

at (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Tuesday, July 23, 2002, (67 FR 48070), announced that a public hearing was scheduled for October 16, 2002 at 10 a.m., in room 4718. The subject of the public hearing is proposed regulations under sections 170, 2522, and 2055 of the Internal Revenue Code. The public comment period for these proposed regulations expired on September 25, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, October 9, 2002, no one has requested to speak. Therefore, the public hearing scheduled for October 16, 2002 is cancelled.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[USCG-2001-8661]

RIN 2115-AG05

Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changes to its requirements for oil-spill removal equipment under vessel response plans and marine transportation-related facility response plans. These changes would increase the minimum available spill removal equipment required for tank vessels and facilities, add requirements for new response technologies, and clarify methods and procedures for responding to oil spills in coastal waters.

DATES: Comments and related material must reach the Docket Management Facility on or before January 9, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before January 9, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2001-8661), U.S.

Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>. In choosing among these means, please give due regard to the recent difficulties with delivery of mail by the U.S. Postal Service to Federal facilities.

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

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, would become part of this docket and would be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

You may inspect the material proposed for incorporation by reference at room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-267-0448. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rulemaking, call or e-mail Mr. Robert Pond, G-MOR, Coast Guard, at telephone 202-267-6603, or rpond@comdt.uscg.mil. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG-2001-8661), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We would consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we would hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Under the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380) and Executive Order 12777, the Coast Guard is authorized to issue regulations requiring the owners and operators of tank vessels and marine transportation-related (MTR) facilities to prepare and submit response plans. The Oil Pollution Act of 1990 amended the Federal Water Pollution Control Act to require the preparation and submission of oil spill response plans by the owners or operators of certain facilities and vessels. It also requires that these vessels and facilities be operated in compliance with their submitted response plans. Failure to have submitted a response plan, and to have received approval of that plan or authorization from the Coast Guard to operate according to the submitted plan, results in the prohibition of that vessel or facility from the handling, storing or transporting of oil. In 1996, the Coast Guard published final tank vessel response plan regulations (61 FR 1052)

and final MTR facilities response plan regulations (61 FR 7890). These regulations contain minimum on-water oil removal equipment requirements that planholders transporting or transferring petroleum oil are required to meet in planning for an oil discharge. These regulations also state that the Coast Guard would periodically review the existing oil removal equipment requirements to determine if increases in mechanical recovery systems and additional requirements for new response technologies are practicable.

On January 27, 1998, the Coast Guard published a Notice of Request for Comments (63 FR 3861) regarding our intent to conduct a review of response plan removal equipment requirements. In the notice we stated that the 1993 removal equipment requirements would remain in effect pending the results of that review, and that the removal equipment requirements increases as originally scheduled would not be implemented until the review was complete. On June 24, 1998, the Coast Guard published a Notice of Meetings (63 FR 34500) that announced three public workshops. They were set up to solicit comments on potential changes to removal equipment requirements within the response plan regulations (33 CFR parts 153, 154 and 155) for mechanical recovery, dispersants, and other spill removal technologies. Based on comments to the **Federal Register** Notice and the three Workshops, the Coast Guard commissioned an in-depth assessment of advances in oil spill response equipment since 1993. The Coast Guard completed the assessment in May 1999.

Based on the recommendations contained in the assessment (Summary Report of Public Workshop for Response Plan Equipment CAPs), the Coast Guard published a Notice of Decision (65 FR 710, January 6, 2000) that provided for a 25% increase for on-water mechanical recovery equipment for response plans of MTR facilities and tank vessels, effective April 6, 2000. The Coast Guard also initiated a regulatory project to evaluate the potential for additional increases in mechanical on-water recovery and new requirements for other response technologies, which would, if practicable, become effective in 2003.

To ensure that a broad range of environmental issues are adequately considered in the rulemaking, the Coast Guard is preparing a Programmatic Environmental Impact Statement (PEIS) for revising the oil removal equipment requirements for tank vessels and MTR facilities response plans. On September 1, 2000, the Coast Guard published a

Notice of Intent to prepare and circulate a draft PEIS (65 FR 53335). The Coast Guard requested input on environmental concerns of the public related to the alternatives for increasing spill removal equipment requirements for an oil discharge, and suggested analyses or methodologies for inclusion in the PEIS.

Discussion of Comments From Public Workshops

We received 70 letters commenting on this proposed rulemaking from the three public workshops. In the following paragraphs, the Coast Guard discusses the comments received and explains any changes made to the proposed rulemaking. The Coast Guard first discusses general comments, and secondly discusses comments regarding specific sections of the rulemaking. The respondents offering comments included MTR facilities, Oil Spill Removal Organizations, the oil industry, tanker associations, Federal and State agencies, environmental and marine safety non-profit organizations, and private citizens.

General Comments

Several respondents supported adoption of requirements (or credits against existing mechanical recovery equipment requirements) for establishment of dispersant and in-situ burning capabilities for a number of reasons including

- These methods have been demonstrated to have higher effectiveness ratings, under certain conditions, than mechanical recovery;
- Regional Response Teams (RRTs) around the country have pre-authorized their use under certain conditions;
- Adding dispersant and in-situ burning equipment requirements is more cost-effective because those response methods would result in greater mitigation of spill impacts than the addition of more mechanical recovery equipment; and
- Having three response options provides greater opportunity for effective response regardless of environmental conditions at the time of a spill.

Several respondents expressed concern regarding the use of dispersants and in-situ burning because, in their view-

- The effectiveness and effects of these technologies have not been proven; and
- These technologies do not remove the oil from the environment but only transfer it to the water column or the atmosphere.

These options pose a greater potential for adverse environmental impacts than mechanical recovery methods. These technologies have been studied extensively. The conclusions and recommendations of the Summary Report of Public Workshop for Response Plan Equipment CAPs, as well as the requirements proposed in this rulemaking, address the concerns expressed in these comments.

The Coast Guard believes that potential effectiveness and effects of dispersants and in-situ burning have been sufficiently documented, and that use of either or both of those options in certain circumstances would produce a net environmental benefit compared to reliance on mechanical methods alone. The Coast Guard also agrees with the conclusions of the 1989 National Academy of Sciences report "Using Oil Spill Dispersant on the Sea" which concludes that * * * "Sensitive inshore habitats, such as salt marshes, coral reefs, sea grasses and mangroves, are best protected by preventing oil from reaching them. Dispersion of oil at sea, before a slick reaches a sensitive habitat, generally will reduce overall and particularly the chronic impact of oil on many habitats." This study stimulated the adoption of dispersant and in-situ burning preauthorization agreements around the country, as well as a series of government-industry workshops dealing with comparative effects and effectiveness of various response countermeasures in the mid to late 1990's, the 1999 Summary Report of Public Workshop for Response Plan Equipment CAPs, and successful dispersant use in response to several spill incidents in the U.S. More detailed discussion of the comparative environmental impacts of response options (mechanical recovery, dispersant use and in-situ burning) will be included in the PEIS we are preparing for this rulemaking. Current dispersant and in situ burning pre-authorization/expedited approval zones around the country generally extend seaward from .5 to 3 miles offshore in coastal waters. There are no pre-authorizations/pre-approvals in estuarine or fresh water areas at this time, although, as required by the National Oil and Hazardous Substances Pollution Contingency Plan in 40 CFR 300.900, Regional Response Teams and Area Committees continue to give consideration to pre-approvals in those waters.

Several respondents stated that they were in favor of the use of dispersants as a primary oil spill response tool.

The Coast Guard agrees with this comment. Dispersants have been used

effectively in numerous oil spill responses both in the U.S., and abroad within the last several years. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) states that all technologies that may minimize impact to the environment are potential primary response options. The use of all response technologies would be used in accordance with those strategies contained within the Area Contingency Plans (ACPs). The effects of dispersants on an ecosystem are discussed in the PEIS.

Several respondents stated that both the dispersant and in-situ burning equipment requirements should offset mechanical recovery requirements, that is, reduce the amount of mechanical recovery equipment a planholder is required to have available.

The Coast Guard disagrees with this comment regarding dispersants. The weather and sea state conditions for the two options are opposite. The calmer the seas and winds the more effective mechanical recovery would be and the less effective dispersants would be and vice versa. If mechanical recovery equipment requirements were reduced by 10,000 barrels (bbls), there would be many spills that would not be compensated by the newly added dispersant equipment requirement because dispersant use would not fit the scenario. Thus, if mechanical recovery equipment requirements were reduced because dispersant equipment requirements are added, there could be an overall reduction in the nation's ability to mitigate effects of an oil spill. On the other hand, mechanical recovery and in-situ burning equipment work in nearly identical circumstances. Thus in pre-authorization areas, for most spills the two technologies are interchangeable so that a reduction of 10,000 bbls of mechanical recovery capability is directly offset by the 10,000 barrel increase in in-situ burning capability. Therefore, a limited offset is practicable for in-situ burning.

Several respondents stated that the United States must develop a consistent national policy on the use of dispersants before adopting a mandatory requirement for a dispersant capability.

National policy does exist and has been in place since the NCP (40 CFR part 300) was first published in 1972. The NCP contains the national policy regarding decisions on the use of dispersants and in-situ burning. The NCP details the procedures for establishing use criteria and deciding whether or not to use either dispersants or in-situ burning in a specific incident. It requires that all pre-approval and incident specific approval decisions

related to these response options be made with the consent of the Environmental Protection Agency and the affected state(s)—including State Representative(s) to the RRT—and in consultation with all affected Federal natural resource trustees. At the same time, certain baseline guidance, such as the Special Monitoring of Applied Response Technologies (SMART) protocol for monitoring dispersant effectiveness are being adopted on the national level where appropriate.

It should also be emphasized that this proposed rulemaking does not require dispersants or in-situ burning to be used in any circumstance. It does not set national, regional, or local policy. This rulemaking is only intended to facilitate execution of those policies established in accordance with the NCP by requiring that the personnel and materials to accomplish those policies be ensured available if the local response community's criteria for use are met in a specific incident.

Several respondents recommended that dispersant equipment requirements should be broad-based, that is, applied to all potential end-users including offshore oil production facilities. The respondents suggested that the Coast Guard work with the Minerals Management Service (MMS) to harmonize any dispersant requirements.

The Coast Guard is currently working with MMS, EPA, and the Office of Pipeline Safety to keep them apprised of this effort and to ensure cooperation in developing and applying consistent requirements to all segments of the oil industry.

Several respondents stated that a complete dispersant response system should include mobilization procedures, a dispersant stockpile, handling, transportation and staging plans, pre-identified staging areas with refueling and loading capabilities, a spotter aircraft, tracking capabilities, communication systems, application platforms, ground crews for loading, monitoring equipment, stockpiles, ground crews for maintenance, training and exercise programs, trained observers, and communications procedures.

The Coast Guard believes that it is in the best interest of the response community to avoid regulations that are over-prescriptive. Therefore, this proposed rulemaking establishes a minimum quantity of oil to be treated with dispersant within certain time periods. It emphasizes the responsibility of the planholder to identify type and location of dispersant stockpiles, dispersant delivery platforms, maintenance, and loading

responsibilities and procedures, communications, etc.

Several respondents recommended that responders be capable of starting either dispersant application or in-situ burning operations at times ranging from 6 to 12 hours after the time a decision is made to use. Based on our evaluation of risk and capabilities and the development of mobilization factors, the Coast Guard is proposing that dispersant operations be planned to start within 7 hours and in-situ burning operations within 12 hours of the decision to use.

Several respondents stated that dispersant capabilities should be available to treat a quantity of oil over time. The Coast Guard has opted to structure the proposed rulemaking slightly differently, specifying a minimum dispersant spraying capacity over time. Equipment requirements calculators in the proposed rulemaking are based on existing platform types and capabilities as documented in the Summary Report of Public Workshop for Response Plan Equipment CAPs. The requirements are based on a planning assumption of 5 gallons/acre (1:20 dispersant to oil application ratio).

The aforementioned planning assumption relies on the generally agreed upon estimate of the effectiveness of current dispersant formulations. If significant advances are made in dispersant effectiveness, through improvements in dispersant technology, the Coast Guard will consider a greater oil: dispersant ratio. Such consideration will be based on submission of credible peer review evidence that a higher ratio can be achieved over a range of oils and environmental conditions.

