives a request from a FOSC to review a response plan, OPS may require an operator to give a copy of the response plan to the FOSC. OPS may consider FOSC comments on response techniques, protecting fish, wildlife and sensitive environments, and on consistency with the ACP. OPS remains the approving authority for the response plan.

n 11. Amend § 194.121 by revising paragraph (a) to read as follows:

§ 194.121 Response plan review and update procedures.

(a) Each operator shall update its response plan to address new or different operating conditions or information. In addition, each operator shall review its response plan in full at least every 5 years from the date of the last submission or the last approval as follows:

(1) For substantial harm plans, an operator shall resubmit its response plan to OPS every 5 years from the last submission date.

(2) For significant and substantial harm plans, an operator shall resubmit every 5 years from the last approval date.

* * * * *

n 12. Amend Appendix A to Part 194 by revising the introductory paragraph to read as follows:

Appendix A to Part 194—Guidelines for the Preparation of Response Plans

This appendix provides a recommended format for the preparation and submission of the response plans required by 49 CFR Part 194. Operators are referenced to the most current version of the guidance documents listed below. Although these documents contain guidance to assist in preparing response plans, their use is not mandatory:

(1) The ''National Preparedness for Response Exercise Program (PREP) Guidelines'' (PREP), which can be found using the search function on the USCG's PREP Web page, *http://www.uscg.mil*;

(2) The National Response Team's ''Integrated Contingency Plan Guidance,'' which can be found using the search function at the National Response Center's Web site, *http://www.nrt.org and*;

(3) 33 CFR Part 154, Appendix C, ''Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans.''

* * * * *

Issued in Washington, DC, on February 14, 2005.

Samuel G. Bonasso,

Deputy Administrator.

[FR Doc. 05–3257 Filed 2–22–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Hunting and Fishing

CFR Correction

n In Title 50 of the Code of Federal Regulations, parts 18 to 199, revised as of October 1, 2004, in part 32, make the following corrections:

n 1. In § 32.24, on page 211, remove the first heading for ''San Pablo Bay National Wildlife Refuge''.

n 2. In § 32.28, on page 219, under ''St. Vincent National Wildlife Refuge'', the first paragraph *''C. Big Game Hunting''* is removed.

n 3. In § 32.29, on page 222, under ''Blackbeard Island National Wildlife Refuge'' paragraph D is added after paragraph C.17, and on page 226, under ''Savannah National Wildlife Refuge'' paragraph D is added after paragraph C.10, to read as follows:

§ 32.29 Georgia.

* * * * *

Blackbeard Island National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Anglers may fish in freshwater year-round from sunrise to sunset, except during managed deer hunts.

2. Only nonmotorized boats and boats with electric motors are permitted.

3. The use of live minnows as bait is not permitted.

4. Boats may not be left on the refuge overnight.

5. Anglers may bank fish into estuarine waters daily from sunrise to sunset only.

* * * * *

Savannah National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. Anglers may fish in refuge impoundments and canals from March 1 through November 30 annually.

2. Anglers may fish in Kingfisher Pond year round.

3. We allow fishing from sunrise to sunset.

4. Anglers may bank fish year round in the canals adjacent to the wildlife drive.

5. Boats may not be left on the refuge overnight.