Appendices B and C of the proposed rulemaking incorporate this methodology as Tables 7 and 8 and contain further procedures for calculating overall capability based on the locations and numbers of dispersant stock piles and delivery platforms. Proposed requirements represent flexible, operationally viable, and economically feasible tier 1 response amounts. These amounts are intended to allow use of a variety of regionally based assets in response to 99% of all spills for which dispersants are a viable option. Tiers 2 and 3 are designed to accommodate a cascade of assets from a central location.

Several respondents said that oil spill response equipment requirements should not mandate a specific type of application platform, but allow planholders to choose one. We agree and are not requiring a specific type of application platform in this rulemaking.

Several respondents believe that dispersant exercise requirements should be handled through the Preparedness for Response Exercise Program (PREP). We agree and have proposed changes to the PREP Guidelines to include both a dispersant and where appropriate an in-situ burning equipment exercise requirement.

Several respondents stated that the ability to track oil has improved tremendously with the development of tracking buoys, Global Positioning Systems, and satellite and aerial imaging systems. This allows for much better employment of resources than was possible in 1993.

The Coast Guard agrees that continuous improvement has occurred in these areas of oil tracking. However, these technologies need further development and are not practical at this time.

At least one respondent suggested that the Coast Guard should consider requiring industry to stockpile equipment and materials for use of bioremediation in addition to dispersants and in-situ burning.

Bioremediation agents are intended to enhance the natural biodegradation of oil. One bioremediation product is essentially a fertilizer, providing nutrients that act to stimulate rapid growth of naturally occurring, oil-eating bacteria. A second type of bioremediant is a microbiological culture (an actual oil-eating bacteria) that can be introduced into the spilled oil. Both types act over weeks or months in removing oil from the environment.

This alternative has received widespread consideration for use at the national, regional, and local area levels in many parts of the country, similar to the attention paid to chemical dispersants and in-situ burning. To date, response decision-makers have concluded that bioremediants are most useful as a "polishing tool," that is, being applied to oil remaining on shoreline beaches and marsh areas after all visible and accessible oil has been removed. Thus, decisions whether, when, and how to use a bioremediant are typically made once the oil has been stabilized in place on shore. No pre-approvals have been developed in part because there is time and opportunity to locate and acquire suitable bioremediants as the response moves from the emergency to the remediation phase.

On the other hand on-water mechanical recovery, dispersant use, and in-situ burning use decisions must be made quickly during a spill because a primary objective with each of these options is to intercept and remove or

divert the spilled oil from the water before it affects highly sensitive nearshore and onshore environments. This short window of opportunity for use makes it imperative that necessary materials and equipment be readily available at the start of an incident. Therefore, it is appropriate to require industry to arrange for their use in advance.

There were several comments made regarding the effects dispersants have on the environment. These comments will be addressed in the PEIS.

Discussion of Comments From the Federal Government-Oil Spill Response Industry Partnership Action Team

The Federal Government-Oil Spill Response Industry Partnership Action Team recommended that the Coast Guard consider regulations to target tier response based on historical spill data. Historically, the Gulf of Mexico region is the area of most intense activity including tank vessel transits, offshore oil production, and underwater oil pipelines. As a consequence of the high volume of these activities, the area also has the highest incidence of large volume oil spills as well. Therefore, the Gulf of Mexico region should have a larger Tier 1 dispersant equipment requirement than other regions of the country.

The Coast Guard agrees and the proposed dispersant tiers reflect the historical differences in incidence and volume between the Gulf and other areas of the country.

The Federal Government-Oil Spill Response Industry Partnership Action Team recommended that industry be required to maintain all dispersant stockpiles and equipment as well as the tier 1 delivery capability. According to the team, Tier 2 and 3 equipment requirements would have to be provided by large aircraft and, therefore, the Federal government should provide delivery capability for those two tiers.

The Coast Guard acknowledges that high-volume oil spills are extremely rare events, that there are currently few commercially available large dispersant-capable aircraft, and that the cost of acquiring and maintaining such aircraft in every region of the country could be substantial. The Coast Guard does not agree that the solution to these problems is to assign responsibility for providing such aircraft to the Federal government for the following reasons:

- The Federal Water Pollution Control Act, Clean Water Act, and Oil Pollution Act of 1990 have consistently assigned responsibility for maintaining large incident response capabilities to the private sector regardless of the cost

of establishing and maintaining those capabilities to within practicable limits. The industry is currently required to maintain extensive mechanical recovery capabilities in all offshore areas of the U.S., including large skimmers, temporary storage vessels, offshore containment booms, and other oil spill response vessels, for the sake of preparedness for response to an extremely rare event.

- The Coast Guard has made every effort in this regulation not to be overly prescriptive in terms of types and quantities of equipment that would be required to meet the proposed response tiers. No particular platform is specifically required, not even large aircraft for any response tier.

- The use of government aircraft is not specifically prohibited by the regulation and would be evaluated similarly to the way any other proposed commercial resource would be evaluated. That is, the resource would have to be guaranteed available by the providing source (through some form of written agreement with the planholder) to meet the response delivery capabilities within the prescribed timeframes. In general however, because government aircraft are multi-mission assets with other higher priority operational missions, it is unlikely that government resources will be able to satisfy the guaranteed availability criteria.

The Action Team stated that the Federal government is tasked in the OPA 90 to direct response to spills that present an imminent and substantial threat to the public health and welfare. They suggested that tasking implies a requirement for the government to have government-owned spill response assets capable of large volume incident response and available in the event industry fails to respond adequately. They point to the Coast Guard owned, pre-positioned response equipment around the country, Navy response assets, and the long-standing specialized expertise of the National Strike Force (NSF) as evidence to support this contention.

The Coast Guard believes the responsibility to direct all public and private response to certain spills in no way implies or suggests that the government establish and maintain its own large incident response capability.

Further, OPA 90 clearly requires planholders to identify and ensure by contract the availability of private resources sufficient to remove a worst-case discharge. If private-sector resources are required to be available everywhere around the country, it is not reasonable or practicable for the

government to duplicate those private-sector capabilities using public resources. Thus, in the absence of an identified or cooperative responsible party, the government typically relies on basic ordering agreements with private-sector oil spill response organizations to ensure availability of adequate response resources, rather than maintaining its own suite of government response assets.

The Coast Guard's pre-positioned response resources are intended as a "first response" capability to assist in initial containment and recovery until the full complement of private-sector response resources can be brought to bear. The Navy-owned resources are intended primarily for use in responding to incidents on or near Navy facilities or vessels. The NSF primarily provides operational advice and tactical and logistics management support. The NSF does have a limited amount of specialized lightering and containment equipment that is typically only employed until suitable private sector equipment can be brought to bear.

Discussion of Proposed Rule

The proposed rulemaking would revise 33 CFR 154.1020, 154.1045, 155.1020, and 155.1050; part 154, appendix C; and part 155, appendix B. The following is a summary of the proposed revisions:

1. On-Water Mechanical Recovery

Based on the conclusions in the Caps Report and the Regulatory Analysis for this rule, the Coast Guard is not proposing an increase in the mechanical response equipment requirements levels. Specifically, given the rate at which oil spreads on the water, and the current technological limitations in the ability to contain oil for recovery in an open water environment, it would not be practicable to require such an increase at this time.

2. Dispersants

This proposed rulemaking would require planholders to have pre-spill planning arrangements to use dispersants. This capability would not result in an offset in the mechanical recovery capability. As such, the mandatory requirements for dispersants would replace the existing credit provisions for dispersants. Therefore, the credit provisions would be removed from the existing regulations. The regulatory assessment would include the costs and benefits of this requirement. Planholders carrying Groups II, III, and IV cargoes, operating in inland, nearshore, offshore and open ocean areas, in waters where a

dispersant pre-approval or expedited approval agreement exists, would be required to maintain a dispersant stockpile.

For the purpose of analysis, we propose that planholders should be able to supply two levels of dispersants, one level for the Gulf of Mexico (Gulf Coast) and one level for the rest of the United States. See proposed Table 155.1050(l) for an illustration of the required daily capability. The proposed rulemaking would allow planholders to employ a mix of vessels, rotary and fixed-wing aircraft in meeting this requirement, however, fixed-wing aircraft should provide at least 50 percent of every planholder's dispersant delivery capability. For implementation, planholders would be required to have dispersant delivery equipment sufficient to commence application within 7 hours of incident-specific dispersant approval.

Planholders would have 8 months after the final rule is published to come into compliance.

3. In-Situ Burning

There would be no proposed requirements for in-situ burning; however, planholders would receive credit for establishing and maintaining in-situ burn equipment if they are—

- Carrying Groups II, III, and IV cargoes; and
 - Operating in inland, nearshore, offshore and open ocean areas in waters where an in-situ burn pre-approval or expedited approval agreement exists.
- Adding and maintaining an in-situ burn capability will be encouraged by allowing an offset to mechanical recovery requirements of up to 10,000 bbls for planholders who establish and maintain an in-situ burn capability as follows:

- 5,000 BPD at tier 1.
- 10,000 BPD at tier 2.
- 10,000 BPD at tier 3 (The credit is held at 10,000 bpd for tier 3 because of the limited window of opportunity for use after 72 hours).

Tier timeframes would correspond with the tier response times for mechanical recovery requirements, including the shorter response times established for high-volume ports.

With the current state of technology for in-situ burn-boom, an individual boom package would be expected to survive for one 8 to 10-hour day. To meet the three tier requirements, a planholder would have to arrange by contract or other approved means for five fire-resistant burn-boom packages. If stainless steel and water-cooled technologies are perfected, burn-boom service life could be extended, thereby

reducing the planholder's contracting requirements.

Tying a credit to existing pre-authorization agreements targets those areas where the technique is most likely to be used, and areas of most probable use are automatically targeted. These credits would provide incentive for RRTs to finalize policies for pre-authorization and expedited approval. They would also provide an incentive to vessel and facility planholders to further develop in-situ burn capabilities while maintaining a balanced response capability consisting of mechanical recovery, dispersants, and in-situ burn resources as applicable. Proposed Table 154.1050(k) illustrates the maximum allowable tiers for effective daily burn capability.

Planholders would have 8 months after the final rule is published to come into compliance.

4. Oil Spill Aerial Tracking

Currently there are no requirements for planholders to visually monitor oil spills from aircraft. Visual monitoring has been proven both practicable and effective in directing on-water mechanical recovery systems, dispersant operations, and in-situ burning to the thickest portions of an oil slick. Therefore, this proposed rulemaking would require planholders to have the ability to conduct visual monitoring from aircraft. The regulatory assessment will contain the costs and benefits of this proposed measure.

All planholders would be required to have available by contract or other approved means sufficient suitable aircraft and trained personnel to maintain visual observation of spill response operations up to 50 nautical miles from shore and in remote inland, Great Lakes, and river areas. Required aircraft should be capable of sustained operations during daylight hours up to 50 nautical miles from shore. Aerial oil tracking resources must be capable of supporting oil spill removal operations for three, 10-hour operational periods during the initial 72 hours of the discharge. The aircraft providing the initial surveillance and observation of a discharge would be required to arrive at the discharge site within 3 hours from the time of discovery of the discharge (based on 2 hours of recall/preparation time and 1 hour of flight time). Observation personnel should be separate from aircraft operations personnel. Observation personnel should be able to maintain continuous communications with command and control personnel on the ground and with on-water response resources. Observation personnel must be trained

in the protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity.

Observation personnel should be fully trained in the use of assessment techniques as outlined in the American Society of Testing Materials (ASTM) standard [ASTM F 1779-97], "Standard Practice for Reporting Visual Observations of Oil on Water."

Observation personnel should also be familiar with the use of other guides such as the National Oceanic and Atmospheric Administration's (NOAA's) "Open Water Oil Identification Job Aid for Aerial Observation" and NOAA's "Characteristic Coastal Habitats" Guide.

Incorporation by Reference

Material proposed for incorporation by reference appears in §§ 154.106 and 155.140. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in §§ 154.106 and 155.140.

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

Assessment

This proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). A draft Assessment is available in the docket as indicated under **ADDRESSES**. A summary of the Assessment follows:

The Assessment addresses the economic impacts of changes that the Coast Guard is proposing to the regulations for Vessel Response Plans (VRPs) and Facility Response Plans (FRPs) (Title 33 of the Code of Federal Regulations (CFR) parts 154 and 155). Spill response requirements were originally established in a 1993 rulemaking as part of the OPA 90 and,

at that time, were scheduled to increase by 25 percent twice—once in 1998 and again in 2003. The increases were contingent on Coast Guard review of the industry and assessment of new requirements for other oil-removal technologies. A Notice of Decision (64 FR 710, January 6, 2000) implemented the 1998 increase. The purpose of the Assessment (in the public docket for this rule) is to assess the cost and benefit of the Coast Guard's proposed rulemaking for the 2003 increase in response equipment requirements. The rulemaking would apply to vessels carrying oil in bulk and MTR oil facilities that are required to have an oil response plan under the current VRP and FRP rules. These planholders contract with Oil Spill Removal Organizations (OSROs) to ensure that response resources required by regulation are available in the case of a Worst Case Discharge (WCD) oil spill. Response resources include—

- Mechanical recovery—physical removal of spilled oil from the water using equipment such as boom and skimmers;
- Dispersants—diffusion of spilled oil into the water column through the application of chemicals;
- In-situ burning—controlled ignition of the spilled oil; and
- Aerial tracking of the oil spill—operations from aircraft that enhance on-water response operations.

The Assessment analyzes the cost and benefit of five regulatory alternatives, including a "no action" alternative, that emphasize either mechanical or non-mechanical response assets. This spectrum of regulatory alternatives is illustrated in Figure 1. In addition to addressing different modes of oil-spill response, the alternatives have differing capabilities within each response mode. The five regulatory alternatives are as follows:

Alternative 1

No Action: 2000 response requirements remain effective without further modification.

Alternative 2

Mechanical recovery: Increase of 25 percent (over 2000 response-requirement levels) for inland,

nearshore, offshore, open ocean, Great Lakes, and river and canal operating areas of water.

Dispersants: No response requirements established.

In-situ burning credit: No response requirements established.

Aerial tracking: Required to enhance on-water response capabilities.

Alternative 3

Mechanical recovery: Increase of 25 percent (over 2000 response-requirement levels) for inland, nearshore, offshore, open ocean, Great Lakes, and river and canal operating areas of water.

Dispersants: New application capabilities for a given response time.

In-situ burning: No response requirements, but credit offered (can offset the requirements for mechanical recovery).

Aerial tracking: Required to enhance on-water response capabilities.

Alternative 4

Mechanical recovery: Increase of 25 percent (over 2000 response-requirement levels) for inland, Great Lakes, and river and canal operating areas of water.

Dispersants: New application capabilities for a given response time that are more stringent than capabilities under Alternative 3.

In-situ burning: No response requirements, but credit offered (can offset the requirements for mechanical recovery).

Aerial tracking: Required to enhance on-water response capabilities.

Alternative 5

Mechanical recovery: No increase of 2000 response-requirement levels.

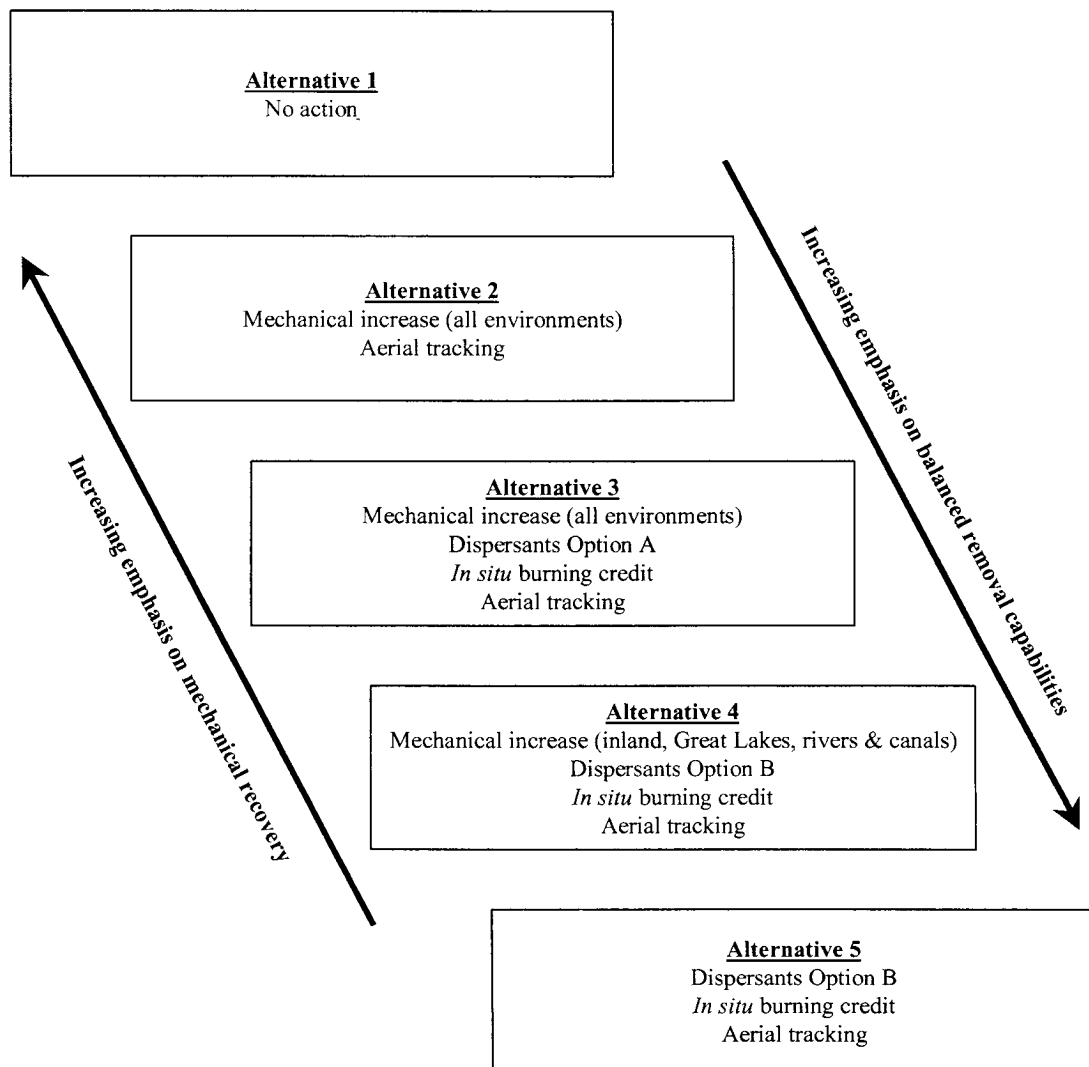
Dispersants: New application capabilities for a given response time that are more stringent than capabilities under Alternative 3 (same as Alternative 4).

In-situ burning: No response requirements, but credit offered (can offset the requirements for mechanical recovery).

Aerial tracking: Required to enhance on-water response capabilities

Figure –1

Regulatory Alternatives



The Coast Guard supports Alternative 5 as the preferred regulatory option. This alternative meets the objectives of the Coast Guard to protect the marine environment and promote maritime safety at reasonable cost, substantial benefit.

The RA for this rule estimates the cost and benefit of the regulatory alternatives from 2001–2030. Cost and benefit are discounted at 7 percent to estimate the net present value (NPV) of the proposed rule. Cost of the proposed rule is expressed in 2001 constant dollars. Equipment and personnel costs were developed using information from OSRO representatives and the Coast Guard. Paperwork costs were based on previous regulatory analysis of paperwork requirements for the original

vessel response plan rulemaking. We believe that the capital and annual costs incurred by OSROs will be, to the extent possible, passed on to vessel planholders through retainer fees or increased costs for services provided.

Benefit is expressed in barrels of oil recovered from the marine environment (or treated in the marine environment if considering dispersants or *in situ* burning). We assessed the benefit of the proposed rule using a modeling tool developed for the Oil Pollution Act of 1990 Programmatic Regulatory Assessment (OPA 90 PRA). The PRA assessed the costs and benefits of 11 “core group” rules enacted under OPA 90. These included such rules as double hulls, financial responsibility, and the original vessel response plan

rulemakings. The PRA assessed the overlapping effects (and therefore benefits) of these 11 major rulemakings and avoided the double counting of barrels of oil not spilled. A copy of the OPA 90 PRA can be found in the Docket for this proposed rulemaking.

The benefit analysis for the proposed rulemaking used the PRA modeling tool and adjusted estimates of effectiveness specific to this proposed rulemaking. Effectiveness factors (*i.e.*, the quantified effect of the proposed rule) were developed through an expert panel.

A cost effectiveness ratio compares cost and benefit and represents the value to society to recover (treat) a barrel of oil from the marine environment. Cost, benefit, and cost

effectiveness of the regulatory alternatives are presented in Table 1:

TABLE 1.—NPV COST, BENEFIT, AND COST EFFECTIVENESS BY REGULATORY ALTERNATIVE (7 PERCENT DISCOUNT RATE, ASSESSMENT PERIOD 2001–2030)

	NPV total national cost (\$Millions)	NPV total national benefit (Barrels)	NPV total national cost effectiveness (\$/Barrel)
Alternative 1	\$0	\$0	NA
Alternative 2	141.65	8,000	\$17,700.
Alternative 3	254.53	22,100	11,500.
Alternative 4	240.57	22,300	10,800.
Alternative 5	223.46	22,300	10,000.

For Alternative 5, the total NPV cost for the period 2001–2030 is \$223.46 million (7 percent discount rate, 2001 dollars). Of this, \$17.88 million (\$15.62 million NPV) is for the initial acquisition of response equipment in 2003, when the proposed rule will become effective. An estimated \$15.12 million (\$13.21 million NPV) is for initial paperwork requirements in 2003 for response providers and planholders. This rule is estimated to cost \$18.05 million annually (undiscounted) for operations, maintenance, and paperwork costs. This cost will first be incurred in 2004 and will be incurred through the assessment period (until 2030). Capital equipment initially acquired in 2003 will be replaced at various times throughout the assessment period.

Paperwork costs for planholders and equipment costs for OSROs drive the national cost of the proposed rule. While planholder paperwork costs are constant across all regulatory alternatives, OSROs must invest in different response equipment depending on the provisions of a specific alternative. Alternative 3 is the most expensive option because OSROs must purchase mechanical recovery equipment for all operating areas, ensure some dispersants capabilities, and provide aerial tracking capabilities. Alternative 2 is the least expensive of the change alternatives because it includes requirements for mechanical recovery and aerial tracking only.

National benefit is driven by the effectiveness of dispersants application and aerial tracking. Our analysis found there is essentially no benefit from increasing response requirements for mechanical recovery over 2000 levels. It also found that planholders would not take advantage of the in-situ burning credit to reduce the need for mechanical recovery assets. Alternatives 4 and 5 are the most beneficial because they include rigorous requirements for dispersants application capability. Alternative 2 is

the least beneficial because it includes increased mechanical recovery requirements, which yield no benefit, and aerial tracking requirements, which yield modest benefit.

When cost is compared to benefit, Alternative 5 is the most cost-effective regulatory alternative—\$10,000/barrel. Alternative 2 is the least cost-effective—\$17,700/barrel.

Small Entities

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

We do not believe this rulemaking will have a significant impact on a substantial number of small entities. Nevertheless, we prepared an Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under **ADDRESSES**. Our analysis indicates that the proposed rulemaking would have a less-than-5-percent impact on annual revenues for small businesses in the first year. Annual costs would have a lesser impact on small businesses because costs following the first year decrease significantly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please consult Mr. Robert Pond, G-MOR, Coast Guard, telephone 202–267–6603 or email RPond@comdt.uscg.mil.

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

Collection of Information

This proposed rule would call for an increase in an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden are detailed in the chapter 8 of the Assessment in the docket. We found that the proposed rule would require 158,770 labor hours in the first year after implementation and 90,496 labor hours in subsequent years. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule and the Assessment to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for the collection of information become effective, we would publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. For example, a rule has federalism implications under EO 13132, if it is intended to preempt a state from regulating the entities covered by the federal regulation. This proposed regulation is not intended to preempt state regulations on the same subject, unless the state's regulation actually conflicts with the requirements of this proposed regulation or would frustrate its purpose.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, though it is a "significant regulatory action" under Executive Order 12866, and that it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that preparation of a Programmatic Environmental Impact Statement (PEIS) is necessary. A PEIS will be prepared as announced September 1, 2000 (65 FR 53335, Draft Programmatic Environmental Impact Statement for Vessel and Facility Response Plans for Oil; On-Water Mechanical Recovery Capacity Increase for 2003 and Alternative Removal Technologies). The PEIS is considered necessary because the proposed rulemaking would require planholders to establish and maintain chemical dispersant stockpiles—and encourage establishing an in-situ burning capability—around the country. While dispersant and in-situ burning use are currently pre-authorized under certain conditions in most port areas, their use has been limited in the past, in part due to the lack of availability of those capabilities in the vicinity of the spill. Therefore, this regulation is likely to result in an increase in the number of dispersant and in-situ burning uses in spill response. A PEIS is necessary to ensure that any such effects are adequately considered because of public concern over the potential environmental effects of these technologies.

List of Subjects

33 CFR Part 154

Facilities, Hazardous substances, Oil pollution.

33 CFR Part 155

Hazardous substances, Oil pollution, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 154 and 155 as follows:

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

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

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

2. In § 154.106(b), under "American Society for Testing and Materials (ASTM)", add, in numerical order, entries for ASTM F 1413–92, ASTM F 1737–96, and ASTM F 1779–97 to read as follows:

§ 154.106 Incorporation by reference.

* * * * *

(b) * * *

* * * * *

American Society for Testing and Materials (ASTM)

* * * * *

ASTM F 1413-92, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems—154.1045

ASTM F 1737-96, Standard Guide for Use of Oil Spill Dispersant Application Equipment During Spill Response: Boom and Nozzle Systems—154.1045

ASTM F 1779-97, Standard Practice for Reporting Visual Observations of Oil on Water—154.1045

* * * * *

3. In § 154.1020, add definitions in alphabetical order to read as follows:

§ 154.1020 Definitions.

* * * * *

Dispersant operations group supervisor means the person in charge of the dispersant operations under the operations section of the Incident Command System (ICS) organization.

Dispersant monitor means a person responsible for monitoring the effectiveness of the dispersant operation through measures and guidelines established by the National Response Team, Regional Response Teams, and Area Committees.

Dispersant spotter means the person who controls, guides, or lines up the dispersant-application platform over the spill target.

Dispersant-application platform means the vessel or aircraft outfitted with the dispersant-application equipment acting as the delivery system for the dispersant onto the oil spill.

* * * * *

Effective daily application capacity or EDAC means the estimated amount of dispersant that can be applied to a discharge by an application system given the availability of supporting dispersant stockpiles.

Effective daily burn capacity or EDBC means the estimated amount of oil that can be effectively removed from the surface of the water by burning in one day.

* * * * *

Fireproof boom means an oil containment boom constructed out of fireproof materials and designed to withstand prolonged periods of exposure to heat and flame during in-situ burning operations and have a demonstrated service life that extends through multiple days of burning operations. Stainless steel and water-cooled boom designs are examples of

potential fireproof boom that may be credited with extended service lives if such durability can be properly demonstrated and documented.

Fire-resistant boom means an oil containment boom constructed out of fire-retardant fabrics and reinforced internal strength members and designed to withstand exposure to heat and flame during in-situ burning operations. Fire resistant booms typically undergo material degradation when subjected to intense heat and flame for extended periods as is associated with the in-situ burning of oil. Fire resistant booms have a planning service life of one operational day.

* * * * *

Gulf Coast means, for the purposes of dispersant-application requirements, the region encompassing the following Captain of the Port Zones:

- (1) Corpus Christi, TX.
- (2) Houston/Galveston, TX.
- (3) Port Arthur, TX.
- (4) Morgan City, LA.
- (5) New Orleans, LA.
- (6) Mobile, AL.
- (7) Tampa, FL.

* * * * *

In-situ burn operations group supervisor means the person in charge of the in-situ burn operations functional group under the operations section of the ICS organization.

* * * * *

Operational effectiveness monitoring means monitoring concerned primarily with determining whether the dispersant was properly applied and how the dispersant is affecting the oil.

* * * * *

Pre-authorization for dispersant use means an agreement, adopted by a Regional Response Team or an Area Committee, that authorizes the use of dispersants at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Pre-authorization for in-situ burning means an agreement, adopted by a Regional Response Team and an Area Committee, that authorizes the in-situ burning of oil at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Primary dispersant staging site means a site designated within a Captain of the

Port zone that has been identified as a forward staging area for dispersant application platforms and the loading of dispersant stockpiles. Primary staging sites are typically the planned locations where platforms load or reload dispersants before departing for application at the site of the discharge and may not be the locations where dispersant stockpiles are stored or application platforms are home based.

* * * * *

Quick or expedited approval for dispersant use means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

Quick or expedited approval for in-situ burning means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

* * * * *

4. In § 154.1035, revise paragraphs (b)(3)(iv) and (b)(3)(v), and add paragraphs (b)(3)(vi) through (b)(3)(ix) to read as follows:

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

* * * * *

(b) * * *

(3) * * *

(iv) This subsection must identify the oil spill removal organizations and the spill management team to be capable of providing the following resources:

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

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

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

(vi) For facilities that handle, store, or transport Group II through Group IV petroleum oils (and that operate in waters where dispersant use pre-

authorization or expedited approval exists) this subsection must also separately list the resource providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means as described in § 154.1028(a). The dispersant resources to be listed within this section must include the following:

(A) The identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of this subpart.

(B) The identification of the platform type, providing-resource organization, location, dispersant payload, and readiness/mobilization category (as provided for in Table 6 of appendix C to this part) for each dispersant-application platform identified. Location data must identify the distance between the platform's home base and the identified primary dispersant staging site for this section.

(C) The identification of the dispersant product resource provider, location, and amount for each unit of dispersant stockpile required to support the required Effective Daily Application Capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation. Location data must include the stockpile's distance to the primary staging sites where the stockpile would be loaded onto the corresponding platforms.

(D) If an oil spill removal organization is approved by the Coast Guard and its capability is equal to or exceeds the response capability needed by the owner or operator, the section may identify the oil spill removal organization only and not the information required in paragraphs (b)(3)(vi)(A) through (C) of this section.

(vii) This subsection must also separately list the resource providers and specific resources necessary to provide, if appropriate, the in-situ burn capabilities as required in this subpart. The in-situ burn resources to be listed within this section must include the following:

(A) The identification of the amount, type, resource provider, and location of in-situ burn boom.

(B) The identification of the amount, type, resource providers, and location of support vessels to deploy, and if

necessary, tow, the in-situ burn boom during burning operations.

(C) The identification of the amount, type, resource provider, and location for each ignition device required to support the required Effective Daily Burn Capacity (EDBC) of each in-situ burn package.

(D) The identification of the amount, location, resource provider of trained personnel necessary to support the required EDBC of each in-situ burn package.

(E) If an oil spill removal organization has been approved by the Coast Guard and its capability is equal to or exceeds the response capability needed by the owner or operator for the credit level requested, the section may identify the oil spill removal organization and the level of in-situ-burn removal capability being provided, and not the information required in paragraphs(b)(3)(vii)(A)–(D).

(viii) This subsection must also separately list the resource providers and specific resources necessary to provide oil tracking capabilities required in this subpart. The oil tracking resources to be listed within this section must include the following:

(A) The identification of a resource provider.

(B) Type and location of aerial surveillance aircraft that are ensured available, through contract or other approved means, to meet the oil tracking requirements of § 154.1045(k).

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

* * * * *

5. In § 154.1045—

a. Revise paragraph (i) as set forth below;

b. Remove paragraph (n);

c. Redesignate paragraphs (j), (k), (l), and (m) as paragraphs (l), (m), (n), and (o) respectively; and

d. Add new paragraphs (j) and (k) to read as follows:

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

* * * * *

(i) The owner or operator of a facility that handles, stores, or transports

Groups II through IV petroleum oils within the inland, nearshore, or offshore area where pre-authorization or expedited approval for dispersant use exists must identify in their response plan, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas.

(1) Dispersant response resources must be capable of commencing dispersant-application operations at the site of a discharge within 7 hours of the decision by the Federal On-Scene Coordinator to use dispersants.

(2) Dispersant response resources must include the following:

(i) Sufficient volumes of dispersants for application as required by paragraph (i)(3) of this section. Any dispersants identified in a response plan must be of a type listed on the National Oil and Hazardous Substances Pollution Contingency Plan Product Schedule (40 CFR part 300), as maintained by the Environmental Protection Agency.

(ii) Dispersant-application platforms capable of delivering and applying the dispersant on a discharge in the amounts as required by paragraph (i)(3) of this section. At least 50 percent of each EDAC tier requirement must be achieved through the use of fixed-wing, aircraft-based application platforms.

(iii) Dispersant-application systems that are consistent in design with, and are capable of applying dispersant within the performance criteria in ASTM F 1413–92. For dispersant-application systems not fully covered by ASTM F 1413–92, such as fire monitor-type applicators, adequacy of performance criteria must be documented by presentation of independent evaluation materials (*e.g.*, laboratory tests, field tests, and reports of actual use) that document the design of performance specifications.

(iv) Dispersant-application personnel trained in and capable of applying dispersants according to the recommended procedures contained within ASTM F 1737–96.

(3) Dispersant stockpiles, application platforms, and other supporting resources must be available in a quantity and type sufficient to treat a facility's worst case discharge (as determined by using the criteria in appendix B, section 8) or in quantities sufficient to meet the requirements in Table 154.1045(i) of this section, whichever is the lesser amount.

TABLE 154.1045(i).—TIERS FOR EFFECTIVE DAILY APPLICATION CAPABILITY

Tier	Response time for completed application (hours)	Dispersant application—Dispersant: oil treated in gallons (Gulf Coast)	Dispersant application—Dispersant: oil treated in gallons (All other U.S.)
Tier 1	12	8,250:165,000	4,125:82,500
Tier 2	36	23,375:467,000	23,375:467,000
Tier 3	60	23,375:467,000	23,375:467,000
Total	60	55,000:1,100,000	50,875:1,017,500

Note: Gulf Coast Tier 1 is higher due to greater potential spill size and frequency in that area, and it is assumed that dispersant stockpiles would be centralized in the Gulf area. Also note the 1:20 dispersant-to-oil application ratio is a planning assumption which relies on the generally agreed upon estimate of the effectiveness of current dispersant formulations. Alternative application ratios may be considered based on submission to the Coast Guard (G-MOR) of peer-reviewed scientific evidence of improved capability.

(j) The owner or operator of a facility that handles, stores, or transports Groups II through IV petroleum oil within any inland, nearshore, or offshore area with pre-authorization or expedited approval for in-situ burning may request credit that will count toward the facility's on-water mechanical recovery capability for worst case discharge response Tiers 2 and 3 up to the amounts identified in Table 154.1045(j) of this section. No credit is available for Tier 1. To receive this credit, the vessel owner or operator must identify and ensure, through

contract or other approved means, the availability of the necessary resources to sustain in-situ burning operations for the level of credit being requested.

(1) In-situ burn response resources must be capable of commencing ignition of oil at the site of a discharge within 12 hours of the initial authorization of the Federal On-Scene Coordinator to conduct in-situ burning to receive credit against Tier 2 requirements.

(2) In-situ burn response resources for all response tiers must include the following:

(i) Sufficient in-situ burn boom.

(ii) Vessel platforms capable of towing and tending in-situ burn boom in the operating environments where credit is requested.

(iii) Sufficient ignition devices to support burning operations.

(iv) Personnel trained in conducting in-situ burning operations.

(v) All equipment ensured available as required in paragraphs (j)(2)(i) through (iii) of this section must be capable of sustained use in the operating environments for which credit is requested.

TABLE 154.1045(j).—MAXIMUM ALLOWABLE TIERS FOR EFFECTIVE DAILY BURN CAPABILITY

Tier	Response time for completed burning ¹ (in hrs.)	Daily burn capacity (EDBC) ² (in bbls)	Cumulative equipment requirements				
			Fire proof boom (feet) ³	Fire resistant boom (feet) ³	Hand-held or igniter	Heli-torch igniter ⁴	Support vessel
Tier 1	24	5,000	500	500	4 or	1	2
Tier 2	48	10,000	1,000	1,500	12 or	1	4
Tier 3	72	10,000	1,000	2,500	20 or	1	4

¹ Tiered response times represent the maximum allowable time from the instant when in-situ burning is authorized for use by the Federal On-scene coordinator to the completion of the operational burn period for that tier.

² EDBC amounts for Tiers 2 and 3 above may be applied against the corresponding tiers for on-water mechanical recovery (EDRC) as required to respond to an owner or operator's worst case discharge.

³ Assumes fireproof boom is reusable in all three tiers. The fire will consume fire-resistant boom, therefore, it will require a replacement at the start of each new operational period.

⁴ If a heli-torch igniter system is identified and ensured available, one-time igniters are not required. Alternatives may be considered based on submission to the Coast Guard of peer-reviewed scientific evidence of improved capability.

(3) In areas that have ice-bound conditions throughout prolonged periods of the year, credit levels for Effective Daily Burn Capacity (EDBC) against on-water mechanical recovery requirements can be elevated, as deemed appropriate, by the respective Area Committee for the area where the extra credit is being considered. Extra EDBC levels are at the discretion of the Area Committee, however, it is not recommended that EDBC levels comprise more than 50 percent of the total on-water recovery capability for a planholder in any one particular Captain of the Port area.

(k) The owner or operator of a facility handling Groups I through IV petroleum oil as a primary cargo must identify in the response plan, and ensure the availability of through contract or other approved means, response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities. Aerial oil tracking resources must—

(1) Be capable of arriving at the site of a discharge within 3 hours from the time of the initial notification of the discharge for a distance up to 50 nautical miles from shore;

(2) Be capable of supporting oil spill removal operations continuously for three 10-hour operational periods

during the initial 72 hours of the discharge; and

(3) Include the following:

(i) Appropriately located aircraft and personnel capable of meeting the response time requirement for oil tracking from paragraph (k)(1) of this section.

(ii) Sufficient numbers of aircraft, pilots, and trained observation personnel to support oil spill operations, commencing upon initial assessment, and capable of coordinating on-scene cleanup operations, including dispersant, in-situ burn, and mechanical recovery operations. Observation personnel must be trained in—

(A) The protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity; and

(B) The use of assessment techniques in ASTM F 1779-97, and familiar with the use of other guides, such as NOAA's "Open Water Oil Identification Job Aid for Aerial Observation," (available at <http://response.restoration.noaa.gov/order/jobaid.html>) and NOAA's "Characteristic Coastal Habitats" Guide (available at <http://response.restoration.noaa.gov/oilaid/coastal/coastal.html>).

* * * * *

6. In appendix C to Part 154, revise section 8, and following Table 5, add Tables 6, 7, and 8 to read as follows:

Appendix C to Part 154—Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

* * * * *

8. Determining the Capability of High-Rate Response Methods 8.1 Calculating Cumulative Dispersant-Application Capacity Requirements.

8.1.1 A facility owner or operator should plan either for a dispersant capacity to respond to a facility's worst case discharge (WCD) of oil or for the amount of the dispersant resource cap as required by § 154.1045(i)(3) of this part, whichever is the lesser amount. When planning for the cumulative application capacity that is required, the calculations should account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure should be used to determine the cumulative application requirements:

8.1.2 Determine the WCD volume of oil in gallons and the appropriate cargo group for the type of petroleum oil (persistent Groups II, III, IV). For facilities with mixed petroleum oils, assume a total WCD volume using the group that constitutes the largest portion of the oil being handled or the group with the smallest natural dissipation factor.

8.1.3 Multiply the total WCD amount in gallons by the natural dissipation factor for the appropriate cargo group as follows: Group II factor is 0.50; Group III is 0.30 and Group IV is 0.10 associated with the nearshore area for the cargo type carried. This represents the amount of oil that can be expected to be lost to natural dissipation. Subtract the oil amount lost to natural dissipation from the total WCD amount to determine the remaining oil cargo available for treatment by dispersant-application.

8.1.4 Multiply the oil available for dispersant treatment by the dispersant to oil planning application ratio of 1 part dispersant to 20 parts oil (0.05). The resultant number represents the cumulative total dispersant-application capability that should be ensured available within the first 60 hours.

8.1.5 The following is an example of the procedure described above: A facility with a 1,000,000 gallon WCD of crude oil (specific

gravity 0.87) is located in an area with pre-authorization for dispersant use in the nearshore environment on the U.S. East Coast.

WCD: 1,000,000 gallons, Group III oil.
Natural Dissipation Factor for Group III: 30%.

General formula to determine oil available for dispersant treatment: (WCD) - [(WCD) × (natural dissipation factor)] = available oil.

E.g., 1,000,000 gal - (1,000,000 gal × .30) = 700,000 gallons of available oil.

Cumulative application capacity = Available oil × planning application ratio (1 gal disp/20 gals oil = 0.05), 700,000 gal oil × (0.05) = 35,000 gallons cumulative dispersant-application capacity.

The requirements for cumulative dispersant-application capacity (35,000 gallons) for this facility's WCD is less than the overall dispersant capability for non-Gulf Coast waters as required by § 155.1045(i)(3) of this chapter. As such, this vessel would not need to meet the entire amount for Tier 3, but would be required to meet the following tier requirements (totaling 35,000 gallons application):

Tier 1 4,125 gallons—Completed in 12 hours

Tier 2 23,375 gallons—Completed in 36 hours

Tier 3 7,500 gallons—Completed in 60 hours

8.2 Determining Effective Daily Application Capacities "EDAC" for Dispersant Response Systems.

8.2.1 This section discusses methods to be used for the purposes of determining the EDAC of a dispersant response system. This methodology considers mobilization factors for dispersant platforms as well as dispersant stockpiles and platform application rates (as published in the 1999 Summary Report of Public Workshop for Response Plan Equipment CAPs. This report is available at <http://www.uscg.mil/vrp/reg/caps.shtml>).

8.2.2 For each Captain of the Port zone where a dispersant response capability is required, the response plan should identify:

- The type, number, and location of each dispersant-application platform intended for use in meeting dispersant delivery requirements specified in § 155.1050(j)(3) of this chapter.

- The amount and location of available dispersant stockpiles to support each platform.

- A primary staging site for each platform that will serve as its base of operations for the duration of the response.

8.2.3 Using the readiness factors from Table 6 of this appendix and platform capability factors in Table 7 of this appendix, calculate mobilization times and dispersant delivery capabilities for each platform. For each aircraft platform—

MP = R + T + L

MP = Mobilization of platform

R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant-application system for transport)

T = Transit time (time it takes for dispersant-application system to be transported to the staging area mobilization)

L = 1 hour to load dispersant at staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours Tier 2, and less than 48 hours Tier 3;

For each stockpile—

MS = R + T + L

MS = Mobilization of Stockpile

R = Recall of loading personnel/transportation assets and loading dispersant for transport if applicable

T = Transit time to staging site

L = 1 hour for loading on delivery platform.

The transit time to the spill site is included in delivery capability calculations for aircraft but not for vessels. Total time for stockpile mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3.

Delivery capability for Tier 1 should be calculated as follows:

$R/10 \times 12$ —T

R = EDAC Rate (from Table 7)

10 = hours in operational period

12 = assumed hours of daylight for planning purposes

T = mobilization time (either for platform or stockpile time whichever is greater).

Delivery capability for all Tier 1 platforms should at least equal amount specified for Tier 1 in § 155.1050(l)(3) of this chapter.

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 7 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this chapter.

For each vessel platform—

MP = R + T + S + L

MP = Mobilization of platform

R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant-application system for transport)

T = Transit time (time it takes for dispersant-application system to be transported to the staging area mobilization)

S = Transit time from staging site or usual location of vessel to the spill site

L = 1 hour to load dispersant at staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3. Usual location of the vessel is the location where the vessel is typically employed when not engaged in dispersant-application operations. Spill site is the location in the Captain of the Port zone up to 50 miles offshore furthest from the dispersant platform staging site or the usual location of the vessel.

MS = R + T

MS = Mobilization of Stockpile

R = Recall of loading personnel/transportation assets and loading dispersant for transport if applicable

T = Transit time to staging site. Total time for stockpile mobilization should be less

than 6 hours for Tier 1, less than 23 hours for Tier 2, and less than 47 hours for Tier 3 to allow time for loading dispersant on delivery platform.

Delivery capability for Tier 1 should be calculated as follows:
 $R/10 \times 12 - T$

R = EDAC Rate (from Table 7 of this appendix)

10 = 10 hours in operational period

12 = assumed hours of daylight for planning purposes

T = mobilization time (either for platform or stockpile time whichever is greater). Delivery capability for all Tier 1 platforms must at least equal the amount specified for tier 1 in § 155.1050(l)(3) of this chapter.

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 7 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this chapter.

8.2.3.1 EDAC must be calculated for each platform and supporting stockpile, and added together as appropriate to meet the dispersant-application tier requirements.

8.2.3.2 The following is an example of the procedure described above: A plan lists a stockpile of 5,000 gallons of dispersant located 35 miles from a central staging site (e.g., a coastal airport) but not loaded for transport, and a DC-3 aircraft based at a facility approximately 75 miles from the staging site. The DC-3 is dedicated to dispersant spraying operations. The EDAC allowed toward tier 1 for this dispersant-application system can be calculated as follows:

Stockpile: Amount—5,000 gallons.

Stockpile Mobilization time: $R = 4$ hours, $T = 35$ miles/35 miles per hour or 1 hour, hours = $4 + 1 + 1$ hour loading = 6 hours.

Platform Mobilization: $R = 2$ hours, $T = 75$ miles/150 miles per hour or 0.5 hours + 1 hour loading at staging site = $2 + 1.5 + 1 = 3.5$ hours.

Operational period "OP" = 12 hours daylight—5 hours (use longer of stockpile or platform mobilization time) = 7 hours (commencing 6 hours after notification of approval and continuing until the end of the first 12 hour daylight period.)

Tier 1 delivery capability for this platform = (Table 7 of this appendix) EDAC rate =

5000 gallons/10 hours $\times 6 = 3000$ gallons application capacity.

8.2.3.3 Other platform types do exist, and additional platform types are expected to develop with time. The Coast Guard will review requests to establish EDAC rates for other platform types at its discretion. EDAC calculations for additional platforms use the same methodology as used to establish the existing rates already in Table 7 of this appendix. Table 7 is based on average characteristics (for planning and review purposes) for most types of application platforms typically used for spraying dispersants.

8.3 Determining Effective Daily Burn Capacities "EDBC" for In-situ Burn Response Systems.

8.3.1 For the purposes of determining the effective daily burn capacity of in-situ burn resources, the information within this section applies.

8.3.2 For each Captain of the Port zone where an in-situ burn response capability is ensured available, the response plan should identify—

- The type, location, and amount of in-situ burn boom available;
- The amount and location of available ignition sources. If ignition system ensured available is a helitorch, a source of pilots trained in the use of the helitorch and suitable aircraft must be identified that can respond within the required response times; and
- The identification of supporting vessels and trained operators capable of towing, deploying, and tending the fire boom.

8.3.3 Using the readiness factors from Table 8 of this appendix, mobilization times are calculated for each in-situ burn system. The General Formula for calculating Tier 1 mobilization time is as follows:

$T = (MB + MV)$ or (MH) , whichever is greater (in hours).

T = Total Mobilization

MB = Mobilization of In-situ burn boom/hand held igniters

$MB = R + L + T1$

R = Recall of loading personnel/transportation assets

L = Loading to truck

T1 = Transit time to vessel staging site

MV = Mobilization of Support Vessels = $L + T2$

L = Boom loading to vessel

T2 = Transit time to spill site

MH = Mobilization of Helitorch = $R + T1 + L + T2$

R = Recall of personnel/platform

T1 = Transit time to staging site

L = Torch loading

T2 = Transit time to spill site

8.3.4 The mobilization times are used to ensure that a full 12-hour "operational period" or "OP" for in-situ burning is available for Tier 1. All operational period calculations assume approval for use is granted at zero hour, and that a maximum of 12 hours is available to support oil collection and burning within the initial 24-hour period. The available time allowed to support in-situ burning is slightly longer (12 hours) in comparison to dispersant operations (10 hours) as in-situ burning operations can continue for a limited period during darkness where dispersant spraying would be suspended due to decreased visibility. The 12-hour period is divided into four, 1-hour burning cycles, each preceded by a 2-hour oil containment and collection cycle.

8.3.4.1 The general formula for calculating the tier 1 operational period of a system is:

OP = Operational Period = 24 hours – (the mobilization time for the boom + platform or the mobilization time for the supporting helitorch igniter (if used, whichever is greater)).

8.3.5 For planning purposes, an in-situ burning system is comprised of the following minimum components that must be ensured available: Minimum 500 ft. fire boom, two support vessels to tend and tow the boom, and four hand-held igniters or one helitorch system. 500 ft. sections of fire resistant boom are credited with a 5,000 bpd burning capacity and are also considered to have a service life of one operational period. For example, a second (Tier 2) and third (Tier 3) section of 500 ft. boom must be ensured available if the planholder desires to claim a 5,000 bpd credit for all three tiers.

8.3.6 Planholders may request extensions of boom service lives beyond one operational period for "fire-proof" type boom, such as stainless steel, or water-cooled boom designs, when such boom has been tested and can be adequately documented as providing extended service capabilities. Planholders may receive credit for multiple operational periods using the same 500 ft. section of boom dependant upon the documentation presented to the Coast Guard for review and approval.

* * * * *

TABLE 6.—READINESS/MOBILIZATION FACTORS
 [All times listed in hours]

Resource/status	Recall period "R"	Transit to staging site "T" ₁	Transit to spill site "S" ₂
Aircraft dedicated to dispersant response operations	2	D/150+1	N/A
Aircraft dedicated to spraying operations	3	D/150+1	N/A
Aircraft nondedicated	4	D/150+1	N/A
Vessel dedicated (preloaded)	2	0	D/5
Vessel dedicated (not loaded)	2	D/5+1	D/5
Vessel non-dedicated (preloaded)	4	0	D/5
Vessel non-dedicated (not loaded)	³ 4	D/5+1	D/5
Dispersant Stockpile (preloaded for transport to staging site)	2	D/35+1	D/5

TABLE 6.—READINESS/MOBILIZATION FACTORS—Continued

[All times listed in hours]

Resource/status	Recall period "R"	Transit to staging site "T" ¹	Transit to spill site "S" ²
Dispersant Stockpile (not preloaded for transport to staging site)	³ 4	D/35+1	N/A

¹ Transit times to staging site for aircraft based on average speed of advance of 150 kts and "D" distance between aircraft home base and forward staging site for dispersant operations. Transit times for vessels from usual location of vessel to staging site based on average speed of advance of 5 kts and "D" is distance to spill site "D". Speed waivers for transit speeds may be granted based on actual performance of platform. Transit times for stockpile based on average speed of advance of 35 mph by truck and "D" distance from stockpile location to dispersant staging site, such as a coastal airport.

² Transit times to spill site for aircraft is included in the calculations contained in Table 7 because of the relatively high speed of these platforms compared to vessels. Transit times for vessels to the spill site are calculated from the usual location of vessel to staging site based on average speed of advance of 5 kts and "D" is distance to spill site "D". Speed waivers for transit speeds may be granted based on actual performance of platform.

³ Assume 2 hours to load dispersant stockpiles on to trucks for transport to the staging site.

⁴ For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

TABLE 7.—PLATFORM CAPABILITY FOR OIL DISPERSANT DELIVERY OVER A 10-HOUR PERIOD

Platform	Distance out (N. miles)	EDAC rate estimated dispersant applied in 10 hours††
Helicopter	50	1,500.00
Air tractor	50	8,000.00
DC-3	50	5,000.00
DC-4	50	17,495.38
DC-6	50	18,000.00
C-130	50	32,972.28
P-3	50	20,000.00
Fire Monitor-Equipped Vessel	50	6,000.00

TABLE 8.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall period "R" + "L" load time	Transit to staging site "T" ¹	Transit to spill site "T2"
In-situ Burn Boom/HH Igniters	2 + 2 ¹	D/35 ⁴	N/A
Support Vessels	N/A + 2 ²	N/A	(10 or D/5) ³
Aircraft/helitorch igniter	4 + 1	D/90	D/90

¹ Loading Time for boom onto a truck would be zero if the boom is co-located at the same waterfront facility as the vessels used to ferry the boom to the spill.

² Loading Time for in-situ boom onto a support vessel would be zero if the boom is already loaded onto a support vessel.

³ Transit times for support vessels based on average speed of advance of 5 kts and maximum distance from shore to spill site of fifty miles. Speed waivers for transit speeds may be granted based on actual performance of platform.

⁴ Transit times for in-situ boom from warehouse to vessel dock based on average speed of advance of 35 mph by truck and "D" distance from storage location to vessel staging site.

⁵ Transit times for aircraft/helitorch based on average speed of advance of 90 kts and combined distance "D" between aircraft home base, forward staging site and spill location.

⁶ For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

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

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

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec.2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p 351; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and

§§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 36, 33 CFR parts 150, 151, 153, and 157.

8. In § 155.140(b), under "American Society for Testing and Materials (ASTM)", add, in numerical order, entries for ASTM 1413-92, ASTM 1737-96, and ASTM 1779-97 to read as follows:

* * * * *

(b) * * *

* * * * *

American Society for Testing and Materials (ASTM)

* * * * *

ASTM F 1413-92, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems 155.1050

ASTM F 1737-96, Standard Guide for Use of Oil Spill Dispersant-Application Equipment During Spill Response: Boom and Nozzle Systems 155.1050
 ASTM F 1779-97, Standard Practice for Reporting Visual Observations of Oil on Water .. 155.1050

* * * * *

9. In § 155.1020, add definitions in alphabetical order to read as follows:

§ 155.1020 Definitions.

* * * * *

Dispersant operations group supervisor means the person in charge of the dispersant operations under the operations section of the ICS organization.

Dispersant monitor means a person who is responsible for monitoring the effectiveness of the dispersant operation through measures and guidelines established by the National Response Team, Regional Response Teams, and Area Committees.

Dispersant-application platform means the vessel or aircraft outfitted with the dispersant-application equipment acting as the delivery system for the dispersant onto the oil spill.

Dispersant spotter means the person who controls, guides, or lines up the dispersant-application platform over the spill target.

* * * * *

Effective daily application capacity or EDAC means the estimated amount of dispersant that can be applied to a discharge by an application system given the availability of supporting dispersant stockpiles.

Effective daily burn capacity or EDBC means the estimated amount of oil that can be effectively removed from the surface of the water by burning in one day.

* * * * *

Fireproof boom means an oil containment boom constructed out of fireproof materials and designed to withstand prolonged periods of exposure to heat and flame during in-situ burning operations and have a demonstrated service life that extends through multiple days of burning operations. Stainless steel and water-cooled boom designs are examples of potential fireproof boom that may be credited with extended service lives if such durability can be properly demonstrated and documented.

Fire-resistant boom means an oil containment boom constructed out of fire-retardant fabrics and reinforced internal strength members and designed to withstand exposure to heat and flame during in-situ burning operations. Fire resistant booms typically undergo

material degradation when subjected to intense heat and flame for extended periods as is associated with the in-situ burning of oil. Fire resistant booms have a planning service life of one operational day.

* * * * *

Gulf Coast means for the purposes of dispersant-application requirements, the region encompassing the following Captain of the Port Zones:

- (1) Corpus Christi, TX.
- (2) Houston/Galveston, TX.
- (3) Port Arthur, TX.
- (4) Morgan City, LA.
- (5) New Orleans, LA.
- (6) Mobile, AL.
- (7) Tampa, FL.

* * * * *

In-situ burn operations group supervisor means the person in charge of the in-situ burn operations functional group under the operations section of the ICS organization.

* * * * *

Operational effectiveness monitoring means monitoring concerned primarily with determining whether the dispersant was properly applied and how the dispersant is affecting the oil.

* * * * *

Pre-authorization for dispersant use means an agreement, adopted by a Regional Response Team or an Area Committee, that authorizes the use of dispersants at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Pre-authorization for in-situ burning means an agreement, adopted by a Regional Response Team or an Area Committee, that authorizes the in-situ burning of oil at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Primary dispersant staging site means a site designated within a Captain of the Port zone where identified as a forward staging area for dispersant-application platforms and the loading of dispersant stockpiles. Primary staging sites would normally be the planned location where the platform would load or reload dispersants prior to departing for application at the site of the discharge and may not be the location where

dispersant stockpiles are stored or application platforms are home based.

* * * * *

Quick or expedited approval for dispersant use means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

Quick or expedited approval for in-situ burning means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

* * * * *

10. In § 155.1035, revise paragraph (i)(9) and add paragraphs (i)(10), (i)(11), and (i)(12) to read as follows:

§ 155.1035 Response plan requirements for manned vessels carrying oil as a primary cargo.

* * * * *

(i) * * *

(9) For vessels that handle, store, or transport Group II through Group IV petroleum oils, the section must also separately list the resource providers identified to provide the salvage, vessel firefighting, and lightering capabilities required in this subpart.

(10) For vessels that handle, store, or transport Group II through Group IV petroleum oils (and that operate in waters where dispersant use pre-authorization or expedited approval exists) this section must also separately list the resource providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide, if appropriate, the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means. The dispersant resources to be listed within this section must include the following:

(i) The identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of § 155.1050(j).

(ii) The identification of the platform type, resource provider, location, dispersant payload, and readiness/mobilization category (as provided for in Table 7 of appendix B to this part) for each dispersant-application platform identified. Location data should identify the distance between the platform's home base and the identified primary dispersant staging site(s) for this section.

(iii) The identification of the dispersant product resource provider, location and amount for each unit of dispersant stockpile required to support the required Effective Daily Application Capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation. Location data should include the stockpile's distance to the primary staging sites where it would be loaded onto the corresponding platforms. If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator, the section may identify the oil spill removal organization only, and not the information required in paragraphs (i)(10)(i) through (10)(iii) of this section.

(11) This section must also separately list the resource providers and specific resources necessary to provide, if appropriate, the in-situ burn capabilities as required in this subpart. The in-situ burn resources to be listed within this section must include the following:

(i) The identification of the amount, type, providing-resource organization, and location of in-situ burn boom identified and ensured available.

(ii) The identification of the amount, type, resource provider, and location of support vessels, identified and ensured available, to deploy, and if necessary, tow the in-situ burn boom during burning operations.

(iii) The identification of the amount, type, resource provider, and location for each ignition device required to support the required Effective Daily Burn Capacity (EDBC) of each in-situ burn package.

(iv) The identification of the amount, location, and resource provider of trained personnel necessary to support the required EDDB of each in-situ burn package.

(v) If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator for the credit level requested, the section may identify the oil spill removal organization and the level of in-situ burn removal capability being provided, and not the information required in paragraphs (i)(11)(i) through (11)(iv) of this section.

(12) The section must also separately list the resource providers and specific resources necessary to provide oil-tracking capabilities required in this subpart. The oil tracking resources to be listed within this appendix must include the following:

(i) The identification of a resource provider.

(ii) Type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil tracking requirements of § 155.1050(k).

* * * * *

11. In § 155.1040, revise paragraph (j)(9) and add paragraphs (j)(10), (j)(11), and (j)(12) to read as follows:

§ 155.1040 Response plan requirements for unmanned tank barges carrying oil as a primary cargo.

* * * * *

(j) * * *

(9) The section must also separately list the resource providers identified to provide the salvage, vessel firefighting, and lightering capabilities required in this subpart.

(10) The section must also separately list the resource providers and specific resources necessary to provide, if appropriate, the dispersant capabilities required in this subpart. The dispersant resources to be listed within this section must include the following:

(i) The identification of a primary dispersant staging site or sites to be used by each dispersant-application platform that is ensured available, through contract or other approved means, to meet the requirements of § 155.1050(j).

(ii) The identification of the type, resource provider, location, dispersant payload, and readiness/mobilization category (as provided for in Table 7 of appendix B to this part) for each dispersant-application platform identified and ensured available. Location data should identify the distance between the platform's home base and the identified primary dispersant staging sites for this section.

(iii) The identification of the resource provider, location and amount for each unit of stockpile required to support the required Effective Daily Application Capacity of each dispersant-application platform, as necessary to sustain each intended response tier of operation. Location data should include the stockpile's distance to the primary staging sites where it will be loaded onto the corresponding platforms. If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator, the section may identify the oil spill removal organization only, and not the information required in paragraphs (j)(10)(i) through (10)(iii) of this section.

(11) This section must also separately list the resource providers and specific resources necessary to provide, if

appropriate, the in-situ burn capabilities as required in this subpart. The in-situ burn resources to be listed within this section must include the following:

(i) The identification of the amount, type, resource provider, and location of in-situ burn boom identified and ensured available.

(ii) The identification of the amount, type, resource provider, and location of support vessels, identified and ensured available, to deploy, and if necessary, tow the in-situ burn boom during burning operations.

(iii) The identification of the amount, type, resource provider, and location for each ignition device required to support the required Effective Daily Burn Capacity (EDBC) of each in-situ burn package.

(iv) The identification of the amount, location, and resource provider of trained personnel necessary to support the required EDDB of each in-situ burn package.

(v) If an oil spill removal organization has been approved by the Coast Guard and its capability is equal to or exceeds the response capability needed by the owner or operator for the credit level requested, the section may identify the oil spill removal organization and the level of in-situ burn removal capability being provided, and not the information required in paragraphs (j)(11)(i) through (11)(iv) of this section.

(12) The section must also separately list the resource providers and specific resources necessary to provide oil-tracking capabilities required in this subpart. The oil tracking resources to be listed within this section must include the following:

(i) The identification of resource provider.

(ii) Type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil tracking requirements of § 155.1050(k).

* * * * *

12. In § 155.1050—

a. Remove and reserve paragraph (j);
b. Redesignate paragraphs (l), (m), (n), (o), and (p), as paragraphs (o), (p), (q), (r), and (s) respectively; and

c. Add new paragraphs (l), (m), and (n) to read as follows:

§ 155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.

* * * * *

(l) The owner or operator of a vessel carrying Groups II through IV petroleum oil as a primary cargo that operates in any inland, nearshore, or offshore area with pre-authorization or expedited

approval for dispersant use must identify in their response plan, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas.

(1) Dispersant response resources must be capable of commencing dispersant-application operations at the site of a discharge within 7 hours of the decision by the Federal On-Scene Coordinator to use dispersants.

(2) Dispersant response resources must include the following:

(i) Sufficient dispersant capability for application as required by paragraph (l)(3) of this section. Any dispersants identified in a response plan must be of a type listed on the National Oil and Hazardous Substances Pollution

Contingency Plan Product Schedule (40 CFR part 300) as maintained by the Environmental Protection Agency.

(ii) Dispersant-application platforms capable of delivering and applying the dispersant on a discharge in the amounts as required by paragraph (l)(3) of this section. At least 50 percent of each effective daily application capacity (EDAC) tier requirement must be achieved through the use of fixed wing aircraft-based application platforms.

(iii) Dispersant-application personnel trained in and capable of applying dispersant within the performance criteria as outlined in ASTM F 1413-92. For dispersant-application systems not fully covered by ASTM F 1413-92, such as fire monitor-type applicators, adequacy of performance criteria must be documented by presentation of

independent evaluation materials (e.g. laboratory tests field tests, reports of actual use, etc.) which document the design and performance specifications.

(iv) Dispersant-application systems ensured available, including trained personnel, that are capable of applying dispersants in accordance with the recommended procedures contained within ASTM F 1737-96.

(3) Dispersant stockpiles, application platforms, and other supporting resources must be ensured available in a quantity and type sufficient to treat a vessel's worst case discharge (as determined by using the criteria in Section 8 of appendix B to this part), or in quantities sufficient to meet the requirements in Table 155.1050(l), whichever is the lesser amount.

TABLE 155.1050(l).—TIERS FOR EFFECTIVE DAILY APPLICATION CAPABILITY

	Response time for completed application (hours)	Dispersant application—Dispersant: oil treated in gallons (Gulf Coast)	Dispersant application—Dispersant: oil treated in gallons (All Other U.S.)
Tier 1	12	8,250:165,000	4,125:82,500
Tier 2	36	23,375:467,000	23,375:467,000
Tier 3	60	23,375:467,000	23,375:467,000
Total	60	55,000:1,100,000	50,875:1,017,500

Note: Gulf Coast Tier 1 is higher due to greater potential spill size and frequency in that area, and it is assumed that dispersant stockpiles would be centralized in the Gulf area. Alternative application ratios may be considered based on submission to the Coast Guard (G-MOR) of peer-reviewed scientific evidence of improved capability.

(m) The owner or operator of a vessel carrying Groups II, IV petroleum oil as a primary cargo that operates in any inland, nearshore, or offshore area with pre-authorization or expedited approval for in-situ burning may request credit which will count toward his or her on-water mechanical recovery capability for worst case discharge response Tiers 2 and 3 up to the amounts identified in

paragraph (m)(2) of this section. No credit is available for Tier 1. To receive this credit, the vessel owner or operator must identify and ensure, through contract or other approved means the availability of the necessary resources to sustain in-situ burning operations for the level of credit being requested.

(1) In-situ burn response resources must be capable of commencing ignition of oil at the site of a discharge within 12 hours of the initial authorization of the Federal On-Scene Coordinator to conduct in-situ burning to receive credit against Tier 1 requirements.

(2) In-situ burn response resources for all response tiers must include the following:

(i) Sufficient in-situ burn boom.

(ii) Vessel platforms capable of towing and tending in-situ burn boom in the operating environments where credit is requested.

(iii) Sufficient ignition devices to support burning operations.

(iv) Personnel trained in conducting in-situ burning operations.

(v) All equipment ensured available as required in paragraphs (m)(2)(i) through (m)(2)(iii) of this section must be capable of sustained use in the operating environments for which credit is requested.

TABLE 155.1050(m).—MAXIMUM ALLOWABLE TIERS FOR EFFECTIVE DAILY BURN CAPABILITY

	Response time for completed burning ¹ (hours)	Daily burn capacity (EDBC) ² (bbls)	Cumulative equipment requirements				
			Fireproof boom (feet) ³	Fire resistant boom (feet) ³	Hand-held igniter	Heli-torch igniter ⁴	Support vessels
Tier 1	24	5,000	500	500	4	1	2
Tier 2	48	10,000	1,000	1,500	12	1	4
Tier 3	72	10,000	1,000	2,500	20	1	4

¹ Tiered response times represent the maximum allowable time from the instant when in-situ burning is authorized for use by the Federal On-scene coordinator to the completion of the operational burn period for that tier.

² EDBC amounts for Tiers 2 and 3 above may be applied against the corresponding tiers for on-water mechanical recovery (EDRC) as required to respond to an owner or operator's worst case discharge.

³ Assumes fireproof boom is reusable for all three tiers. Fire resistant boom will be consumed by the fire and therefore, require replacement at the start of each new operational period.

⁴If a helitorch igniter system is identified and ensured available, one-time igniters are not required. Alternative application ratios may be considered based on submission to the Coast Guard (G-MOR) of peer-reviewed scientific evidence of improved capability.

(3) In areas that have ice-bound conditions throughout prolonged periods of the year, credit levels for EDBC against on-water mechanical recovery requirements can be elevated, as deemed appropriate, by the respective Area Committee for the area where the extra credit is being considered. Extra EDBC levels are at the discretion of the Area Committee, however, it is not recommended that EDBC levels comprise more than 50 percent of the total on-water recovery capability for a planholder in any one particular Captain of the Port area.

(n) The owner or operator of a vessel carrying Groups I through IV petroleum oil as a primary cargo must identify in the response plan, and ensure the availability of, through contract or other approved means, response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities.

(1) Aerial oil tracking resources must be capable of arriving at the site of a discharge within three hours from the time of the initial notification of the discharge for a distance up to 50 nautical miles from shore. Aerial oil tracking resources should plan on a minimum of two hours for a recall period and one hour of flight time to arrive on-scene.

(2) Aerial oil tracking must include the following resources:

(i) Appropriately located aircraft and personnel capable of meeting the response time requirement for oil tracking in paragraph (n)(1) of this section.

(ii) Sufficient numbers of aircraft, pilots, and trained observation personnel to support oil spill operations, commencing upon initial assessment, and capable of coordinating on-scene cleanup operations, including dispersant, in-situ burn, and mechanical recovery operations.

(iii) Observation personnel must be trained in the protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity. Observation personnel must be trained in the use of assessment techniques as outlined in ASTM F 1779-97, and familiar with the use of other guides, such as NOAA's "Open Water Oil Identification Job Aid for Aerial Observation," and NOAA's "Characteristic Coastal Habitats" Guide.

(iv) Aerial oil tracking resources must be capable of supporting oil spill removal operations continuously for three ten-hour operational periods

during the initial seventy-two hours of the discharge.

* * * * *

13. In appendix B to part 155, revise section 8, and following Table 6, add Tables 7, 8, and 9 to read as follows:

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

* * * * *

8. Determining the Capability of High-Rate Response Methods

8.1 Calculating Cumulative Dispersant-Application Capacity Requirements.

8.1.1. A vessel owner or operator should plan either for a dispersant capacity to respond to a vessel's worst case discharge (WCD) of oil, or for the amount of the dispersant resource capability as required by § 155.1050(l)(3) of this part, whichever is the lesser amount. When planning for the cumulative application capacity that is required, the calculations should account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure should be used to determine the cumulative application requirements:

8.1.2. Determine the volume of oil carried in gallons, and the appropriate cargo group for the type of petroleum oil carried (Groups II, III, IV). For vessels carrying mixed cargoes, assume a total cargo volume using the cargo group that constitutes the largest portion of the oil being carried, or the cargo group with the smallest natural dissipation factor.

8.1.3. Multiply the total cargo amount in gallons by the natural dissipation factor for the appropriate cargo group as follows: Group II factor is 0.50; Group III factor is 0.30, and Group IV factor is 0.10. This represents the amount of cargo that can be expected to be lost to natural dissipation. Subtract the cargo amount lost to natural dissipation from the total cargo amount carried to determine the remaining oil cargo available for treatment by dispersant-application.

8.1.4. Multiply the cargo available for dispersant treatment by the dispersant to oil planning application ratio of 1 part dispersant to 20 parts oil (0.05). The resultant number represents the cumulative total dispersant-application capability that must be ensured available within the first 60 hours.

8.1.5. The following is an example of the procedure described above: A vessel with a 1,000,000 gallons capacity of crude oil (specific gravity 0.87) will transit through an area with pre-authorization for dispersant use in the nearshore environment on the U.S. East Coast.

Cargo carried: 1,000,000 gallons, Group III oil.

Natural Dissipation Factor for Group III: 30%

General formula to determine oil available for dispersant treatment: $((WCD) - [(WCD) \times (\text{natural dissipation factor})]) = \text{available oil}$.

E.g., $1,000,000 \text{ gal} - (1,000,000 \text{ gal} \times 0.30) = 700,000 \text{ gallons available oil}$.

Cumulative application capacity = Available oil \times planning application ratio (1 gal dispersant to 20 gals oil = 0.05), $700,000 \text{ gal oil} \times (0.05) = 35,000 \text{ gallons cumulative dispersant-application capacity}$.

The requirements for cumulative dispersant-application capacity (35,000) for this vessel's WCD is less than the overall dispersant capacity cap for non-Gulf Coast waters as required by § 155.1050(l)(3) of this part. As such, this vessel would not need to meet the entire amount for Tier 3, but would be required to meet the following tier requirements (totaling 35,000 gallons application):

Tier 1 4,125 gallons
Completed in 12 hours
Tier 2 23,375 gallons
Completed in 36 hours
Tier 3 7,500 gallons
Completed in 60 hours

8.2 Determining Effective Daily Application Capacities "EDAC" for Dispersant Response Systems.

8.2.1. This section discusses methods to be used for the purposes of determining the effective daily application capacity of a dispersant response system. This methodology considers mobilization factors for dispersant platforms as well as dispersant stockpiles and platform application rates (as published in the 1999 Summary Report of Public Workshop for Response Plan Equipment CAPs).

8.2.2. For each Captain of the Port Zone where a dispersant response capability is required, the response plan must identify the following:

- The type, number, and location of each dispersant-application platform intended for use in meeting dispersant delivery requirements specified in § 155.1050(l)(3) of this part.

- The amount and location of available dispersant stockpiles to support each platform.

- A primary staging site for each platform that will serve as its base of operations for the duration of the response.

8.2.3. Using the readiness factors from Table 7 of this appendix and platform capability factors in Table 8 of this appendix, calculate mobilization times and dispersant delivery capabilities for each platform. For each aircraft platform—

$MP = R + T + L$

MP = Mobilization of platform

R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant application system for transport)

T = Transit time it takes for dispersant-application system to be transported to the staging area mobilization (in hours)

L = 1 hour to load dispersant at the staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours

for Tier 2, and less than 48 hours for Tier 3.

For each stockpile—

$MS = R + T + L$

MS = Mobilization of Stockpile

R = Recall of loading personnel/transportation assets and loading dispersant for transport if applicable

T = Transit time to staging site

L = 1 hour for loading on delivery platform.

Note that transit time to the spill site is included in delivery capability calculations for aircraft but not for vessels. Total time for stockpile mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3;

Delivery capability for Tier 1 should be calculated as follows:

$R/10 \times 12 - T$

R = EDAC Rate (from Table 8)

10 = 10 hours in operational period

12 = assumed hours of daylight for planning purposes

T = mobilization time (either for platform or stockpile time whichever is greater).

Delivery capability for all Tier 1 platforms should be at least equal amount specified for Tier 1 in § 155.1050(l)(3) of this part; and

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 8 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must be at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this part.

For each vessel platform—

$MP = R + T + L$

MP = Mobilization of platform

R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant-application system for transport

T = Transit time (time it takes for dispersant application system to be transported to the staging area mobilization Transit time from staging site or usual location of facility to the spill site)

L = 1 hour to load dispersant at staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3. Usual location of the vessel is the location where the vessel is typically employed when not engaged in dispersant-application operations. Spill site is the location in the Captain of the Port zone furthest from the dispersant platform staging site or the usual location of the vessel.

$MS = R + T$

MS = Mobilization of Stockpile

R = Recall of loading personnel/transportation assets and loading dispersant for transport if applicable

T = Transit time to staging site. Total time for stockpile mobilization should be less than 6 hours for Tier 1, less than 23 for hours Tier 2, and less than 47 hours for Tier 3 to allow time for loading dispersant on delivery platform.

Delivery capability for tier 1 should be calculated as follows:

$R/10 \times 12 - T$

R = EDAC Rate (from Table 8 of this appendix)

10 = 10 hours in operational period

12 = assumed hours of daylight for planning purposes

T = mobilization time either for platform or stockpile time whichever is greater.

Delivery capability for all Tier 1 platforms should be at least equal the amount specified for Tier 1 in § 155.1050(l)(3) of this part.

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 8 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must be at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this part.

8.2.3.1 EDAC must be calculated for each platform and supporting stockpile, and added together as appropriate to meet the dispersant-application tier requirements.

8.2.3.2 The following is an example of the procedure described above: A plan lists a stockpile of 5,000 gallons of dispersant located 35 miles from a central staging site (a coastal airport) but not loaded for transport, and a DC-3 aircraft based at a facility approximately 75 miles from the staging site. The DC-3 is dedicated to dispersant spraying operations. The EDAC allowed toward Tier 1 for this dispersant-application system can be calculated as follows:

Stockpile: Amount – 5000 gallons.

Stockpile Mobilization time: R = 4 hours, T = 35 miles/35 miles per hour or 1 hour, hours = 4 + 1 + 1 hour loading = 6 hours.

Platform Mobilization: R = 2 hours, T = 75 miles/150 miles per hour or 0.5 hours + 1 hour loading at staging site = 2 + 1.5 + 1 = 3.5 hours.

Operational period “OP” = 12 hours daylight—5 hours (use longer of stockpile or platform mobilization time) = 7 hours (i.e., commencing 6 hours after notification of approval and continuing until the end of the first 12 hour daylight period).

Tier 1 delivery capability for this platform = (Table 8) EDAC rate = 5000 gallons/10 hours \times 6 = 3000 gallons application capacity.

8.2.3.3 Table 8 of this appendix is based on average characteristics (for planning and review purposes) for most types of application platforms typically used for spraying dispersants. However, other platform types do exist, and additional platform types are expected to develop with time. The Coast Guard will review requests to establish EDAC rates for other platform types at their discretion. EDAC calculations for additional platforms will use the same methodology as used to establish the existing rates already contained within Table 8 of this appendix.

8.3 Determining Effective Daily Burn Capacities “EDBC” for In-situ Burn Response Systems.

8.3.1 For the purposes of determining the effective daily application capacity of in-situ burn resources, the information within this section applies.

8.3.2 For each Captain of the Port zone where an in-situ burn response capability is

ensured available, the response plan must identify the following:

- The type, location, and amount of in-situ burn boom available.

- The amount and location of available ignition sources. If ignition system ensured available is a helitorch, a source of pilots trained in the use of the helitorch and suitable aircraft must be identified that can respond within the required response times.

- The identification of supporting vessels and trained operators capable of towing, deploying, and tending the fire boom.

8.3.3 Using the readiness factors from Table 9, mobilization times are calculated for each in-situ burn system. The General Formula for calculating Tier 1 mobilization time is as follows:

$T = (MB + MV) \text{ or } (MH)$, whichever is greater (in hours)

T = Total Mobilization

MB = Mobilization of In-situ burn boom/hand held igniters

$MB = R + L + T1$

R = Recall of loading personnel/transportation assets

L = Loading to truck

T1 = Transit time to vessel staging site

MV = Mobilization of Support Vessels = L + T2

L = Boom loading to vessel

T2 = Transit time to spill site

MH = Mobilization of Helitorch = R + T1 + L + T2

R = Recall of personnel/platform +

T1 = Transit time to staging site

L = Torch loading

T2 = Transit time to spill site

8.3.4 The mobilization times are used to ensure that a full 12 hour “operational period” or “OP” for in-situ burning is available for Tier 1. All operational period calculations assume approval for use is granted at zero hour, and that a maximum of 12 hours is available to support oil collection and burning within the initial 24-hour period. The available time allowed to support in-situ burning is slightly longer (12 hours) in comparison to dispersant operations (10 hours) as in-situ burning operations can continue on for a limited period during darkness where dispersant spraying would be suspended due to decreased visibility. The 12-hour period is divided into four 1-hour burning cycles, each preceded by a 2-hour oil containment and collection cycle.

8.3.4.1 The general formula for calculating the tier 1 operational period of a system is: Operational Period “OP” = 24 hours—(the mobilization time for the boom + platform or the mobilization time for the supporting helitorch igniter (if used), whichever is greater.

8.3.5 For planning purposes, an in-situ burning system is comprised of the following minimum components that must be ensured available: minimum 500 ft. fire boom, two support vessels to tend and tow the boom, and four hand-held igniters or one helitorch system. 500 ft. sections of fire resistant boom are credited with a 5,000 bpd burning capacity, and are also considered to have a service life of one operational period. For example, a second (Tier 2) and third (Tier 3) section of 500 ft. boom must be ensured

available if the planholder desires to claim a 5,000 bpd credit for all three tiers.

8.3.6 Planholders may request extensions of boom service lives beyond one operational period for "fire-proof" type boom, such as

stainless steel, or water-cooled boom designs, when such boom has been tested and can be adequately documented as providing extended service capabilities. Planholders may receive credit for multiple operational

periods using the same 500 ft. section of boom dependent upon the documentation presented to the Coast Guard for review and approval.

* * * * *

TABLE 7.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall period "R"	Transit to staging Site "T" ¹	Transit to Spill Site "S" ²
Aircraft dedicated to dispersant response operations	2	D/150+1	N/A
Aircraft dedicated to spraying operations	3	D/150+1	N/A
Aircraft nondedicated	4	D/150+1	N/A
Vessel dedicated (preloaded)	2	0	D/5
Vessel dedicated (not loaded)	2	D/5+1	D/5
Vessel non-dedicated (preloaded)	4	0	D/5
Vessel non-dedicated (not loaded)	4	D/5+1	
Dispersant Stockpile (preloaded for transport to staging site)	2	D/35	D/5
Dispersant Stockpile (not preloaded for transport to staging site)	³ 4	D/35	N/A

¹ Transit times to staging site for aircraft based on average speed of advance of 150 kts and "D" distance between aircraft home base and forward staging site for dispersant operations. Transit times for vessels from usual location of vessel to staging site based on average speed of advance of 5 kts and "D" is distance to spill site "D". Speed waivers for transit speeds may be granted based on actual performance of platform. Transit times for stockpile based on average speed of advance of 35 mph by truck and "D" distance from stockpile location to dispersant staging site, such as a coastal airport.

² Transit times to spill site for aircraft is included in the calculations contained in table 8 because of the relatively high speed of these platforms compared to vessels. Transit times for vessels to the spill site are calculated from the usual location of vessel to staging site based on average speed of advance of 5 kts and "D" is distance to spill site "D". Speed waivers for transit speeds may be granted based on actual performance of platform.

³ Assume 2 hours to load dispersant stockpiles on to trucks for transport to the staging site.

⁴ For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

TABLE 8.—PLATFORM CAPABILITY FOR OIL DISPERSANT DELIVERY OVER A 10-HOUR PERIOD

Platform	Distance out (N. Miles) ¹	EDAC Rate estimated dispersant applied in 10 Hours
Helicopter	50	1,500.00
Air tractor	50	8,000.00
DC-3	50	5,000.00
DC-4	50	17,495.38
DC-6	50	18,000.00
C-130	50	32,972.28
P-3	50	20,000.00
Fire Monitor-Equipped Vessel	50	6,000.00

TABLE 9.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall Period "R" + "L" load time	Transit to staging site "T" ¹	Transit to Spill Site "T2"
In-situ Burn Boom/HH Igniters to staging sites (MB)	2 + 2 ¹	D/35 ⁴	N/A
Support Vessels (MV)	NA + 2 ²	N/A	(10 or D/5) ³
Aircraft/helitorch igniter (MH)	4 + 1	D/90 ⁵	D/90

¹ Loading Time for in-situ boom onto a truck would be zero if the boom is co-located at the same waterfront facility as the vessels used to ferry the boom to the spill.

² Loading Time for in-situ boom onto a support vessel would be zero if the boom is already loaded onto a support vessel.

³ Transit times for support vessels based on average speed of advance of 5 kts and maximum distance from shore to spill site of fifty miles. Speed waivers for transit speeds may be granted based on actual performance of platform.

⁴ Transit times for in-situ boom from warehouse to vessel dock based on average speed of advance of 35 mph by truck and "D" distance from storage location to vessel staging site.

⁵ Transit times for aircraft/helitorch based on average speed of advance of 90 kts and combined distance "D" between aircraft home base, forward staging site and spill location.

⁶ For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

Dated: April 12, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AK21

Definition of Psychosis for Certain VA Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to define the term "psychosis." The term is used but not defined in certain statutes that provide presumptive service connection for compensation or health care purposes. The intended effect of this proposed amendment is consistent application of these statutory provisions.

DATES: Comments must be received on or before December 10, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AK21." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Carol McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7284.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Provisions

There are three sections in title 38, United States Code, that refer to psychosis in veterans and are pertinent to this regulation.

Section 1112(a)(1) of title 38, United States Code, presumes that certain chronic diseases that become manifest to a compensable degree within one

year of a veteran's separation from active service were incurred or aggravated during that service. The term "chronic disease," as defined at 38 U.S.C. 1101(3), includes "psychoses." Section 3.309(a) of title 38, Code of Federal Regulations, implements 38 U.S.C. 1112(a)(1) and 1101(3).

Section 1112(b)(8) of title 38, United States Code, presumes that a "psychosis" that becomes manifest to a compensable degree at any time after service in a former prisoner-of-war was incurred or aggravated during that service. Section 3.309(c) of title 38, Code of Federal Regulations, implements this statutory provision.

Section 1702 of title 38, United States Code, presumes that "active psychosis" that develops in certain wartime veterans within two years of separation from active service was incurred during active service. This presumption is only for purposes of hospital, nursing home, domiciliary, and medical care.

None of these statutory or regulatory provisions defines the term "psychosis" or specifies which mental disorders are included in that category. In addition, the legislative histories of the relevant statutory provisions provide no guidance with regard to interpreting these terms.

Medical Interpretation

VA's Schedule for Rating Disabilities requires that mental disorders be diagnosed according to the diagnostic criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (APA Manual), Fourth Edition (DSM-IV). Although the term "psychosis" continues to be widely used, it has not served as an organizing principle in the APA Manual since 1980 when DSM-III was published. DSM-IV does not have a "psychosis" category of mental disorders.

Appendix C of DSM-IV, at page 770, states that the term "psychotic" has historically had a number of definitions, "none of which has achieved universal acceptance." It therefore appears that the term "psychosis," and its plural form "psychoses," have no commonly accepted meaning.

Proposed Definition

DSM-IV, Appendix A, pages 689 and 694-695, in addressing differential diagnoses of psychotic disorders, generally includes mental disorders in which at least one of the following psychotic symptoms is a defining feature: delusions; hallucinations; disorganized speech; or grossly disorganized behavior. In our judgment,

these defining features are reasonable and appropriate for VA purposes.

According to DSM-IV, pages 19 and 694-695, the following mental disorders contain at least one of the above-mentioned DSM-IV, Appendix A, psychotic symptoms: psychotic disorder due to a general medical condition; substance-induced psychotic disorder; schizophrenia; schizophreniform disorder; schizoaffective disorder; mood disorder with psychotic features; delusional disorder; psychotic disorder not otherwise specified; brief psychotic disorder; and shared psychotic disorder. If one of these conditions is diagnosed in a veteran, all other regulations involved in determining entitlement to service connection must be considered.

We propose to add new § 3.384 to title 38, Code of Federal Regulations, to state that for purposes of 38 CFR part 3, those conditions are defined as psychoses.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits,