DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 154 and 155

[Docket No. USCG–2001–8661]

RIN 1625–AA26 [Formerly RIN 2115–AG05]

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

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is updating its requirements for oil-spill removal equipment associated with vessel response plans and marine transportation-related facility response plans. This update is based on an ongoing review of these requirements conducted by the Coast Guard pursuant to our regulations. These changes will add requirements for new response technologies and revise methods and procedures for responding to oil spills upon the navigable waters of the United States, adjoining shorelines, and the exclusive economic zone. The Coast Guard is also revising the compliance date for updates of vessel response plans (VRPs) required by the Salvage and Marine Firefighting final rule. This extension of the compliance date will ensure that plan holders are not required to update their VRPs twice within a 12-month period.

DATES: This final rule is effective September 30, 2009. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 30, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–8661 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, 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://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this rule, call or e-mail LT Xochitl Castañeda, Office of Vessel Activities, Vessel Response Plan Program, (CG–5431) telephone 202–372–1225, or *vrp@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Abbreviations

AMPD average most probable discharge
ANSI American National Standards Institute
API American Petroleum Institute
ASTM American Society for Testing and Materials
BA Biodegradation Accelerant
bbls barrels
BR Bioremediation
caps Capability Limits
COTP Captain of the Port
DMP Dispersant Mission Planner
DMP2 Dispersant Mission Planner 2
DPEIS Draft Programmatic Environmental Impact Statement
EDAC effective daily application capacity
EIS Environmental Impact Statement
EPA Environmental Protection Agency
FAA Federal Aviation Administration
FOSC Federal On-Scene Coordinator
FPEIS Final Programmatic Environmental Impact Statement
FRFA Final Regulatory Flexibility Analysis
FRP facility response plan
FWPCA Federal Water Pollution Control Act
IBR Incorporation by Reference
IEC International Electrotechnical Commission
IMO International Maritime Organization
ISB in-situ burning
MMPD maximum most probable discharge
MMS Minerals Management Service
MOU memoranda of understanding
MTC Makah Tribal Council
MTR marine transportation-related
NAICS North American Industry Classification System
NARA National Archives and Records Administration
NCP National Contingency Plan
NEMA National Electrical Manufacturers Association
NEPA National Environmental Policy Act
NFPA National Fire Protection Association
NOAA National Oceanic & Atmospheric Administration
NPRM notice of proposed rulemaking
NSFCC National Strike Force Coordination Center
NTTA National Technology Transfer and Advancement Act
NVIC Navigation and Vessel and Inspection Circular
OCIMF Oil Companies International Marine Forum
OCONUS outside the continental United States
OPA 90 Oil Pollution Act of 1990
OSRO Oil Spill Removal Organization
PEIS Programmatic Environmental Impact Statement
RA regulatory assessment
RRT regional response team
SBA Small Business Administration
UAMA Usual and Accustomed Marine Area
VRP vessel response plan
WCD worst case discharge

II. Regulatory History

In 1996, the Coast Guard published final tank vessel response plan regulations (61 FR 1052 (January 12, 1996)) and final marine transportation related (MTR) facilities response plan regulations (61 FR 7890 (February 29, 1996)) pursuant to the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) and Executive Order 12777. These regulations contain minimum on-water oil removal equipment requirements that plan holders (vessel and/or facility owners and operators) transporting or transferring petroleum oil must meet to be prepared for an oil spill. Under these regulations, the Coast Guard periodically reviews 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 Request for Comments (63 FR 3861) regarding our intent to conduct a review of oil removal equipment response plan requirements. In the request, we stated that the 1993 oil removal equipment requirements would remain in effect until the review was complete. On June 24, 1998, we published a Notice of Meetings (63 FR 34500) that announced three public workshops. The meetings were set up to solicit comments on potential changes to oil removal equipment requirements associated with the response plan regulations (33 CFR parts 153, 154 and 155) for mechanical recovery, dispersants, and other spill removal technologies. The meetings were held at the following places and times:

- Friday, July 24, 1998, from 9:30 a.m. to 3 p.m. at the Oakland Airport

Hilton, One Hegenberger Road, Oakland, California 94621;

• Wednesday, August 19, 1998, from 9:30 a.m. to 3 p.m. at the Houston Marriott West Loop-by the Galleria, 1750 West Look South, Houston, Texas 77027; and

• Wednesday, September 16, 1998, from 9:30 a.m. to 3 p.m. at the U.S. Department of Transportation, Nassif Building, Room 2230, 400 Seventh Street, SW., Washington, DC 20590.

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. We completed the assessment, ''Summary Report of Public Workshop for Response Plan Equipment CAPs,'' in May 1999 and, based on its recommendations, published a notice of decision (65 FR 710, January 6, 2000) that announced a 25-percent increase in on-water mechanical recovery equipment for response plans of MTR facilities and tank vessels, effective April 6, 2000. Furthermore, we started 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 is adequately considered in the rulemaking, the Coast Guard prepared 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, we published a Notice of Intent to prepare and circulate a draft PEIS (65 FR 53335). We requested public input on environmental concerns related to the alternatives for increasing spill removal equipment requirements for an oil discharge, and suggested analyses or methodologies for inclusion in the PEIS.

The Coast Guard received 70 comments in response to the 1998 Request for Comments and from the three public workshops. Those comments, as well as the recommendation of the Federal Government-Oil Spill Response Industry Partnership Action Team, were placed on the Federal rulemaking docket for this rulemaking and addressed in the notice of proposed rulemaking (NPRM).

On October 11, 2002, the Coast Guard published an NPRM in the **Federal Register** (67 FR 63331) entitled, ''Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions.'' On November 19, 2002, we published a notice of public meeting and extension of the comment period (67 FR 69697). The meeting was held on December 18, 2002, at Coast Guard Headquarters in Washington, DC, and the comment period closed on April 8, 2003.

The NPRM described five regulatory alternatives, including a ''no action'' alternative, which emphasized either mechanical or non-mechanical response assets. In addition to addressing different modes of oil-spill response, the alternatives included differing capabilities within each response mode. The five regulatory alternatives presented in the NPRM and considered by the Coast Guard are summarized briefly below:

Alternative 1	No action (2000 response requirements remain effective without modification).	
Alternative 2	Mechanical recovery	Increase of 25 percent for all operating areas of water (inland, nearshore, offshore, Open Ocean, Great Lakes, rivers and canals).
	Dispersants	No response requirements.
	Aerial tracking	Required.
Alternative 3	Mechanical recovery	Increase of 25 percent for all operating areas of water (inland, nearshore, offshore, Open Ocean, Great Lakes, rivers and canals).
	Dispersants	Option A Effective Daily Application Capability (EDAC) for Tier 1 response time.
	Aerial tracking	Required.
	In-situ burning	Credit against mechanical recovery.
Alternative 4	Mechanical recovery	Increase of 25 percent for certain operating areas of water (inland, Great Lakes, rivers and canals).
	Dispersants	Option B EDAC for Tier 1 response time.
	Aerial tracking	Required.
	In-situ burning	Credit against mechanical recovery.
Alternative 5	Mechanical recovery	No added response requirements.
	Dispersants	Option B EDAC for Tier 1 response time.
	Aerial tracking	Required.
	In-situ burning	Credit against mechanical recovery.

We received 116 comments on the proposed rule in response to the NPRM, which are discussed below in the ''Discussion of Comments and Changes'' section of this preamble.

On December 31, 2008, the Coast Guard published the Salvage and Marine Firefighting final rule (73 FR 80618). In that final rule, the Coast Guard amended the vessel response plan salvage and marine firefighting requirements for tank vessels carrying oil. The revisions clarified the salvage and marine firefighting services that must be identified in VRPs and set new response plan requirements for each of the required salvage and marine firefighting services. The final rule also revised 33 CFR 1520 addressing when plan holders were required to comply with the new salvage and marine firefighting requirements to change the compliance date from 6 months to 18 months after the December 31, 2008, publication of the final rule based on public comments on the issue.

III. Background and Purpose

Under OPA 90 and Executive Order 12777, the Coast Guard is authorized to issue regulations requiring the owners and operators of tank vessels and MTR facilities to prepare and submit response plans. OPA 90 amended the Federal Water Pollution Control Act (FWPCA) to require the preparation and submission of oil spill response plans by the owners or operators of certain facilities and vessels. It also required these vessels and facilities to operate in compliance with their submitted response plans. Vessel and facility owners or operators were told to submit a response plan to the Coast Guard for approval to handle,

store, or transport oil. In 1996, the Coast Guard published final tank vessel response plan regulations (61 FR 1052 (January 12, 1996)) and final MTR facility response plan regulations (61 FR 7890 (February 29, 1996)). These regulations defined the minimum on-water oil removal equipment requirements that plan holders transporting or transferring petroleum oil must meet to be prepared for an oil spill. Under these regulations, the Coast Guard periodically reviews the existing oil removal equipment requirements to determine if increases in mechanical recovery systems and additional requirements for new response technologies are practicable. The Coast Guard is promulgating this final rule in keeping with its obligation to periodically review and update these requirements.

IV. Discussion of Comments and Changes

During the comment period, we received 116 comments. Discussion of comments on the NPRM, including those from the public meetings, are organized into sections concerning general comments, mechanical recovery, dispersants, and aerial tracking. Material on the comparative merits of mechanical recovery and dispersants is included in the dispersants section.

A. General Comments

This section concerns in-situ burning (ISB), costs and benefits, environmental impacts, editorial changes, compliance dates, and other subjects of a general nature.

We received several comments on the use of ISB. In the NPRM, burn credits were proposed to offset the requirements for mechanical recovery, rather than requiring specific ISB response requirements. As a result of further Coast Guard analysis and associated public comments received on the Draft Programmatic Environmental Impact Statement (DPEIS), we decided not to include ISB or the associated burn credits in the regulatory scheme. Because ISB is eliminated in our final decision, we are not addressing comments that solely concern ISB. However, we still evaluated ISB credits in the Final PEIS because they remained reasonable (but not selected) alternatives.

We removed ISB from this rulemaking because allowing a credit for ISB may reduce the amount of mechanical recovery response equipment available in areas where ISB pre-authorizations are in place. Removal of the ISB credit will prevent the potential for reduction in mechanical recovery equipment.

Removal of the ISB credit is justified because on-water ISB is, operationally, too limited an option to require the capability nationally. There are only limited opportunities to employ ISB in open waters. Those limitations, however, are so severe, and the cost of ISB equipment so high, that the Coast Guard cannot justify requiring stockpiling of ISB equipment in addition to required mechanical recovery stockpiles. Furthermore, ISB has very limited potential for use with on-water spills, even in the event of catastrophic oil releases from vessels. ISB has significant potential value for use on land, in marshes, and other areas. However, in those situations, the oil is usually stabilized in place and specialized burn booms addressed in these regulations are either not required at all, or are not subjected to emergency delivery. ISB may also be useful in response to a continuous discharge, such as an incident involving an oil production facility. However, such facilities are not covered in this rulemaking. ISB may offer some benefit for response to oil trapped in ice. But, in those areas, icing is typically a seasonal situation, such that the loss of mechanical recovery capability has not been justified. If local area planning committees determine that the loss of mechanical recovery is justified, then they may work with plan holders to permit alternative compliance strategies that may accommodate some tradeoff between mechanical recovery and ISB equipment.

For the reasons set out above, the Coast Guard is eliminating the offer of credit against mechanical recovery for ISB capability. The ISB pre-authorizations in place provide sufficient incentive to encourage plan holders to stockpile ISB equipment if such equipment will be useful in addressing response situations without requiring them in the regulations.

Since vessel and facility owners or operators are not required to contract with Oil Spill Removal Organizations (OSROs) for ISB resources, we removed the ISB tables from the final rule.

Two commenters believed that the benefits of the proposed regulations do not justify the costs of implementation. Furthermore, the commenters stated that future regulations should focus on oil spill prevention.

As technology and science advance, regulations must change to facilitate those advances. Regulation implementation cost was considered in the development of these regulations. While the number and volume of small spills have decreased, these regulations are aimed at minimizing catastrophic spills. These regulations consider advances in technology and scientific understanding, and changes in regional oil spill response preparedness efforts. Additionally, they establish the appropriate roles for various response technologies, including dispersants, ISB, and aerial monitoring.

Another commenter asked why the Coast Guard is implementing increased mandatory recovery capabilities when current containment requirements and equipment have adequately addressed the problem.

This rule does not increase the mechanical recovery capabilities already required. It requires that dispersants complement the existing capability. Dispersants may reduce environmental damage from an oil spill in circumstances where use of mechanical recovery systems is not practical. For instance, in rough seas, mechanical containment and recovery systems are of little use while dispersants are very effective at scattering the oil and reducing shoreline impacts.

Several commenters expressed general concern with the costs discussed in the assessment of the proposed rule. However, some commenters did not provide specific data or additional details that would support their concerns and, as a result, we were unable to address their comments directly.

One commenter was concerned with the limited use of dispersants and the limited availability of application platforms for mandatory dispersant use. This rule does not make dispersant use mandatory. It seeks to ensure the availability of dispersant capability within limited areas where pre-authorizations exist. The establishment of pre-authorization areas and the decision to use dispersants in any incident is governed by EPA in 40 CFR 300.900 *et seq.* and are not within the scope of this rulemaking.

One commenter believed this rulemaking would have an adverse impact on his small business because he thought his company could no longer act as an independent OSRO. This commenter was responding to a change to the OSRO classification process carried out by the National Strike Force Coordination Center (NSFCC). At one time, the NSFCC, classified OSROs who were capable of providing average most probable discharge (AMPD) coverage to a plan holder. Under the current classification process implemented in 2002, the NSFCC no longer classifies OSROs that only provide AMPD response resources and coverage. AMPD response resources must be ensured

available, as applicable, by the plan holder and verified at the Coast Guard Captain of the Port (COTP) zone level. This commenter was concerned that the result would be that he could no longer provide AMPD coverage. The comment is outside the scope of this rulemaking. Furthermore, AMPD coverage for mechanical recovery remains unchanged by this final rule.

Several commenters stated that requiring ISB and dispersant equipment in remote areas would place a large financial burden on responsible parties in certain areas of Alaska where there are few facilities and little or no infrastructure for response. Therefore, they suggested the requirements be modified for Alaskan waters outside of Prince William Sound and Cook Inlet. One of these commenters requested the regulations be modified to account for the short periods of the year when dispersants can be successfully used in areas such as Cook Inlet.

The Coast Guard agrees that requiring dispersant and ISB capability in remote areas of Alaska may impose an undue burden on plan holders. This concern was one of many factors in the decision not to require ISB response equipment. As dispersant response equipment is only required for plan holders operating in pre-authorization areas, and because Alaska has no pre-authorizations as of September 27, 2008, this concern is not an immediate issue.

In Alaska, the Area Planning Committee and the Regional Response Team have at least two options within the parameters of the regulations. They may either determine that pre-authorization in remote areas is not feasible because of the potential financial burden, or they may adopt pre-authorization but recommend that some, or all, plan holders be exempted from complying in accordance with the provisions of 33 CFR 154.108 for facilities or 33 CFR 155.130 for vessels. As part of the exemption request, alternative procedures, methods, and equivalent standards must be evaluated and implemented if available. This requirement would facilitate the decision process but leave the burden of providing the capability to the Area Committee and Regional Response Team. The Coast Guard has addressed the standard case in most of the country, but has provided sufficient flexibility at the local and regional levels to address local issues and concerns.

The Coast Guard strongly agrees with the need for the regulations to be sufficiently flexible to allow consideration of alternatives. There are already provisions in 33 CFR 154.1065 and 33 CFR 155.1065 intended precisely for this purpose. Plan holders, especially in remote areas of Alaska, Hawaii, and Guam, are encouraged to work with the Coast Guard and local response communities to determine suitable alternatives to the regulations that might be approved by the Coast Guard.

Three commenters believed the Coast Guard should specifically define the methods used to determine compliance with dispersant (ISB and aerial surveillance) capability and availability. Another commenter felt procedures should be published to classify dispersant providers and aerial observation personnel. One commenter felt that requiring plan holders to list all resources would place an unreasonable burden on plan holders. In addition, several commenters stated that effective daily application capacity (EDAC) and other tabulated information is inaccurate and that recalculations should be made using the National Oceanic & Atmospheric Administration (NOAA) dispersant planner. One commenter recommended that an industry or government workgroup be established to update the NOAA Dispersant Mission Planner.

Effective daily application capacities have been revised using the NOAA dispersant planning calculator (the updated version is now simply called the Dispersant Mission Planner 2 [DMP2]). Therefore, rather than including tables approximating dispersant delivery response times in the regulations, which would be cumbersome to update in light of new technology, the Coast Guard decided to reference the DMP2, which was recently updated by a joint government and industry workgroup for this purpose. Plan holders can download the DMP2 and other spill tools from the Internet at the following URL: *http://response.restoration.noaa.gov/spilltools*.

While the Coast Guard will use this calculator to assess plan holder dispersant plans, plan holders are not obligated to use it as a planning tool.

Adequate dispersant application platforms will be evaluated by the NSFCC using the DMP2 based on an OSRO-submitted list that identifies sufficient and appropriately trained personnel, specific aircraft, vessels, delivery systems, dispersant, and any other input parameters specified in the calculator. The list should also provide the location of each identified item. Regarding availability of response resources, the NSFCC will use the DMP2, as specified in the regulations, to determine response times to the scene and EDAC. Accordingly, the definition of DMP2 in § 155.1020 has been revised from the definition proposed in the NPRM to clarify that the NSFCC will use the DMP2 application for evaluating dispersant classification levels. OSROs with dispersant capability must be identified in a vessel response plan in the same manner as is currently required of Coast Guard classified OSROs [*see* 33 CFR 155.1035(6)–(10)]. If the Coast Guard evaluates an OSRO for dispersants and determines their capability is equal to, or exceeds, the response capability needed by the vessel, only the OSRO and its applicable classification need to be identified. If the OSRO has not been evaluated for dispersant capability the appendix must contain comprehensive response lists.

Aircraft air speeds will be limited as indicated in the calculator because these are planning standards and not response standards. Vessel speeds will be limited to five knots as indicated in the regulations. The NSFCC will use those standards to determine time to dispersant loading point, if different from delivery resource point, and then draw a radius from the dispersant stock point to determine response coverage provided by those resources. For dispersant vessels on water, response radius will be limited to 35 nautical miles from home base or usual station for tier 1 responses, 60 miles for tier 2 responses, and 180 miles for tier 3 responses.

The OSRO classification processed by the NSFCC will ensure consistency of assumptions and terminology used by response service providers across the country and will also provide feedback for the national response resource inventory database maintained by the NSFCC. The classification is not intended to certify capability. Certification is the responsibility of the vessel and facility response plan holders who will rely on these services.

Vessel and facility response plan holders must ensure these dispersant service providers meet the response requirements in the regulations. The vessel response plan certification statement required by the regulations is the plan holder's certification that the cited items are available to deliver dispersants in accordance with applicable ASTM International standards within the timeframes specified in the regulations.

The NSFCC, in cooperation with regional and local area-planning committees, will conduct periodic visits verifying that dispersant response providers' equipment and personnel are available to provide the required services. These visits may be unannounced. No actual deployment will be required as part of these visits,

but maintenance records and material condition may be examined. Furthermore, plan holders must conduct deployment exercises of these resources at least annually. Finally, industry plan holders must include deployment of these resources as part of periodic participation in government or industry-led area exercises when those exercises include these resources in the scenario.

One commenter encouraged the Coast Guard to apply this rulemaking to non-tank vessels and other facilities and entities that might spill oil into the environment. Otherwise, the commenter maintained, the entire burden for services, which may benefit these other entities, will fall to a small segment of the potential spillers.

As a result of the Coast Guard and Maritime Transportation Act of 2004, the Coast Guard is also developing proposed response plan regulations for non-tank vessels over 400 gross tons. These regulations may be added to 33 CFR 155 as a new subpart. This action may result in similar oil spill planning standards for tank and non-tank vessels, including the requirements for dispersant capability and aerial observation platforms.

With respect to other facilities and entities, the U.S. Minerals Management Service (MMS) has followed this rulemaking closely and will determine what, if any, changes they will make to their requirements for the offshore oil exploration and production facilities it regulates. The Environmental Protection Agency (EPA) and Pipeline and Hazardous Materials Safety Administration are also monitoring this rulemaking for consistency and impact on the industry segments these agencies regulate.

Several commenters objected to the proposed requirement for plan holders to comply with these regulations within 8 months of publication of the final rule. Some were particularly concerned with the regulation's focus on development of a nationwide dispersant capability. This focus will require acquisition and outfitting of multiple aircraft in multiple locations, along with dispersant stockpile depots and a logistical network to ensure compliance. Additionally, commenters argued, it may also require Federal Aviation Administration (FAA) approval of individual airframes and other implementation obstacles. Finally, commenters explained that because of the cost of compliance, none of these steps can be initiated until the nature and details of the final rule become clear.

The Coast Guard agrees and has amended § 154.1065(e) and § 155.1070(i) to extend the compliance date for facility and vessel owners or operators to 18 months from the publication of the final rule.

One commenter suggested renumbering Table 154.1050(k) to 154.1050(j) to conform to the numbering convention in the rest of the regulations.

ISB tables will be removed from the regulations because ISB resources will no longer be used as an alternative to offset a portion of the required mechanical recovery equipment/capability.

Two commenters noted that Table 154.1045(i) should include a footnote indicating that these response time frames are based on application in daylight hours. For example, in Alaska, where days are very short in winter, these response time frames should not apply to all tier 2 or tier 3 quantities in a limited operational period.

Dispersant application requirements assume 12 hours of daylight in each tier period as a planning standard, not a performance standard. More precisely, tier 1 assumes that daylight begins upon notification and ends at hour 12. For tier 2, planners can estimate daylight to begin at hour 24 and end at hour 36 and for tier 3, daylight begins at hour 48 and ends at hour 60. This is a planning standard, not a performance standard, which presumes that average daylight over a 12-month period is 12 hours. The 12-hour assumption permits practical planning for an oil spill; however seasonal variance should be taken into account during actual response operations. As noted previously in this discussion of comments section, rather than including tables approximating dispersant delivery response times in the regulations, we have decided to reference NOAA's Dispersant Mission Planner 2 (DMP2). The DMP2 is available from the Internet at the following URL: *http://response.restoration.noaa.gov/spilltools*. Therefore, a footnote to the table is not applicable.

Additionally, paragraphs (j) and (p) of Part 155.1050 have been removed.

Two commenters wanted to know whether vessel speed waivers conducted under the OSRO guidelines will be accepted or, if not, whether the plan holder or OSRO will have to go through a separate waiver procedure.

Existing response delivery speed waivers will still apply if owners and/or operators can provide transit calculations demonstrating greater speed of transit than the assumed five knots over water or 35 miles per hour over land.

Several commenters supported the decision that only plan holders operating in areas where dispersant use has been pre-authorized are required to have dispersant resources available. One of these commenters was concerned that the regulations would require plan holders operating in inland areas to comply with the dispersant capability requirements. Another commenter supported exemptions for inland barges. One commenter believed no inland waters exist where the commenter's vessels operate that are pre-approved for dispersant use.

The Coast Guard recognizes there are no pre-authorizations in inland areas (*e.g.,* estuarine or freshwater) at this time. It is possible, although not likely, that such pre-authorizations may be developed over time. Currently, however, facilities and vessels operating in inland areas, including ports and harbors, rivers, and the Great Lakes, will not be required to have dispersant resources available. If pre-authorization is established in any of those waters, plan holders operating in the waters covered by that pre-authorization will be expected to comply within 24 months of the date of publication of a **Federal Register** notice advising of the pre-authorization. The 24-month compliance time frame will allow owners and operators to stockpile the requisite dispersants and supporting delivery assests.

One commenter suggested that the final rule define facilities that handle petroleum as primary cargo as those whose primary business is the frequent shipping and/or receiving of oil and therefore are facilities where the probability of oil releases is significantly greater than it is for facilities that handle oil infrequently.

The definition of the term ''facilities'' for the purposes of these regulations was already established with the promulgation of the facility response plan regulations in 1993. *See* 33 CFR 154.1020. Additionally, the local Coast Guard Captain of the Port can upgrade or downgrade the classification of a facility based on its operating status. *See* 33 CFR 154.1016. The frequency of transfers at a particular location is not the only factor determining probability that the facility will suffer a major spill incident.

Several commenters urged the Coast Guard to publish a list of pre-authorization areas and expedited approval zones for both dispersant use and ISB to clarify who is presently required to provide this equipment. One commenter recommended that the regulations clearly state where dispersant and ISB use is pre-authorized. Another commenter felt that governmental agencies do not have the

resources or motivation to develop pre-authorization agreements.

Pre-authorization areas are contained in individual Area Contingency Plans available at *http://www.homeport.uscg.mil* under Port Directory. Additionally, the Coast Guard published a list of pre-authorization areas at *http://www.uscg.mil/vrp/reg/disperse.shtml*.

The Coast Guard Office of Incident Management and Preparedness at Headquarters (CG–533) maintains this list in coordination with Regional Response Teams. If new or revised pre-authorizations are received, the Coast Guard will post the document on the Web site and publish a notice in the **Federal Register.** Plan holders within newly established pre-authorized areas will have 24 months from the date of publication of a pre-authorization area to achieve compliance.

One commenter recommended that dispersant planning only be required in areas actually pre-authorized for dispersant use or pre-approved with consultation, and not in areas only designated for quick approval of dispersant use. The Coast Guard agrees. To eliminate ambiguity and confusion, the rule will apply to pre-approved areas only.

One commenter recognized the value of input from qualified OSROs, and requested that the Coast Guard solicit their expertise.

The Coast Guard agrees and has followed a deliberate public process in this regulatory development. Since 1998, the Coast Guard has engaged in frequent dialogue with Federal, State, and local government agencies, industry, and OSROs. Throughout this process, the Coast Guard has incorporated many recommendations provided by OSROs.

One commenter requested that the regulations not require detailed equipment lists, but instead require just a ''simple reference'' to the OSRO contracted by the plan holder.

The Coast Guard agrees. The regulations will allow plan holders to reference in their plans an OSRO that provides dispersants, is classified by the Coast Guard, and whose availability has been ensured by contract or other approved means.

One commenter agreed with the Coast Guard that it is the sole responsibility of the potential spiller to pay for all costs associated with maintaining large incident response capability.

Several commenters felt it was premature to evaluate the proposed regulations prior to publication of the programmatic environmental impact statement (PEIS). One felt the comment period should be extended until the PEIS was completed.

The Coast Guard disagrees. The comment period for the NPRM was open for approximately 6 months [Oct 2002 to Apr 2003], and the comment period for the DPEIS was open for 3 months [in 2005]. There was ample opportunity to comment following publication of the NPRM and the notice of availability for the DPEIS.

Specifically, on June 1, 2005, we published the DPEIS. Shortly after the DPEIS publication we held four public hearings in July 2005. Public comments received on the DPEIS and the NPRM prompted the Coast Guard to alter its proposed action. As such, the new alternative 5 (without the ISB) was evaluated in the final PEIS, and was the selected alternative.

The final PEIS has been completed. It describes the reasonable alternatives evaluated, the affected environment, and the environmental impacts associated with the alternatives on the resources analyzed.

Three commenters were concerned that requirements for the Gulf of Mexico were higher than those for other areas of the country due to the large presence of oil and gas production facilities in that area. Oil and gas production facilities are not regulated by the Coast Guard, so they should not be used in establishing a Coast Guard requirement or to justify an increased level of dispersant coverage. The commenters also urged coordination with the Minerals Management Service (MMS), which regulates those facilities, to ensure consistent regulatory standards between agencies.

The planning volumes in the Gulf of Mexico are higher because oil tanker traffic there is much higher than it is elsewhere in the country. This is partly due to the fact that much of the oil produced in this region, and most of the crude oil refined in the United States, travels on ships operating in and out of Gulf of Mexico ports. The Coast Guard developed this rule in close cooperation with MMS.

One commenter stated that there are several plans which utilize bioremediation in spill response, contrary to what was stated in the NPRM preamble.

The Coast Guard acknowledges that various regional and local area planning documents around the country appropriately use bioremediation in response to spills. However, none of these plans endorses the immediate use of bioremediation in treating large volumes of oil on water. Rather, bioremediation is generally seen as a ''polishing tool'' for use on shoreline areas when further removal of remaining oil is impracticable or environmentally damaging. Unlike on-water mechanical recovery, on-water ISB, and chemical dispersion, bioremediation is not an initial response option and does not need to be applied within the first few days of a spill. Days or weeks may pass before bioremediation use is even considered during a response. The Coast Guard supports the use of biobased products as a part of the response evolution and encourages national, regional, and local area planners to consider use of bioremediation and bioacceleration. However, it is not necessary for vessel and facility owners to contract in advance for this response tool.

A related comment recommended that this rule include a provision to require use of dispersants determined to be environmentally preferable products in accordance with Executive Orders 13101, 13134, and 13148.

Executive Order 13101 requires consideration of waste prevention in reference to our pollution response policies. In this instance we have complied with Executive Order 13101 by ensuring that our regulation does not contradict 40 CFR Part 300—National Oil and Hazardous Substances Pollution Contingency Plan. Part 300 describes the structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants. Recycling is the preferred disposal alternative cited in 40 CFR 300.310.

Executive Order 13134 encourages the development of a comprehensive national strategy, including research, development, and private sector incentives, to stimulate the creation and early adoption of technologies needed to make biobased products and bioenergy cost-competitive in large national and international markets. Although we note the commenter's concern with regard to these products, the focus of this rule is on responding to oil spills with the technologies currently available. The Coast Guard may consider additional technologies as they become available.

Executive Order 13148 charges Federal agencies with ensuring that all necessary actions are taken to integrate comprehensive environmental accountability in the agencies' day-to-day decisionmaking and long-term planning processes. In this instance, we have integrated environmental accountability into this rulemaking process by complying with the mandates of the National Environmental Protection Act (please see the final Environmental Impact Statement on the

docket USCG–2000–7833). Further, in response to actual spills, the Coast Guard is accountable, as the Federal On-Scene Coordinator, for response operations within our jurisdiction (40 CFR 300). This jurisdiction includes oversight of disposal operations.

One commenter asked the Coast Guard to revise or clarify the terms ''inland'' and ''nearshore'' in the preamble.

''Inland area'' and ''nearshore area,'' as used in the preamble, are defined in the existing vessel and facility response plan regulations at 33 CFR 154.1020 and 155.1020.

One commenter requested that the Coast Guard amend its ''Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program'' to include detailed guidance on how the Coast Guard will evaluate, inspect, and classify OSROs that provide dispersant services.

Once final regulations have been promulgated, the Coast Guard will provide adequate guidance to industry for classification as a dispersant OSRO.

One commenter recommended that the Coast Guard recognize all applicable ASTM standards for dispersants. The ASTM represents broad-based industry and government review of equipment and procedural standards. The commenter stated that all of the applicable standards should be referenced in the regulations.

The Coast Guard agrees and has included a list of all relevant ASTM standards to 33 CFR 155.140(b) and 154.140(b).

Several commenters suggested that the Coast Guard remove the definitions ''dispersant operations group supervisor'' and ''in-situ burn operations group supervisor'' from the regulations. The commenters argued these are spill management positions, which are appropriately described in other Coast Guard guidance, such as the Coast Guard Incident Management Handbook, and are overly prescriptive and unnecessary for the implementation of these regulations.

The Coast Guard agrees and has removed the terms from the definitions. Plan holders should still ensure that these positions are addressed in their spill management team structures for both plan holder-led and government-led response operations.

One commenter suggested the definition of ''effective daily application capacity (EDAC)'' be amended to include the assumption that the application system is used in accordance with approved standards and within acceptable operating parameters.

The Coast Guard agrees that the EDAC for dispersants assumes the application system is used in accordance with ASTM standards and that operations occur within acceptable environmental conditions (*e.g.,* sea state, winds, visibility) assigned in the National Contingency Plan (NCP) (40 CFR 300.900 *et seq.*). The regulations describe these parameters in detail. However, to reinforce the intent of these planning standards, the Coast Guard has amended the definition of *EDAC* in §§ 154.1020 and 155.1020 to include, ''* * * when operated in accordance with approved standards and within acceptable environmental conditions'' as specified in the NCP.

Another commenter recommended increasing the proposed EDACs for dispersants.

The Coast Guard disagrees. Many factors were considered when establishing the defined EDAC levels in these regulations, including cost-benefit analysis, availability of delivery systems, stockpiling dispersants, effective use, and statistics on volumes of spills where dispersants could be an effective mitigation technique. The Coast Guard does not intend to change the required minimum EDAC levels.

One commenter felt that the regulations should include a minimum threshold volume of persistent oil transferred (or transfer capability) to trigger the dispersant planning requirements for facilities.

The Coast Guard concurs. The applicability requirements for facility response plans are found at 33 CFR 154.1015. These applicability requirements specify that a facility response plan is required to be submitted for approval if a facility is capable of transferring oil or hazardous materials to a vessel that has a total capacity of 250 bbls or more.

One commenter recommended that the applicability of dispersant planning regulations be based upon risk assessments. Those facilities that can demonstrate through quantitative risk analysis that they are less likely to have spills in pre-authorized areas should be exempt from the regulations.

The Coast Guard disagrees. Risk assessment tools have proven their utility in providing ''quantitative'' support to decision-making processes within industry and government agencies. However, the subjective nature of quantifying risk would make enforcement of these regulations difficult, if not impossible, using the commenter's suggested method. The applicability of the regulations is based upon a risk assessment conducted by the Coast Guard. It was determined that those facilities and vessels subject to the regulations pose enough risk to warrant the requirement of this additional equipment coverage.

One commenter felt that an assessment that arbitrarily starts with a 25-percent increase without justification appears to bias the work product.

The Coast Guard assumes the commenter refers to the planned 25-percent increase in mechanical recovery that was rejected by the Coast Guard. This topic is discussed in some detail under the ''Mechanical Recovery'' section of this preamble, which immediately follows this section.

One commenter recommended that the Coast Guard clarify the language used in referring to OSROs regarding evaluation, approval, certification, and classification.

In some cases, the regulations are broad or general to avoid being prescriptive. The NSFCC evaluates OSRO capabilities based on documentation submitted by an OSRO. This documentation includes detailed equipment specification and personnel qualifications. Based on the documentation review, the NSFCC issues a classification to an OSRO. The classification is a general estimate of an OSRO's generic capability and does not imply that an OSRO can satisfy any individual plan holder's requirements. Current and future guidelines for OSRO evaluation may be found at *http://www.uscg.mil/hq/nsfweb/nsfcc/ops/ResponseSupport/RRAB/osroclassifiedguidelines.html*. NSFCC and Coast Guard field personnel visit OSRO equipment sites to verify the accuracy of documentation submitted.

One commenter asked if an OSRO could provide services to several plan holders. Specifically, would an OSRO need multiple sets of supplies and equipment to cover a minimum number of plan holders and have the capability to respond to simultaneous worst-case discharges? If not, what would the OSRO or a plan holder that contracted their services need to provide during the time the OSRO's services were being used by another plan holder or while supplies were being restocked and/or equipment decontaminated after a major response?

The availability of services to meet a plan holder's needs is the plan holder's responsibility. In the event of a spill, the Coast Guard will expect the plan holder to respond in accordance with its plans, regardless of other spill events that may be occurring at the time of the response. Therefore, in its planning process, the plan holder should discuss with its service providers their ability to handle multiple incidents and the number of

other plan holders to which the service provider is already committed.

Also, if a plan holder's capabilities are diminished because service-provider resources are committed elsewhere for a response, that plan holder is obligated to notify the Coast Guard Captain of the Port (COTP) for the zone in which the plan holder operates of: (1) The plan holder's reduced capability, and (2) the plan holder's plans for overcoming the shortfall. This will enable the COTP to determine whether any operating restrictions should be imposed on the plan holder until such shortfalls are overcome. The Coast Guard recently published guidance to the public addressing this issue. *See* Navigation and Vessel and Inspection Circular (NVIC) 01–07, ''Guidance on Vessel and Facility Response Plans in Relation to Oil Spill Removal Organization (OSRO) Resource Movements During Significant Pollution Events.''

The NVIC is available on the Internet at: *http://www.uscg.mil/hq/g-m/nvic/0-07/NVIC%2001-07.pdf.*

B. Mechanical Recovery

Several commenters claimed that the mechanical recovery equipment requirement was sufficient in 1993. They argued that, since spill volume is considerably less today than in 1993, increasing the requirement for mechanical recovery equipment is unjustified. Several of these commenters supported the Coast Guard's decision not to increase mechanical recovery caps and agreed that raising the caps would not cause a significant benefit. Other commenters disagreed and favored a 25-percent increase in mechanical recovery equipment, which was supported by a Coast Guard report published in 1999. *See Response Plan Equipment Caps Review,* pages 1–3, and 55, which is available in the docket.

The Coast Guard has concluded that an increase in mechanical recovery equipment is unjustified at this time. This rule eliminates provisions in §§ 154.1045(i) and 155.1050(j) that permit plan holders to offset their mechanical recovery equipment inventory by as much as 25 percent in exchange for including dispersants in their response plans. This change will effectively increase mechanical recovery equipment requirements for some plan holders.

The Coast Guard also recognizes that oil spill volume decreased significantly since the implementation of oil spill prevention regulations and innovative industry measures. Because spill volume is significantly down, mechanical removal equipment inventory requirements have not increased.

At the same time, mechanical recovery equipment effectiveness has, historically, been relatively low compared to that of dispersants. According to a 2001 International Petroleum Industry Environmental Conservation Association report:

> Estimates of dispersant effectiveness should be compared with estimates of the effectiveness of physical methods, which are more constrained by rough sea conditions than dispersant application. When appropriate, and under most circumstances, dispersants can generally remove a significantly greater proportion of oil from the water surface than physical methods.

Dispersants and Their Role in Oil Spill Response, p. 10 (2d Ed., November 2001).

Although the two recovery modes are often preferred in different environments, the effectiveness of mechanical recovery fails to support a conclusion that significantly increased inventory would produce commensurate benefits. In fact, requiring additional mechanical equipment above the current requirements would not result in an appreciable increase in the ability to remove spilled oil from the water. Investment in dispersants, though, is expected to lead to significantly improved response capability.

Additionally, in 2000, the Coast Guard convened a panel of 11 oil spill response experts who came from the response industry, the Coast Guard, and academia. That panel concluded that ''there was no justification for increasing mechanical recovery mode amounts * * *.'' *See Regulatory Assessment for Changes to Vessel and Facility Response Plans: 2003 Response Requirements for Mechanical Recovery, Dispersants, In Situ Burning, and Aerial Tracking*, Appendix A, pages 28, 29, 34 and 35 (February 2002), which is available on the docket. That judgment was validated by field experience when, immediately after Hurricanes Katrina and Rita in 2005, ten major and medium oil spills were cleaned up using mechanical recovery. Despite this huge spike in demand for mechanical equipment, only one plan holder requested a waiver for mechanical equipment capability reduced below minimum requirements.

For these reasons, the Coast Guard agrees that an increase in mechanical recovery equipment is unjustified. The current total requirement for oil spill response assets, which includes a 25-percent increase in 2000 (*see* earlier ''Regulatory History'' section), continues to be adequate.

While another 25-percent increase is not supported at this time, the Coast Guard recognizes that the amount of mechanical recovery equipment is still inadequate to address fully the worst-case threat, or cases where environmental conditions render mechanical recovery ineffective or impracticable. For this reason, the Coast Guard will continue to evaluate the environmental benefits, cost efficiency, and practicality of increasing mechanical recovery capability requirements. This continuing evaluation is part of the Coast Guard's long-term commitment to achieving and maintaining an optimum mix of oil spill response capability across the full spectrum of response modes. Accordingly, 33 CFR 154.1045(o) and § 155.1050(q) were added to reflect this future assessment.

Two commenters believed that the existing Coast Guard regulations stated that mechanical recovery equipment requirements would be increased by 25 percent in 2003. One commenter recommended an increase in capability limits (caps) for mechanical recovery equipment on the Great Lakes and inland water areas if other areas gained the benefit of additional equipment. Another commenter noted that an increase was never scheduled for 2003.

Previous regulations at 33 CFR 154.1045(n) and § 155.1050(p) required the Coast Guard to establish caps in 2003, based on a review of mechanical recovery, dispersant, ISB, and oil-spill tracking technologies. Those regulations required a review (*Response Plan Equipment Caps Review,* completed by the U.S. Coast Guard in May 1999; *see* 65 FR 710 (January 6, 2000)) but did not require or propose an increase for any of those technologies.

C. Dispersants

This section addresses comments on dispersants, including their use in remote areas, classification, delivery platforms, ratios, environmental impacts, response times, peer review, compliance, and training.

Several commenters agreed that requiring dispersant availability is acceptable, though they pointed out that the most likely and desirable method of response in nearshore waters is mechanical recovery.

The Coast Guard agrees that the most desirable and likely method of response in nearshore waters is, and will remain, mechanical recovery. However, weather conditions or spill size may create conditions unsuitable for mechanical recovery. Therefore, the availability of other technologies to plan holders, especially dispersant technology, is

appropriate. It is also important to emphasize that these regulations intend only to make dispersant equipment available. Regulations regarding actual use in any situation are contained in the National Contingency Plan (NCP).

Several commenters supported our decision not to allow offsets (reductions in the quantity of mechanical recovery equipment required) for plan holders maintaining dispersant capability.

One commenter supported the development and use of new technologies for oil spill response in Prince William Sound, but believed mechanical recovery remains the best-suited recovery platform.

The Coast Guard agrees that under certain conditions, spills in any environment, including Prince William Sound, are amenable to mechanical recovery. However, under other conditions, in seas of greater than 2 to 3 feet and winds greater than 16 knots, even the best mechanical recovery systems are likely to be ineffective. Under such conditions, dispersants provide a practicable option which allows responders to mitigate the negative effects of spilled oil before it moves into sensitive nearshore and onshore habitats. However, if a particular area committee or regional response team is not satisfied that there is sufficient credible scientific data to assess environmental tradeoffs between dispersant use, shoreline cleanup, and mechanical recovery, then the committee or team is fully empowered not to allow the use of a dispersant-response option, as authorized under 40 CFR 300, subpart J.

Two commenters stated that the regulations require them to maintain equipment they may never use.

To avoid unnecessary stockpiling of dispersant equipment, the Coast Guard requires equipment only in areas where it has been predetermined that dispersants would be a viable oil spill mitigation technique and pre-authorizations have been established. Dispersant resources will not be located where their use was never considered or deemed appropriate. If and when new areas gain pre-authorization, plan holders operating in waters covered by that pre-authorization will be expected to comply within 24 months of the date of publication of a **Federal Register** notice advising of the pre-authorization.

The pre-authorization agreements indicate that dispersant use may be appropriate and will be approved for use in a spill incident meeting certain predetermined criteria that may occur in the covered area. The regulations will ensure that the dispersant equipment and materials are available, and that the cost of maintaining those resources is shared equitably among all potential private sector users.

Three commenters objected to the statement that plan holders should use private-sector aircraft and not count on Coast Guard or other government aircraft to apply dispersants. The commenters argued that this would destroy industry incentive to build a strong dispersant capability. Both Alaska and Hawaii are remote areas that have relied on memoranda of understanding (MOU) between industry and the Coast Guard to provide Coast Guard C–130 aircraft to serve as dispersant platforms. The commenters felt the proposed rule threatens these MOU and formally requested that Alaska and Hawaii be exempted from the regulations because the proposed rule does not take into account the limited availability of aircraft in these and other remote locations.

The Coast Guard agrees that provision of response resources is the responsibility of members of the regulated industry who are potential spillers. In fact, these regulations are based on the Coast Guard's determination that it is economically and technically feasible for the regulated industry to contract with the response industry to establish and maintain these resources at the levels specified in the regulations. For the Coast Guard or any other government agency to offer these resources in place of the response industry may place the government in competition with industry and is contradictory to 33 U.S.C. 1321. Even in remote areas like Hawaii, tier 2 and tier 3 resources can be provided through contract with mainland dispersant providers. Nevertheless, the Coast Guard acknowledges that U.S. Air Force Reserve and Coast Guard aircraft have been made available through MOUs with local regional response communities in Hawaii, Alaska, the Caribbean, and Ohio. The Coast Guard will re-evaluate MOUs periodically to ensure an appropriate balance of private resources is maintained. Therefore, Alaska and Hawaii are not exempted from the regulations.

The previously mentioned MOUs are limited in scope and degrees of commitment. They are intended to provide support in excess of commercially-available resources unless government resources are engaged in other missions. All agree to provide aircraft, if available. In all cases, however, the government considers this a secondary mission, on a ''not to interfere with primary missions'' basis. There is no assurance that aircraft or crews will be available at any time. In fact, for a period of time beginning in 2003, the U.S. Air Force Reserve had to suspend its participation in its MOU with the Coast Guard, due to overseas commitments. Likewise, Coast Guard aircraft and crews routinely support law enforcement, maritime security, and search and rescue missions. For these reasons, availability of government resources is not assured and does not satisfy the regulatory standard or intent.

We received several comments relating to Federal aircraft resources. One commenter suggested that the Coast Guard should allow State and industry stakeholders to work with the Coast Guard in each area to define a strategy tailored to that area's unique needs, including the use of government aircraft. This commenter also questioned the volume of dispersants required for stockpiles and the potential ''shelf life'' of stockpiles. Another commenter requested that the Coast Guard clarify the availability of Federal (aircraft) resources in the event of a major oil spill. And a different commenter urged that guidance language be provided and alternative compliance strategies (for aircraft resources) be included in the regulations. This commenter was particularly concerned about the ability to use Coast Guard C–130 aircraft as dispersant platforms in the Hawaiian Islands.

The Federal Water Pollution Control Act (FWPCA) and existing regulations clearly require the plan holder to rely on private sector resources, not government resources (*e.g.,* Coast Guard C–130 aircraft), in meeting its response needs. This is partly due to the concern that the response is a private sector responsibility, the equipment is available in the private sector, and, if the government were to provide the equipment, the government would be interfering with the private sector and free enterprise.

All plan holders everywhere are affected by the limited availability of aircraft, the volume of dispersant to be stockpiled, and the ''shelf life'' of these products. This is primarily a tier 1 issue where, in Alaska, Hawaii, and other select areas of the country, dispersant resources will have to be locally available. The regulations recognize the burden this imposes by limiting the amount of dispersant that needs to be delivered in the first 12 hours of the incident, so that local areas can rely on aircraft that are typically more readily available in the local area.

For tier 2 and tier 3, it is feasible for commercial aircraft, strategically located on the mainland, to reach either Alaska

or Hawaii within established time frames. The Coast Guard anticipates that the plan holders will ultimately establish a small number of strategic dispersant and aircraft stockpiles on the U.S. mainland that will be fully capable of satisfying all tier 2 and tier 3 requirements in nearly all remote areas of the U.S., including Alaska and Hawaii. Therefore, those areas should not be unfairly burdened in achieving compliance with the regulations.

The Coast Guard has drafted these regulations to establish a national standard for compliance by industry. It is not appropriate to exempt automatically any area of the U.S. from these regulations. At the same time, the regulations do include a provision for alternate planning criteria and deviation from the regulations. This is outlined in 33 CFR 154.107 for Facilties and 33 CFR 155.1065(f) for vessels.

For example, while the regulations require facility plan holders to rely on commercial, fixed-wing aircraft, local COTPs will have the flexibility to accept the use of rotary-wing aircraft in facility response plans, especially for tier 1 response, if the plan holder can demonstrate an equivalent level of delivery capability. Alternatives for facilities required to comply with these regulations are permitted under 33 CFR 154.107 and alternatives for vessels are permitted under the provisions of 33 CFR 155.1065(f).

One commenter stated that OSRO dispersant capability should not be classified by the NSFCC without input from the local COTP.

The Coast Guard agrees that local input into the classification process followed by the NSFCC is very important. The NSFCC is well aware of its responsibility to solicit local input into any deviation from the regulatory standard in classifying an OSRO. The OSRO guidelines, as well as guidance in the field, have reiterated that the OSRO classification process merely validates compliance with a national standard. Furthermore, Vessel and Facility plan holders are required to certify, to the Coast Guard, that response plans meet the applicable standards in accordance with 33 CFR 154.1060(b) and 33 CFR 155.1065(b), respectively.

Several commenters felt that the Coast Guard should specifically reevaluate restrictions that limit dispersant aircraft to 50 percent of the dispersant delivery vehicle capability. One commenter recommended that the minimum percentage of dispersants delivered by fixed-winged aircraft be increased from 50 percent to 90 percent due to the limited capability of helicopter and vessel delivery systems. Another commenter recommended that the maximum flexibility for application platforms be maintained at the tier 1 level, and the 50-percent fixed-wing dispersant platform requirement be applied against the entire 60-hour application planning period. One commenter suggested the regulations be goal-oriented and non-prescriptive of aircraft in order to ensure long-term applicability of the regulations. Another commenter wanted dispersants applied from vessels to be considered as fulfilling part of the required tier 1 spill response.

The regulatory requirement is not intended to restrict reliance on fixed-wing aircraft. During an actual response, the responsible party or plan holder would ensure more application resources be brought to bear according to the needs of the particular incident. Fifty percent is a minimum, not a maximum. The regulations are goal-oriented in that they prescribe the amount of dispersant a plan holder should have available to be applied. The Coast Guard has recognized the effectiveness of fixed-wing aircraft and will require that 50 percent of dispersant platforms be fixed-wing aircraft. If more fixed-wing aircraft are necessary to deliver the required dispersants, then the plan holder, in consultation with the FOSC, will take appropriate response action. To avoid creating regulations that are too prescriptive, the 50-percent requirement is intended as a minimum, and ensures a viable dispersant capability.

One commenter disagreed with the proposed requirement that 50 percent of dispersant capability be delivered by fixed-wing aircraft for all tiers. The commenter stated that fixed-wing aircraft are expensive to maintain on standby and that helicopters and vessels could be used to meet tier 1 requirements in certain operating areas.

The Coast Guard agrees that vessels and rotary-wing aircraft can meet tier 1 response times under certain scenarios if stationed in close proximity to spills. Accordingly, provisions of alternate compliance are allowed in the existing regulations. Requiring 50-percent fixed-wing dispersant capability was based upon several planning factors, including the geographic scale of coverage in the offshore environment, the time it takes to arrive on scene, and the application time. As these regulations require planning for tier 1 operations up to 50 miles from shore, and because forward vessel speed is calculated at a standard speed of five knots, vessels cannot be relied upon to meet tier 1 capabilities. Furthermore, rotary-wing aircraft are restricted in their ability to operate in the offshore environment and their dispersant-carrying capacities are very limited. Therefore, the regulations require planning for use of fixed-wing aircraft. Because these speeds and capacity limitations are assumptions, the regulations allow consideration of alternatives, such as the use of rotary-wing aircraft and vessels, if it can be demonstrated that alternate systems adequately address special local conditions. Refer to 33 CFR 154.107 and 33 CFR 155.1065(f) for provision to allow alternatives.

One commenter stated that the dispersant-aircraft tables should identify aircraft by make and model number. This was done for the Douglas-made aircraft (DC–3, DC–4, DC–6) and the Lockheed (C–130), but not for helicopters and air tractors.

The regulations are intended to serve as a planning tool, which approximates capability instead of serving as an all-inclusive guide. The Coast Guard recognizes that not only are there different air frames produced by a single manufacturer, but that individual airframe types (*e.g.,* C–130) include various models, not all of which are suitable for dispersant use. Therefore, it would be impossible to list all possible types of aircraft that might be used for such operations. The Coast Guard will rely on the plan holder to certify that specific aircraft contracted for dispersant application are suitable for this service and meet all FAA requirements for this service. Rather than listing all aircraft, plan holders are encouraged to correlate non-listed aircraft with the listed aircraft that most closely matches the available aircraft's capabilities.

One commenter believed aircraft should be required to apply dispersants using a racetrack pattern, which is best for spraying dispersants.

The Coast Guard will rely on the Dispersant Mission Planner 2 (DMP2) for calculating dispersant-application capabilities of all dispersant-delivery vehicles. Plan holders are encouraged to do likewise. The DMP2 relies on best practices, including application patterns and turning times, in calculating application parameters.

One commenter stated that safety requires all aircraft considered for use 50 nautical miles from shore and beyond to be multi-engined with ample fuel capacity.

The Coast Guard agrees that safety is of the greatest importance. The regulations require that all aircraft and pilots be fully certified by the appropriate agencies, including the FAA, for the operating environment and intended mission of the aircraft.

Because aircraft safety requirements are outside the scope of this rulemaking, we cannot impose the requirements suggested by the commenter.

Two commenters questioned the use of a 1:20 dispersant ratio and suggested that some dispersants have shown that they can be effective when applied at ratios of 1:50 or higher, under fairly rigorous conditions. One commenter recommended that the column showing oil treated, in tables 154.1045(i) and 155.1050(k), be deleted because it is unrelated to regulatory criteria for gallons of dispersant to be applied.

The commenter was concerned that listing the amount of oil treated may cause confusion for the response community about the amount of oil that might be dispersed in a response. The commenter argued the 1:20 dispersant application ratio is only a rough approximation based on current technology. If advances are made in dispersant formulations and greater evidence of dispersant effectiveness is gained, then application ratios may climb to 1:30, 1:50, or even higher. The column in Tables 154.1045(i) and 155.1050(k) cannot be deleted without impacting dispersant capability because the listed quantity of oil treated is for planning purposes only, it cannot be deleted without impacting dispersant capability. The tables list the maximum amount of oil to be treated for planning purposes only. The tables also identify the minimum quantity of dispersants needed to be ensured by contract or other approved means. The ratios have been constructed and listed as such to eliminate the need to revise the regulations at a later date based upon dispersant improvements.

Another commenter recommended using the tables in 154.1045(i) and 155.1050(k) as the basic standard and requiring that appropriate application be determined by the plan holder given existing environmental conditions.

The quantity of oil treated as identified in table 154.1045(i) and table 155.1050(k) is the basic standard, or minimum amount, for which the plan holder must contract. The tables set the planning standard to ensure that the equipment and materials are in place and available to respond to a worst-case scenario. The Coast Guard opted to use the 1:20 ratio as a planning standard, based on the fact that many of the pre-authorization agreements around the country cite application at a ratio of 1:20. Moreover, this ratio represents an optimal situation for oil spills that are less responsive to dispersion, either due to the oil type when initially spilled, or to the effects of weathering on the oil over time.

With regard to the plan holder's use of dispersants in an actual response scenario, this rule does not address the environmental conditions for use. Dispersant use conditions are set out in the Area Contingency Plans and Regional Contingency Plans, as appropriate, pursuant to 40 CFR 300.910.

One commenter noted that structuring the rule to specify minimum dispersant spraying capacity over time rather than for the amount of oil to be dispersed is an implied acknowledgement that oil slick dispersal will not be in accordance with the 1:20 assumption.

The Coast Guard agrees. The 1:20 ratio is a planning standard; it is not a performance standard. It provides clear guidance to the plan holder regarding the quantity of dispersant to be stockpiled along with the number and types of delivery vehicles. In actual response, it is anticipated that initial applications may be made at ratios of, for example, 1:50 or 1:100, depending on oil type, but with the overall ratio average of 1:20 for the entire spill.

One commenter supported the requirement for aerial observers and offered that the observers could serve three roles:

1. Providing information on spill location, size and trajectory;

2. Providing guidance to response assets, including recommendations for response tactics; and

3. Evaluating effectiveness of dispersant application.

Another commenter recommended that plan holders be required to have the equipment and capability necessary to implement the special monitoring of applied response technologies protocols for dispersant monitoring.

The Coast Guard agrees. By requiring training in protocols outlined in ASTM F1779–08, including NOAA's ''Open Water Oil Identification Job Aid for Aerial Observation'' and ''Characteristic Coastal Habitats,'' aerial observers should be prepared to fulfill all three of these roles. See 155.1050(l)(2)(iii).

One commenter wanted the proposed Appendix B Table 7 or Table 8 to reflect the requirement for dedicated vessel and aircraft crews for the dispersant-delivery platforms.

The Coast Guard disagrees and feels this requirement would be too prescriptive and costly. Additionally, these tables were removed and replaced by the DMP2 planning tool.

One commenter supported the requirement for advanced planning for dispersant use, as the window of opportunity to use a dispersant once an oil spill has occured is limited.

Another commenter suggested that the Coast Guard should raise its spill planning volume for dispersant use from a requirement to treat 26,190 barrels of oil to a requirement to treat 100,000 barrels of oil.

We believe the commenter is referencing the methodology which resulted in the tables found in 33 CFR 154.1045(i) and 155.1050(k). Current regulations governing response plans limit the total required amount of all equipment for which vessel and facility owners and operators must contract for in advance (mechanical recovery, dispersant, *etc.*) to the predicted loss of cargo from two tanks of a vessel rather than total loss of all cargo. The Coast Guard will not increase required dispersant stockpile levels at this time. The Coast Guard acknowledges that spills may occur that far exceed the volumes contemplated in the regulations. However, the Coast Guard has determined that a limit of 26,190 barrels is the optimum practical limit based on the costs and benefits in establishing and maintaining massive quantities of response equipment, combined with the limits of dispersant technologies. This number is based on a 40,000-barrel spill reduced by evaporation, natural dispersion, and other weathering effects.

The commenter stated that a dispersant requirement is unnecessary and inappropriate because it has limited utility and is subject to the government's decision. The commenter believes that the government should not fund such limited utility initiatives.

Response options are designed to have specific utility for the circumstances they address, but the responsibility for maintaining the infrastructure to apply those options rests with the potential spillers.

One commenter objected to the specification that at least 50 percent of the dispersant capability be provided by fixed-wing aircraft and suggested that plan holders be required to have the capability without reference to specific delivery systems.

The Coast Guard has included references to specific dispersant application platforms by way of the Dispersant Mission Planner 2 (DMP2) in an effort to aid plan holders in the planning process. The platform specifications are intended as a tool to describe baseline presumptions about those capabilities. Plan holders are free to develop capabilities within those parameters or to suggest reasonable alternatives to them if those alternatives can be shown to achieve equal coverage.

The Coast Guard has determined that the fixed-wing aircraft is the most

efficient and rapidly deployed dispersant delivery system. While deviations from the 50-percent requirement will be considered on a case-by-case basis, the Coast Guard believes that, given current technology, a minimum of 50 percent is achievable.

We received several comments relating to dispersant testing and effectiveness. Two commenters believed that the Coast Guard's rationale could be strengthened if the final rule included data and citations supporting the conclusion that dispersant technologies have been sufficiently documented and would, in certain circumstances, produce net environmental benefits compared to reliance on mechanical methods alone. Another commenter recommended extensive testing of dispersant and ISB use and, in particular, the long-term effects of dispersed oil.

The Coast Guard only partially agrees with these commenters, because the primary source documents for our conclusions are the National Academy of Sciences' ''Using Oil Spill Dispersants on the Sea'' and the dispersant use pre-authorization agreements adopted around the country in accordance with the requirements of 40 CFR 300.900, subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan. In accordance with those EPA regulations, the EPA, Department of the Interior, Department of Commerce, and State trustee agencies to the area committees and regional response teams determine whether pre-authorization for dispersants or other technologies are appropriate, and if so, under what conditions.

This reliance on trustee agencies to make such decisions was specifically put in place to ensure that any decision to use these technologies was taken in the best interest of the environment; that is, to produce a net environmental benefit. We are confident that the decisions of Federal and State trustee agencies at the regional and local level are sound, rational, and in the best interest of the environment. The purpose of these regulations is to support those decisions by making available to the regions and areas the tools they need for execution. Therefore, it is our position that the matters of further testing/research concerning dispersant and/or ISB use, and the effects of dispersed oil, fall outside the scope of this rulemaking.

One commenter recommended that the Coast Guard should communicate information to the regional response teams (RRTs) and other stakeholders about conditions unfavorable for dispersant use in order to help guard against indiscriminant use. The conditions can include material discharged, weather conditions, receiving waters, environmental risk, and other factors.

The Coast Guard maintains constant communications with the RRTs and the Coast Guard Federal On-Scene Coordinators (FOSCs) regarding this and related subjects. Since 1998, the Coast Guard has sponsored a series of facilitated consensus workshops at the local level that brought natural resource trustees together with local responders to examine the ecological risks associated with dispersants and other oil spill response options.

In partnership with the other Federal agencies of the National Response System, the Coast Guard actively supports the activities of the science and technology Committee of the National Response Team, whose function is to provide scientific and technical data of this nature to RRTs and area committees alike. The Coast Guard is a major sponsor of the International Oil Spill Conference, which convenes every three years and serves as a forum to disseminate the latest information on dispersants and other technologies to the response community. The CAPS Report (1999) points out that dispersants have reduced effectiveness with certain types of oil and when used in conditions of reduced salinity or calm winds.

Two commenters expressed concern that the proposed rule would result in requests for dispersant use in areas that are inappropriate, such as freshwater. Therefore, the commenters suggested that certain plan holders, such as those likely to discharge oil only into freshwater, be exempted. Another commenter opposed dispersant and aerial tracking requirements for inland tank barge operations.

The Coast Guard agrees. Dispersants should not be used in areas that are inappropriate, and we support the continued reliance on the dispersant use decision processes established by the EPA in 40 CFR 300, subpart J. The rule exempts any plan holder not operating in pre-authorized areas from compliance with the dispersant equipment requirements. However, because the EPA rule does not specifically exclude freshwater from dispersant use consideration, the Coast Guard regulations are flexible enough to allow imposition of requirements in those areas, should RRTs and area committees deem such use environmentally beneficial.

One commenter was concerned that the Coast Guard's inclusion of a proposed start time for dispersant application of 7 hours is overly prescriptive and may prevent earlier responses. Another commenter felt the time frames for aerial dispersant applications are too aggressive and recommended that dispersants be available for application outside the continental United States (OCONUS) in 24 hours, at low volume ports in 12 hours, and at high volume ports in 6 hours.

The dispersant operations start time is a planning standard and represents the maximum time allowed for planning to respond anywhere. It is expected that most actual response operations will begin in less than 7 hours and not over 7 hours. The Coast Guard believes that there should be no variation in the time frame, regardless of the location (*e.g.*, OCONUS) or the volume of the port (*low* vs. *high*). Basing response times upon the proximity of the spill location to environmentally sensitive areas may be more accurate, but the regulations do not intend to be so prescriptive.

One commenter was concerned about linking dispersant requirements to regional response team (RRT) pre-approvals because this would place undue pressure on RRTs in inland areas. If inland pre-approvals are established in the future, the available supply of dispersants and aircraft would likely be sufficient without further regulatory action.

The Coast Guard disagrees. In fact, this rule is necessary to ensure that dispersant capabilities are available to meet the needs identified in the pre-authorization agreements. Without the existence of the pre-authorizations, it would not be practicable to require dispersant capability. On the other hand, it is not this rule, but the National Contingency Plan (NCP), that puts pressure on inland RRTs to make decisions regarding these kinds of countermeasures. The requirement for RRTs to decide whether or not to pre-authorize various countermeasures is contained in 40 CFR 300.910. While there may be sufficient equipment available to support dispersant use needs in newly pre-authorized areas, plan holders in those newly pre-authorized areas would not be required to ensure the availability of this equipment by contract or other approved means unless specifically required by State or Federal agencies.

One commenter stated that the use of dispersants creates the erroneous impression that there is no need to prevent a spill in the first place if dispersants are available as a response option.

The Coast Guard disagrees. All spill response options need to be considered to the extent that they may limit the damage caused by the oil itself once a spill has occurred. However, the Coast Guard continues to emphasize in all its programs that prevention is its highest priority. The Coast Guard will continue to pursue appropriate standards for vessel construction, inspection, and maintenance programs, while emphasizing competence and training requirements for vessel crews, vessel navigational and operations tools, and procedures.

One commenter suggested adding a requirement that tier 2 and tier 3 aerial platforms be capable of applying dispersants in pre-authorized areas, ranging out to 200 nautical miles.

Requiring dispersant capability ranging out to 200 miles is not justified, and this conclusion is supported by a combination of factors. The low percentage of spills occurring more than 50 nautical miles offshore combined with the limited time frame for effective use of dispersants means that only a small volume of oil spills would benefit from this additional requirement. The limited benefits would not justify the cost to maintain this level of preparedness.

Several commenters felt that fire-monitor type dispersant application systems should be held to the same high level of independent peer review testing and documentation as aircraft and boat spray boom applications.

The Coast Guard agrees. The intent of the regulations is to apply a similar level of review to fire monitors as is currently applied to vessel and aircraft application systems, both of which are subject to ASTM standards. Sections 154.1045(i)(2)(iii) and 155.1050(k)(2)(iii) were amended to clarify that ''fire-monitor applicators and adequate criteria must be documented by presentation of independent, peer reviewed scientific evidence (*e.g.*, an ASTM standard) * * *.''

Two commenters claimed that the 2005 National Research Council report entitled ''Understanding Oil Dispersants: Efficacy and Effects'' supported the conclusions that insufficient information exists to responsibly pre-approve application of dispersants. On the contrary, the study states on page 11 that, ''the information base used by decision makers dealing with spills in areas where the consequences of dispersant use are fairly straightforward, has been adequate (for example, situations where rapid dilution has the potential to reduce the possible risk to sensitive habitat enough to allow the establishment of pre-approval zones).'' The study explains further on page 12 that, ''[i]n deep open-water settings (deeper than 10 m or roughly 30 feet) where there is rapid dilution of the dispersed oil, impacts to water-column and benthic resources are likely to be low, thus most of the pre-approval zones are defined in terms of distance offshore and minimum water depths.''

One commenter stated that a requirement for a logistics support plan should be added to the regulations to ensure that the dispersant systems can be effectively and timely deployed.

The regulations need not be so prescriptive. The regulations are already goal-oriented and require the ability to apply dispersants.

One commenter noted the limited capability of vessel dispersant systems to meet tier 1 capabilities because of their speed of advance of five knots.

The five knots speed of advance is provided for planning purposes only. OSROs may request nonstandard classification from the NSFCC. If the supporting documentation accompanying their request is acceptable to the NSFCC, the OSRO may use a higher vessel speed for their classification.

One commenter supported the use of dispersants in appropriate settings in the offshore environment. As discussed above, the Coast Guard agrees that dispersant use in certain conditions is appropriate.

Another commenter felt that training in dispersant strategies should be required as part of the proposed dispersant planning requirements.

OSROs will need to meet certain training proficiencies as required in their certification processes. The regulations do not seek to be as prescriptive as the commenter suggests.

D. Aerial Tracking

This part concerns availability, capability, response time, technology, applicability, and training.

One commenter felt that requiring plan holders to have aerial tracking capability is unnecessary because this capability is essential to reduce spill costs and to improve cleanup efficiency. Therefore, plan holders will have aerial tracking capability available without being required to do so.

Based on the May 1999 Response Plan Equipment CAPs Review and the conclusions of an expert panel documented in the February 2002 Regulatory Assessment for the NPRM, the Coast Guard is certain that aerial tracking capability is necessary and appropriate to ensure efficient cleanup operations. However, the Coast Guard recognizes that unless required by regulations to do so, industry will be insufficiently motivated to guarantee availability of these services, especially in remote offshore areas where these services are most likely to be needed. Additionally, it is in the best interest of the plan holder to have trained aerial observer capability to reduce inefficiency of response resource utilization, thus reducing unnecessary response costs.

Several commenters stated that aerial tracking requirements are supported but should account for refueling periods and be limited to daylight hours only. They felt that aerial tracking requirements were too prescriptive and should better reflect the realities of different aerial missions. Examples of these missions include the need to return to base for fuel, download pictures, and change crews, and the recognition that for mechanical recovery operations at least, it is not necessary to have aircraft continuously on-scene for an entire operational period.

The Coast Guard agrees. The regulations were modified to make it clear that plan holders should plan to have aerial tracking capabilities available to support response operations for entire daily operational periods. As operations are not routinely conducted during darkness, these operational periods will be less than 10 hours per day when there is less than 10 hours of daylight, and longer than 10 hours when there is more than 10 hours of daylight. The 10-hour operational period is offered as a planning target. An individual plan holder may choose to plan more precisely, based on actual length of daylight operational periods.

Additionally, the regulations do not intend to require continuous on-scene surveillance; they require sufficient surveillance to ensure effective employment of response resources. Continuous aerial tracking is appropriate to track dispersant applications. For mechanical recovery operations, routine over-flights are expected versus continuous surveillance. The purpose of the over-flight is to track oil trajectories and to reorient on-water equipment to the largest patches of oil.

Several commenters objected to the need to have aerial tracking resources on-scene within 3 hours of an incident. This objection is based on the fact that, in the early hours of an incident, the government typically relies on its own aircraft for spill assessment.

The stated purpose of the aerial tracking resources is to ensure that response resources are appropriately directed to the heaviest concentrations

of oil for cleanup. Therefore, it is logical to require aerial tracking resources to arrive on-scene within the same timeframe as the other response resources.

Another commenter stated that the prescribed time to establish aerial surveillance in the regulations is unrealistic. One commenter felt that the three-hour response time could not be justified based upon cost and applicability to marine transportation-related (MTR) facilities. However, another commenter felt the three-hour response time was reasonable. Finally, one commenter wanted the regulations to recognize different missions for spill plotting and area delineation.

The Coast Guard agrees with the concerns expressed about rapid response times for aerial-tracking resources; these response times are intended to ensure that aerial-tracking resources arrive prior to tier 1, 2, and 3 resources being in place. The requirement is based on time of arrival on-scene, not on mobilization time. Aerial-tracking resources should be on-scene before or at the time that response equipment begins operations to help optimize initial response activities. No aerial-tracking resources are required to support average most probable discharge (AMPD) or maximum most probable discharge (MMPD) planning.

One commenter stated that the Coast Guard gave tracking buoys, global positioning systems, and satellite and aerial imaging only a cursory review and urged the Coast Guard to be more open-minded about their potential for use. Another commenter stated that the regulations should be less prescriptive and allow for the use of these technologies.

The Coast Guard reviewed these and other technologies from the standpoint of practicability. The Coast Guard does not think that these technologies have sufficiently proven that they will significantly enhance the ability to recover or otherwise mitigate the effects of spilled oil. The Coast Guard does not think that the benefits of these technologies justify the costs to the response community, and therefore, it is not practicable to require industry to incur the costs of establishing and maintaining these capabilities. However, the regulations do not prohibit their use, and the Coast Guard encourages plan holders to explore other options to maximize the ability to track response operations.

The Coast Guard continues to monitor development of other technologies. If these technologies can be demonstrated to be effective in supporting nighttime operations, with full regard and consideration for worker health and safety on water at night, then the Coast Guard may consider a regulatory change at a later date requiring plan holders to acquire the systems. This would likely be accompanied by a substantial increase in mechanical equipment requirements because the current requirements are based on operations being limited to daylight hours only.

One commenter stated that the aerial tracking requirement should not apply to vessels and facilities operating on rivers and other confined waters where the direction of movement of spilled oil is well known and easily tracked from shore and by responding vessels. Several commenters supported aerial tracking for open waters, but wanted alternatives for inland waters and rivers to avoid burdensome costs and to allow for more practical spill-tracking methods.

The Coast Guard agrees and has clarified that vessels and facilities operating on inland rivers will not be required to maintain aerial tracking capabilities. However, vessels operating on the open waters of the Great Lakes will be required to maintain these capabilities.

One commenter recommended that plan holders should only need to reference aerial tracking resources approved by the Coast Guard rather than submit a detailed list of aerial tracking capabilities. The commenter noted that all other response resource lists allowed this exception. For those plan holders who have ensured the availability of aerial platforms for dispersant application purposes and who intend to use these platforms for aerial tracking purposes, the Coast Guard agrees and has added new sections 155.1035(i)(10)(iii), 155.1040(j)(10)(iii), and 154.1035(b)(3)(vi)(D). If aerial platforms for dispersant application are not going to be used for aerial tracking purposes, then a detailed list of aerial tracking capabilites will be required to be submitted in accordance with 33 CFR 154.1045(j) and 33 CFR 155.1050(m). The Coast Guard does not intend to implement a national classification system for the purpose of classifying providers of aerial tracking platforms and resources.

One commenter supported increased over-flight capability and advances in technology such as infrared tracking and satellite imaging.

The Coast Guard agrees, and encourages advancements in technology. Once these advancing technologies are proven to prevent or mitigate damage from oil spills in an economically feasible fashion, the Coast Guard will examine the viability of requiring them.

One commenter felt that aerial tracking requirements were never part of any public discussion, dialogue, consultation, or study group. Therefore, the commenter felt that requirements are impractical, unrealistic, and unachievable.

The Coast Guard disagrees. The public had an opportunity to comment on specific requirements for aerial tracking of mechanical recovery through the NPRM. Further, aerial tracking was also contained in the Notice of Intent for the EIS, published in September, 2000, and in the Draft Programmatic EIS, published in April, 2005. The requirement for aerial surveillance of dispersant and ISB operations has consistently been part of discussions regarding the use of these tools. In addition, the parameters for the aerial surveillance requirements for mechanical recovery were examined by a group of response community experts during the development of the regulatory assessment. Nevertheless, the Coast Guard attempted to address some of the commenter's concerns by clarifying aerial tracking requirements both in this preamble and in the regulations themselves [see §§ 154.1045(j) and 155.1050(l)].

We received two comments relating to training requirements for aerial tracking and observation of oil spills. One commenter stated that the regulations should distinguish between training requirements for aerial observers assigned to ''spotting for on-water recovery operations'' and those ''performing overall assessment of the spill.'' Another commenter recommended that plan holders be permitted to certify plan holder personnel as aerial observers instead of meeting other specific training.

The Coast Guard disagrees. Because aerial tracking personnel are critical to the success of directing mechanical recovery resources and dispersant delivery, this rule calls for well-defined and concise training criteria. The aerial observation personnel are primarily responsible for monitoring and directing on-water clean up operations. This responsibility requires knowledge of oil characteristics and the capabilities and limitations of response resources, as well as familiarity with spill trajectories, resources at risk, coastal habitat identification, *etc.*

One commenter stated that a pilot cannot act as an observer and that this may adversely impact the plan holder's ability to provide aerial surveillance in a timely fashion.

Usually, the pilot's primary responsibility is to fly the plane and the observer's job is to direct spill assets. The Coast Guard believes it will be easier and quicker to match a trained observer with a trained pilot than to find and mobilize a pilot who is also a trained observer. The aerial observation personnel are primarily responsible for monitoring and directing on-water clean up operations.

One commenter noted that under adverse weather, aerial surveillance will not be possible and the regulations do not address this issue.

The regulations are written for planning purposes and cannot address every situation that may be encountered in an oil spill response. The regulations require the availability of, and planning for, certain capabilities.

One commenter felt that the requirements for an aerial surveillance aircraft can be fulfilled by the dispersant application aircraft when it is not involved in dispersant application.

The Coast Guard agrees, as long as the aircraft is not required to do both jobs at the same time.

V. Additional Changes

We are revising the compliance date for updates for VRPs required by the Salvage and Marine Firefighting final rule, which published on December 31, 2008 (73 FR 80618) found in 33 CFR 155.4020. This revision will delay compliance from June 1, 2010, until February 22, 2011. We are making this revision to ensure that plan holders are not required to update their VRPs twice within a 12-month period. Otherwise, a plan holder wishing to complete both updates at once would need to comply with the earlier salvage and marine firefighting compliance date, and would not receive the full benefit of the compliance period provided in this final rule.

VI. Incorporation by Reference

The Director of the Federal Register has approved the material in §§ 154.106 and 155.140 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The new items incorporated by reference in this rule are: ASTM F1413–07, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle System; ASTM F1737–07, Standard Guide for Use of Oil Spill Dispersant Application Equipment During Spill Response: Boom and Nozzle Systems; and ASTM F1779–08, Standard Practice for Reporting Visual Observations of Oil on Water. Additionally, we have updated the reference to NFPA 70, National Electric Code, to reflect the edition currently used by industry. Copies of the material are available from the sources listed in those sections.

VI. Regulatory Analysis

We developed this rule after considering numerous statutes and executive orders related to rulemaking.

A. Administrative Procedure Act

The Coast Guard is issuing the revision to 33 CFR 155.4020 without prior notice and opportunity for comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to the revision in this rule because doing so would be contrary to the public interest. Without this change, vessel response plan holders would be required to update their response plans twice within a 12-month time period, which would be unduly burdensome. Soliciting comment on this revision is also unnecessary, as it is unlikely that these plan holders would oppose the delay in compliance for the salvage and marine firefighting provisions within their response plans. Without this delay, a plan holder wishing to complete both updates at once would need to comply with the earlier salvage and marine firefighting compliance date, and would not receive the full benefit of the compliance period provided in this final rule. Those plan holders wishing to comply earlier may still do so.

B. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. A final Regulatory Assessment (''Regulatory Analysis'') is available in the docket as indicated under **ADDRESSES**. A summary of the analysis follows:

This rulemaking is not an economically significant action under Section 3(f)(1) of the Order because the rulemaking will not have an annual effect on the economy of $100 million or more.

The response resources considered in the final rule were:

Mechanical recovery—increase the amount of mechanical recovery equipment available for oil spill response. There is currently a large amount of mechanical recovery equipment available for oil spill response.

Dispersants—require a minimum amount of dispersant capability for oil spill response. Applying dispersant requires additional equipment and stockpiles of dispersant. Dispersants can diffuse large amounts of oil for quicker spill recovery but have limiting factors, including location and conditions.

Aerial tracking of the oil spill—require aerial tracking capabilities in the event of an oil spill. Aerial tracking of a spill increases the efficiency of other response resources.

The rule directly regulates vessels carrying oil in bulk and marine transportation related (MTR) oil facilities that are required to have an oil response plan under the current vessel response plan (VRP) or facility response plan (FRP) rules. We estimate that there are 795 VRP plan holders and 2,798 FRP plan holders. These plan holders contract with Oil Spill Removal Organizations (OSROs) to ensure that response resources required by regulations are available to mitigate a worst case discharge (WCD) oil spill. As a result, we anticipate these plan holders will incur the costs associated with revised response requirements through price increases from OSROs.

We considered the costs and effectiveness of the five regulatory alternatives discussed in this preamble (*see* the ''Regulatory History'' and ''Background and Purpose'' sections for more information on the regulatory alternatives). These alternatives provide combinations that emphasize either mechanical or non-mechanical response assets. We anticipate the increased cost to the plan holders from the rulemaking will begin when the rule becomes effective. For the preferred alternative (5), the estimated first-year cost is $25.96 million with a recurring annual cost of $8.40 million (non-discounted estimates).

Since the equipment considered has an estimated 15-year replacement interval, we estimated cost for 15 years (2009–2023). The 15-year cost of the preferred alternative is $92.92 million at a 7-percent discount rate, and $117.33 million at a 3-percent discount rate. The preferred alternative is the least expensive of the five alternatives. Table 1 presents the costs, benefits, and cost effectiveness (*i.e.*, costs divided by benefits) for each regulatory alternative

considered over the 15-year period of analysis.

TABLE 1—TOTAL COST, BENEFIT, AND COST EFFECTIVENESS BY REGULATORY ALTERNATIVE (2009–2023)*

Alternative	7 percent			3 percent		
	Cost ($M)	Benefit (bbls)	Cost effectiveness	Cost ($M)	Benefit (bbls)	Cost effectiveness
1	$0	0	NA	$0	0	NA
2	84.56	11,492	$7,358	102.13	15,590	$6,551
3	129.53	62,348	2,077	159.91	84,584	1,891
4	112.97	63,039	1,792	140.63	85,521	1,644
5	92.92	63,039	1,474	117.33	85,521	1,372

* Costs are in $ million ($M) and benefits are in barrels (bbls). Costs and benefits are discounted at 7 and 3 percent.

Alternative 5 uses a combination of dispersant capability and aerial surveillance to provide the most cost-effective improvement in oil spill response. Related equipment costs drive the national cost of this rule. Table 2 displays the discounted first-year cost and annualized costs across the period of analysis associated with the preferred alternative (5) by requirement.

TABLE 2—COSTS OF THE PREFERRED ALTERNATIVE

[$ Millions]

Requirements	Initial costs (2009)*		Annualized (2009–2023)	
	7%	3%	7%	3%
Dispersants Option B	$8.79	$9.13	$4.84	$4.73
Aerial tracking	9.48	9.84	2.71	2.53
Employee training	0.36	0.38	0.39	0.39
Recordkeeping	5.63	5.86	2.26	2.17
Total	24.26	25.21	10.20	9.82

* Total non-discounted (1st year) initial cost is $25.96 million.

From our analysis, we conclude that Alternative 5 is the most cost-effective alternative from the standpoint of a potential worst-case discharge. *See* the Regulatory Analysis available in the docket for more details.

We received comments on the Regulatory Analysis for the NPRM. These comments divide into concerns about the overall cost of the regulations and the impact of the regulations on the Oil Spill Removal Organizations (OSROs) indirectly affected by the rule. Responses to these comments are summarized in the ''General Comments'' section of the rule.

We note that this rule only directly regulates vessels carrying oil in bulk and marine transportation related oil facilities that are required to have an oil response plan under the current vessel response plan or facility response plan rules. Consequently, we believe that the impact of this rule on OSROs is indirect since individual OSROs are not required by this rule to provide additional services. OSROs would make a business decision whether the revenue generated by providing additional services would provide the financial return sufficient to justify the cost of providing such services.

Regulatory Flexibility Analyses are required to include only the direct impacts of a regulation on a small entity that is required to comply with the regulation. *Mid-Tex Electric Coop.* v. *FERC,* 773 F.2d 327, 340–343 (D.C. Cir. 1985) (holding indirect impact of a regulation on small entities that do business with or are otherwise dependent on the regulated entities not considered in RFA analyses). *See* also *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 869 (DC Cir. 2001) (In passing the Regulatory Flexibility Act, ''Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy. * * * [T]o require an agency to assess the impact on all of the nation's small businesses possibly affected by a rule would be to convert every rulemaking process into a massive exercise in economic modeling, an approach we have already rejected.''). *See*, also, Regulatory Flexibility Improvements Act, Hearing before the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, on H.R. 682, 109th Cong., 2nd Sess. (2006), at 13 (Statement of Thomas Sullivan, Chief Counsel for Advocacy, Small Business Administration, testifying on the RFA by noting that ''the RFA * * * does not require agencies to analyze indirect impacts.'')

C. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule will 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 have prepared a Final Regulatory Flexibility Analysis (FRFA) assessing the potential impact on small entities from this rulemaking. The FRFA is in the final Regulatory Analysis, which is available in the docket as indicated under **ADDRESSES**.

We determined which plan holders were small entities based on an evaluation of North American Industry

Classification System (NAICS) codes, publicly available and proprietary revenue and employee size data, and the size standards published by the Small Business Administration (SBA). We found 90 percent of VRP holders and 87 percent of FRP holders to be small.

The estimated first year and annually recurring costs to FRP holders are $525 and $129, respectively. The estimated first year and annually recurring costs for VRP holders are higher at $1,838 and $732, respectively. This cost difference is due to the requirement that VRP holders provide dispersant capability, while most FRP holders are in areas where dispersant use will be impracticable. We found that the costs of this rule will have less than a 1-percent revenue impact on affected small plan holders. We have determined that this rulemaking will not have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act.

We did receive comments about the cost for small OSROs to purchase new equipment. Based on information from industry, we expect most of the costs from this rule will be passed on to plan holders. In comparison to OSRO revenues, any costs not passed will be low and impact revenues by less than 1 percent. In addition, most OSROs do not provide all services being required for plan holders. As small OSROs are not required to provide any of the services mandated by this regulation, any impact of this regulation on OSROs is indirect. A small OSRO is not required to provide any of the services mandated by this regulation. Most small OSROs will need to contract with other entities or access other resources in the case of a worst-case discharge. Small OSROs will only provide these services if they consider them to be beneficial to the company.

D. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. As indicated in the ''Regulatory History'' section of the preamble, the Coast Guard held a public meeting to receive public comment and to explain the NPRM to affected parties, including small entities.

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).

E. Collection of Information

This rule calls for a collection of information (COI) 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, and a description of those who must collect the information, follow.

This rule modifies COI 1625–0066, ''Vessel and Facility Response Plans (Domestic and International), and Additional Response Requirements for Prince William Sound Alaska.'' The estimate below covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Vessel and Facility Response Plans (Domestic and International), and Additional Response Requirements for Prince William Sound Alaska.

OMB Control Number: 1625–0066.

Summary of the Collection of Information: Vessel Response Plan (VRP) holders and Facility Response Plan (FRP) holders will need to collect additional information to comply with the rule for oil-spill response requirements.

This information includes: Name and contact information for oil spill responders for each vessel or facility with appropriate equipment and resources located in each zone of operation; specific lists of equipment that the resource providers will make available in case of an incident in each zone; and certification that the responders are qualified and have given permission to be included in the plan. OSROs will also need to update contracts and their own records to add dispersant capabilities when appropriate.

Need for Information: The information is necessary to show evidence that plan holders have properly planned to prevent or mitigate oil outflow and to provide that information to the Coast Guard for its use in emergency response.

Use of Information: The Coast Guard will use this information to determine whether a vessel or facility meets the statutory requirements.

Description of the Respondents: The respondents are OSROs and vessel and facility response plan holders.

Number of Respondents: The number of respondents is 3,683–3,593 plan holders (795 VRP plan holders + 2,798 FRP plan holders) and 90 OSROs.

Frequency of Response: Each respondent will have one response per year (amending and submitting the response plan the first year; updating in subsequent years).

Burden of Response: According to information from the Coast Guard's Office of Vessel Activities, the estimated burden for the 3,593 plan holders is 27.5 hours the first year and 8 hours each additional year and the estimated burden for the 90 OSROs is 2 hours per year for each plan holder the first year and 1 hour per year for each plan holder in the following years.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden, as adjusted in December 2006, is 220,559 hours. The total additional hours requested for this rulemaking are 56,889. This rule increases the estimated annual burden for plan holders by 98,808 hours ($27.5 \times 3{,}593$) the first year, followed by 28,744 hours per year ($8 \times 3{,}593$) in subsequent years. The rule will increase the estimated annual burden for OSROs by 7,186 hours the first year ($2 \times 3{,}593$), followed by 3,593 hours per year ($1 \times 3{,}593$) in subsequent years. The new burden as a result of this rulemaking is 277,448 hours.

In addition to this rulemaking, COI 1625–0066 is being revised by 2 other Coast Guard rulemakings. These rulemakings are—(1) Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil [Docket No. USCG–1998–3417; RIN 1625–AA19]; and (2) Nontank Vessel Response Plans and Other Vessel Response Plan Requirements [Docket No. USCG–2008–0180; RIN 1625–AB27]. Once these rulemakings are finalized, the hour burden for 1625–0066 may differ from the figures noted above. See the COI preamble section of each rulemaking for details on how the hour burden will differ.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has not yet completed its review of this collection, and the response plan reporting and recordkeeping requirements of this rule will not be enforced until this collection is approved by OMB. We will publish a notice in the **Federal Register**

announcing the effective date of those requirements after OMB approves the collection.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

F. 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. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

G. 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. Although this rule will not result in such expenditure, we discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

This rule will 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.

I. Civil Justice Reform

This 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.

J. Protection of Children

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

K. Indian Tribal Governments

The Coast Guard received two comment letters from Indian Tribal Government sources in response to the Draft Programmatic Environmental Impact Statement (DPEIS). Those letters from the Makah Tribal Council (MTC) and the Northwest Indian Fisheries Commission disagreed with the selection of Alternative 5 in the DPEIS, and suggested that consultation with the Makah Tribal Council was necessary. Additionally, the Coast Guard received a letter from the MTC dated May 30, 2006, concerning revised provisions on dispersants in the Northwest Area Contingency Plan. All three letters expressed concern that dispersant use on or near the Makah Usual and Accustomed Marine Area could cause environmental damage.

The Coast Guard agrees that consultation pursuant to Executive Order 13175 is appropriate. The Makah Usual and Accustomed Marine Area (UAMA) is excluded from the dispersant pre-approval zone described in the Northwest Area Contingency Plan, § 4610.1. After consultations between the MTC and the Coast Guard, the MTC decided that it preferred the UAMA to not be exempt from the requirements of this rule. Had the MTC chosen otherwise, the UAMA would have been explicitly exempt from the requirements of this rule, even if the Northwest Area Contingency Plan were to include the UAMA in a pre-approval zone at some future date. With regard to the Makah Tribe's preference for increasing mechanical recovery requirements, please see the discussion of mechanical recovery in section IV (B) of this preamble.

In consideration of the foregoing, the Coast Guard certifies all relevant requirements under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, have been met.

L. Energy Effects

We have analyzed this 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, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

M. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses the following voluntary consensus standards: ASTM F1413–07, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems; ASTM F1737–07, Standard Guide for Use of Oil Spill Dispersant Application Equipment During Spill Response: Boom and Nozzle Systems; and, ASTM F1779–08, Standard Practice for Reporting Visual Observations of Oil on Water. The sections that reference these standards and the locations where these standards are available are listed in 33 CFR 154.106 and 155.140.

N. Environment

We analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and concluded that preparation of an Environmental Impact Statement (EIS) was necessary. A final ''Environmental Impact Statement'' has been completed and a ''Record of Decision'' was made. This record was based on the assumption that this rulemaking would result in a net environmental benefit within the context of oil spill response efforts. The EIS is available in the docket.

List of Subjects

33 CFR Part 154

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

33 CFR Part 155

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

■ For the reasons discussed in the preamble, the Coast Guard amends 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; Department of Homeland Security Delegation No. 0170.1. Subpart F is also issued under 33 U.S.C. 2735.

■ 2. Revise § 154.106 to read as follows:

§ 154.106 Incorporation by reference: Where can I get a copy of the publications incorporated by reference in this part?

(a) Certain material is incorporated by reference (IBR) into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Coast Guard, Office of Port and Facility Activities, Cargo and Facilities Division (CG–5332), 2100 Second Street SW., Washington, DC 20593–0001, 202–372–2234 and is available from the sources indicated in this section below.

(b) American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20037, 202–682–8000, *http://www.api.org/*:

(1) API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987), IBR approved for § 154.814.

(2) API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, Part II—Process Stream Analyzers, Section 1—Oxygen Analyzers, Fourth Edition, February 1985, IBR approved for § 154.824.

(c) American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036, 202–293–8020, *http://www.ansi.org*:

(1) ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1988, IBR approved for §§ 154.500, 154.808, and 154.810.

(2) ANSI B16.24, Bronze Pipe Flanges and Flange Fittings Class 150 and 300, 1979, IBR approved for §§ 154.500 and 154.808.

(3) ANSI B31.3, Chemical Plant and Petroleum Refinery Piping, 1987 (including B31.3a–1988, B31.3b–1988, and B31.3c–1989 addenda), IBR approved for §§ 154.510 and 154.808.

(d) ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, 610–832–9585, *http://www.astm.org/*:

(1) ASTM F631–93, Standard Guide for Collecting Skimmer Performance Data in Controlled Environments, IBR approved for Appendix C.

(2) ASTM F715–95, Standard Test Methods for Coated Fabrics Used for Oil Spill Control and Storage, IBR approved for Appendix C.

(3) ASTM F722–82 (1993), Standard Specification for Welded Joints for Shipboard Piping Systems, IBR approved for Appendix A and Appendix B.

(4) ASTM F1122–87 (1992), Standard Specification for Quick Disconnect Couplings, IBR approved for § 154.500.

(5) ASTM F1155–98, Standard Practice for Selection and Application of Piping System Materials, IBR approved for Appendix A and Appendix B.

(6) ASTM F1413–07, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems, IBR approved for § 154.1045.

(7) ASTM F1737–07, Standard Guide for Use of Oil Spill Dispersant Application Equipment During Spill Response: Boom and Nozzle Systems, IBR approved for § 154.1045.

(8) ASTM F1779–08, Standard Practice for Reporting Visual Observations of Oil on Water, IBR approved for § 154.1045.

(e) International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnique Internationale, 1 rue de Varembe, Geneva, Switzerland, +41–22–919–02–11, *http://www.iec.ch/*:

(1) IEC 309–1—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 1, General Requirements, 1979, IBR approved for § 154.812.

(2) IEC 309–2—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 2, Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, 1981, IBR approved for § 154.812.

(f) National Electrical Manufacturers Association (NEMA), 1300 North 17th Street, Suite 1752, Rosslyn, Virginia 22209, 703–841–3200, *http://www.nema.org/*:

(1) ANSI NEMA WD–6—Wiring Devices, Dimensional Requirements, 1988, IBR approved for § 154.812.

(2) [Reserved]

(g) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269–9101, 617–770–3000, *http://www.nfpa.org/*:

(1) NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 1994, IBR approved for § 154.735.

(2) NFPA 70, National Electrical Code, 2008, IBR approved for § 154.812.

(h) Oil Companies International Marine Forum (OCIMF), 29 Queen Anne's Gate, London, SW1H 9BU, England, +44–0–20–7654–1200, *http://www.ocimf.com/*:

(1) International Safety Guide for Oil Tankers and Terminals, Section 6.10, Fourth Ed., 1996, IBR approved for § 154.810.

(2) International Safety Guide for Oil Tankers and Terminals, Sections 9.1, 9.2, 9.3 and 9.5, Fourth Ed., 1996, IBR approved for § 154.735.

3. In § 154.500, revise paragraph (d)(2) to read as follows:

§ 154.500 Hose assemblies.

* * * * *

(d) * * *

(2) Flanges that meet ANSI B16.5 or B16.24 (both incorporated by reference; *see* § 154.106); or

* * * * *

■ 4. In § 154.510, revise paragraph (a) to read as follows:

§ 154.510 Loading arms.

(a) Each mechanical loading arm used for transferring oil or hazardous material and placed into service after June 30, 1973, must meet the design, fabrication, material, inspection, and testing requirements in ANSI B31.3 (incorporated by reference; *see* § 154.106).

* * * * *

■ 5. In § 154.735, revise paragraphs (l) introductory text and (s) introductory text to read as follows:

§ 154.735 Safety requirements.

* * * * *

(l) All welding or hot work conducted on or at the facility is the responsibility of the facility operator. The COTP may require that the operator of the facility notify the COTP before any welding or hot work operations are conducted. Any welding or hot work operations conducted on or at the facility must be conducted in accordance with NFPA 51B (incorporated by reference; *see* § 154.106). The facility operator shall ensure that the following additional conditions or criteria are met:

* * * * *

(s) Tank cleaning or gas freeing operations conducted by the facility on vessels carrying oil residues or mixtures shall be conducted in accordance with sections 9.1, 9.2, 9.3, and 9.5 of the OCIMF International Safety Guide for Oil Tankers and Terminals (ISGOTT)

(incorporated by reference; *see* § 154.106), except that—

* * * * *

■ 6. In § 154.808, revise paragraph (b) to read as follows:

§ 154.808 Vapor control system, general.

* * * * *

(b) Vapor collection system piping and fittings must be in accordance with ANSI B31.3 (incorporated by reference; see § 154.106) and designed for a maximum allowable working pressure of at least 150 psig. Valves and flanges must be in accordance with ANSI B16.5 or B16.24 (both incorporated by reference; see § 154.106), 150 pound class.

* * * * *

■ 7. In § 154.810, revise paragraphs (d)(5)(i) and (g) to read as follows:

§ 154.810 Vapor line connections.

* * * * *

(d) * * *

(5) * * *

(i) A bolt hole arrangement complying with the requirements for 150 pound class ANSI B16.5 (incorporated by reference; *see* § 154.106) flanges, and

* * * * *

(g) The facility vapor connection must be electrically insulated from the vessel vapor connection in accordance with section 6.10 of the OCIMF International Safety Guide for Oil Tankers and Terminals (incorporated by reference; see § 154.106).

* * * * *

■ 8. In § 154.812, revise paragraphs (a)(1), (a)(2), and (b)(6) introductory text to read as follows:

§ 154.812 Facility requirements for vessel liquid overfill protection.

(a) * * *

(1) ANSI/NEMA WD6 (incorporated by reference; see § 154.106);

(2) NFPA 70, National Electrical Code, Articles 410–57 and 501–12; incorporated by reference; *see* § 154.106); and

* * * * *

(b) * * *

(6) Has a female connecting plug for the tank barge level sensor system with a 5 wire, 16 amp connector body meeting IEC 309–1/309–2 (incorporated by reference; *see* § 154.106) which is:

* * * * *

■ 9. In § 154.814, revise paragraph (j)(4) to read as follows:

§ 154.814 Facility requirements for vessel vapor overpressure and vacuum protection.

* * * * *

(j) * * *

(4) Has been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000 (incorporated by reference; *see* § 154.106) with a flame screen fitted.

* * * * *

■ 10. In § 154.824, revise paragraph (f)(1) to read as follows:

§ 154.824 Inerting, enriching, and diluting systems.

* * * * *

(f) * * *

(1) Be installed in accordance with API Recommended Practice 550 (incorporated by reference; *see* § 154.106);

* * * * *

■ 11. In § 154.1020, add the definitions ''Dispersant-application platform,'' ''Dispersant Mission Planner 2,'' ''Effective Daily Application Capacity or EDAC,'' ''Gulf Coast,'' ''Operational effectiveness monitoring,'' ''Pre-authorization for dispersant use,'' and ''Primary dispersant staging site'' in alphabetical order to read as follows:

§ 154.1020 Definitions.

* * * * *

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 Mission Planner 2 or (DMP2) means an Internet-downloadable application that estimates EDAC for different dispersant response systems. The NSFCC will use DPMP2 for evaluating OSRO dispersant classification levels.

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, when operated in accordance with approved standards and within acceptable environmental conditions.

* * * * *

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) St. Petersburg, FL.

* * * * *

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 in coordination with area committees, which authorizes the use of dispersants at the discretion of the Federal On-Scene Coordinator 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.

* * * * *

■ 10. In § 154.1035—

■ a. Revise paragraph (b)(3)(iv);

■ b. Redesignate paragraph (b)(3)(v) as paragraph (b)(3)(ix); and,

■ c. Add new paragraphs (b)(3)(v), (b)(3)(vi), (b)(3)(vii), and (b)(3)(viii) 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 of the plan must identify the oil spill removal organizations and the spill management team that will 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 the oil spill removal organization and spill management team for the first 7 days of the response.

(v) This section must include job descriptions for each spill management team member within the organizational structure described in paragraph (b)(3)(iii) of this section. These job descriptions must 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 is pre-authorized, this subsection of the plan 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) Identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of this subpart.

(B) Identification of the platform type, resource-providing organization, location, and dispersant payload 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) For each unit of dispersant stockpile required to support the effective daily application capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation, identify the dispersant product resource provider, location, and volume. 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 has been evaluated 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 only the oil spill removal organization, and not the information required in paragraphs (b)(3)(vi)(A) through (b)(3)(vi)(C) of this section.

(vii) This subsection of the plan must also separately list the resource providers and specific resources necessary to provide aerial 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; and

(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(j).

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

* * * * *

■ 11. In § 154.1045—

■ a. Revise paragraph (i) as set out below;

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

■ c. Add new paragraph (j) to read as follows;

■ d. Revise newly designated paragraph (o) to read as set out below:

§ 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 areas where pre-authorization 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 all of 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 (which is contained in 40 CFR part 300, and available online from the U.S. Government Printing Office).

(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. For dispersant-application platforms not detailed within the DMP2, adequacy of performance criteria must be documented by presentation of independent evaluation materials (*e.g.,* field tests and reports of actual use) that record the performance of the platform.

(iii) Dispersant-application systems that are consistent in design with, and are capable of applying dispersants within, the performance criteria in ASTM F1413–07 (incorporated by reference, *see* § 154.106). For dispersant-application systems not fully covered by ASTM F1413–07, 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 record the design of performance specifications.

(iv) Dispersant-application personnel trained in and capable of applying dispersants according to the recommended procedures contained within ASTM F1737–07 (incorporated by reference, *see* § 154.106).

(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 C, 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

	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 to Table 154.1045(i): 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 upon submission to Coast Guard Headquarters, Office of Incident Management and Preparedness (CG–533, 202–372–2234, 2100 2nd Street, SW., room 2100, Washington, DC 20593) of peer-reviewed scientific evidence of improved capability.

(j) 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 through contract or other approved means, of response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities. Facilities operating exclusively on inland rivers are not required to comply with this paragraph. Aerial oil tracking resources must:

(1) Be capable of arriving at the site of a discharge in advance of the arrival of response resources identified in the plan for tiers 1, 2, and 3 Worst-Case Discharge response times, and for a distance up to 50 nautical miles from shore (excluding inland rivers);

(2) Be capable of supporting oil spill removal operations continuously for three 10-hour operational periods during the initial 72 hours of the discharge;

(3) Include appropriately located aircraft and personnel capable of meeting the response time requirement for oil tracking from paragraph (j)(1) of this section; and

(4) Include sufficient numbers of aircraft, pilots, and trained observation personnel to support oil spill removal operations, commencing upon initial assessment, and capable of coordinating on-scene cleanup operations, including dispersant and mechanical recovery operations. Observation personnel must be trained in:

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

(ii) The use of assessment techniques in ASTM F1779–08 (incorporated by reference, *see* § 154.106), 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 (available on the Internet at *http://response.restoration.noaa.gov/*use the following links in the order presented: Home|Emergency Response|Responding to Oil Spills).

* * * * *

(o) The Coast Guard will continue to evaluate the environmental benefits, cost efficiency and practicality of increasing mechanical recovery capability requirements. This continuing evaluation is part of the Coast Guard's long term commitment to achieving and maintaining an optimum mix of oil spill response capability across the full spectrum of response modes. As best available technology demonstrates a need to evaluate or change mechanical recovery capacities, a review of cap increases and other requirements contained within this subpart may be performed. Any changes in the requirements of this section will occur through a public notice and comment process. During this review, the Coast Guard will determine if established caps remain practicable and if increased caps will provide any benefit to oil spill recovery operations. The review will include, at least, an evaluation of:

(1) Best available technologies for containment and recovery;

(2) Oil spill tracking technology;

(3) High rate response techniques;

(4) Other applicable response technologies; and

(5) Increases in the availability of private response resources.

* * * * *

■ 12. In § 154.1065, add new paragraph (e) to read as follows:

§ 154.1065 Plan review and revision procedures.

* * * * *

(e) If required by §§ 154.1035(b)(3) or 154.1045, a new or existing facility owner or operator must submit the required dispersant and aerial oil tracking resource revisions to a previously submitted or approved plan, made pursuant to §§ 154.1035(b)(3) or 154.1045, to the COTP and all other holders of the response plan for information or approval no later than February 22, 2011.

■ 13. In appendix C to Part 154, revise section 8 and amend Table 5 in section 9 by revising the entries for ''February 18, 2003'' 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. Calculate cumulative dispersant application capacity as follows:

8.1.1 A facility owner or operator must 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 chapter, whichever is the lesser amount. When planning for the cumulative application capacity required, the calculations must account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure must be used to determine the cumulative application requirements:

8.1.2 Determine the WCD volume of oil in gallons and the appropriate oil group for the type of petroleum oil (persistent Groups II, III, and 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 oil group as follows: Group II factor is 0.50; Group III is 0.30; and Group IV is 0.10. This represents the amount of oil that can be expected to be lost to natural dissipation in a nearshore environment. Subtract the oil amount lost to natural dissipation from the total WCD amount to determine the remaining oil available for treatment by dispersant application; and

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 resulting number represents the cumulative total dispersant-application capability that must be ensured available within the first 60 hours.

8.1.5(i) The following is an example of the procedure described in paragraphs 8.1.1 through 8.1.4 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 percent.

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 dispersant/20 gals oil = 0.05).

E.g., 700,000 gal oil × (0.05) = 35,000 gallons cumulative dispersant-application capacity.

(ii) 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 required by § 155.1045(i)(3) of this chapter. Because paragraph 8.1.1 of this appendix requires owners and operators to ensure the availability of the lesser of a facility's dispersant requirements for WCD or the amount of the dispersant cap provided for in § 154.1045(i)(3), the facility in this example would be required to ensure the availability of 35,000 gallons of dispersant. More specifically, this facility would be required to meet the following tier requirements in § 154.1045(i)(3), which total 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 Determine Effective Daily Application Capacities (EDACs) for dispersant response systems as follows:

8.2.1 EDAC planning estimates for compliance with the dispersant application requirements in § 154.1045(i)(3) are to be based on:

8.2.1.1 The spill occurring at the facility;

8.2.1.2 Specific dispersant application platform operational characteristics identified in the Dispersant Mission Planner 2 or as demonstrated by operational tests;

8.2.1.3 Locations of primary dispersant staging sites; and

8.2.1.4 Locations and quantities of dispersant stockpiles.

8.2.2 EDAC calculations with supporting documentation must be submitted to the NSFCC for classification as a Dispersant Oil Spill Removal Organization.

8.2.3(i) EDAC can also be calculated using the Dispersant Mission Planner 2 (DMP2). The DMP2 is a downloadable application that calculates EDAC for different dispersant response systems. It is located on the Internet at: *http://www.response.restoration.noaa.gov/spilltools.*

(ii) The DMP2 contains operating information for the vast majority of dispersant application platforms, including aircraft, both rotary and fixed wing, and vessels. The DMP2 produces EDAC estimates by performing calculations based on performance parameters of dispersant application platforms, locations of primary dispersant staging sites, home-based airport or port locations, and the facility location (for the spill site).

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

8.2.4.1 The type, number, and location of each dispersant-application platform intended for use to meet dispersant delivery requirements specified in § 154.1045(i)(3) of this chapter;

8.2.4.2 The amount and location of available dispersant stockpiles to support each platform; and,

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

8.3 In addition to the equipment and supplies required, a facility owner or operator must identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable regional plans and ACPs.

8.4 Identification of the resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the National Oil and Hazardous Substances Contingency Plan (40 CFR part 300) and the applicable Local or Area Contingency Plan.

9. Additional Equipment Necessary To Sustain Response Operations

* * * * *

TABLE 5—RESPONSE CAPABILITY CAPS BY OPERATING AREA

	Tier 1	Tier 2	Tier 3
* * * *	*	*	*
February 18, 2003:			
All except rivers & canals & Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day.
Great Lakes	6.25K bbls/day	12.3K bbls/day	25K bbls/day.
Rivers & canals	1,875 bbls/day	3,750 bbls/day	7,500 bbls/day.
* * * *	*	*	*

* * * * *

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

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

Authority: 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Pub. L. 101–380.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 40, 150, 151, and 153.

■ 15. In § 155.140—

■ (a) In paragraph (a), after the words ''Washington, DC 20593–0001'' add the phone number '', 202–372–1251''; and,

■ (b) Add new paragraphs (c)(4), (c)(5), and (c)(6) to read as follows:

§ 155.140 Incorporation by reference.

* * * * *

(c) * * *

(4) ASTM F1413–07, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems, incorporation by reference approved for § 155.1050.

(5) ASTM F1737–07, Standard Guide for Use of Oil Spill Dispersant-Application Equipment During Spill Response: Boom and Nozzle Systems, incorporation by reference approved for § 155.1050.

(6) ASTM F1779–08, Standard Practice for Reporting Visual Observations of Oil on Water, incorporation by reference approved for § 155.1050.

* * * * *

■ 16. In § 155.230, revise paragraph (b)(1)(i)(D) to read as follows:

§ 155.230 Emergency control systems for tank barges.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(D) Each operator of the system should wear a safety belt or harness secured by a lanyard to a lifeline, drop line, or fixed structure such as a welded padeye, if the sea or the weather warrants this precaution. Each safety belt, harness, lanyard, lifeline, and drop line must meet the specifications of ANSI A10.14 (incorporated by reference, see § 155.140).

* * * * *

■ 17. Revise § 155.235 to read as follows:

§ 155.235 Emergency towing capability for oil tankers.

An emergency towing arrangement shall be fitted at both ends on board all oil tankers of not less than 20,000 deadweight tons (dwt), constructed on or after September 30, 1997. For oil tankers constructed before September 30, 1997, such an arrangement shall be fitted at the first scheduled dry-docking, but not later than January 1, 1999. The design and construction of the towing arrangement shall be in accordance with IMO resolution MSC.35(63) (incorporated by reference; see § 155.140).

■ 18. In § 155.1020, add the following definitions, ''Dispersant-application platform,'' ''Dispersant Mission Planner 2 (DMP2),'' ''Effective daily application capacity or EDAC,'' ''Gulf Coast,'' ''*Operational effectiveness monitoring,*''

''Pre-authorization for dispersant,'' and ''Primary dispersant staging site'' in alphabetical order to read as follows:

§ 155.1020 Definitions.

* * * * *

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 Mission Planner 2 (DMP2) means an Internet-downloadable application that estimates EDAC for different dispersant response systems. The NSFCC will use DPMP2 for evaluating OSRO dispersant classification levels.

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, when operated in accordance with approved standards and within acceptable environmental conditions.

* * * * *

Gulf Coast means for the purposes of dispersant application requirements, the regions 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; and
(7) St. Petersburg, FL.

* * * * *

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 in coordination with area committees, that authorizes the use of dispersants at the discretion of the Federal On-Scene Coordinator 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 which is 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.

* * * * *

■ 19. In § 155.1035—
■ a. Revise paragraph(c)(5)(i) and paragraph (i)(9); and,
■ b. Add paragraphs (i)(10) and (i)(11) to read as follows:

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

* * * * *

(c) * * *

(5) * * *

(i) The format and content of the ship-to-ship transfer procedures must be consistent with the Ship to Ship Transfer Guide (Petroleum) (incorporated by reference; see § 155.140) published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF).

* * * * *

(i) * * *

(9) For vessels that handle, store, or transport Group I through Group V petroleum oils, the appendix 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 agreements exist, the appendix 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) Identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of § 155.1050(k) of this chapter;

(ii) Identification of the platform type, resource provider, location, and dispersant payload 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(s) for this section.

(iii) For each unit of dispersant stockpile required to support the effective daily application capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation, identify the dispersant product resource provider, location, and volume. Location data must include the distance from the stockpile to the primary staging sites where the stockpile 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 meet 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 (i)(10)(iii) of this section.

(11) The appendix 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 a resource provider; and

(ii) The 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(l) of this chapter.

* * * * *

■ 18. In § 155.1040—
■ a. Revise paragraph (j)(9); and,
■ b. Add new paragraphs (j)(10) and (j)(11) to read as follows:

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

* * * * *

(j) * * *

(9) The appendix must include a separate listing of the resource providers identified to provide the salvage, vessel firefighting, and lightering capabilities required in this subpart.

(10) The appendix must include a separate listing of 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:

(i) 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(k);

(ii) Identification of the type, resource provider, location, and dispersant payload for each dispersant-application platform identified and ensured available. Location data must identify the distance between the platform's

home base and the identified primary dispersant staging sites for this section; and,

(iii) For each unit of dispersant stockpile required to support the effective daily application capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation, identification of the dispersant product resource provider, location, and volume. Location data must 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 appendix may identify only the oil spill removal organization, and not the information required in paragraphs (j)(10)(i) through (j)(10)(iii) of this section.

(11) The appendix must include a separate listing of the resource providers and specific resources necessary to provide oil-tracking capabilities required in this subpart. The oil tracking resources listed within this section must include:

(i) The identification of a resource provider; and,

(ii) The 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(l) of this chapter.

* * * * *

■ 19. In § 155.1050—

■ a. Remove paragraph (j);

■ b. Redesignate paragraph (p) as paragraph (q), and revise the newly redesignated paragraph (q);

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

■ d. Add new paragraphs (k), and (l) 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.

* * * * *

(k) 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 for dispersant use must identify in their response plan, and ensure availability through contract or other approved means, of 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 all of the following:

(i) Sufficient dispersant capability for application as required by paragraph (k)(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 (contained in 40 CFR part 300, and available online from the U.S. Government Printing Office).

(ii) Dispersant-application platforms capable of delivering and applying dispersant in the amounts required by paragraph (k)(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. The adequacy of dispersant-application platforms not detailed within the Dispersant Mission Planner 2 must be documented by presentation of independent evaluation materials (*e.g.,* field tests and reports of actual use).

(iii) Dispersant-application personnel trained in and capable of applying dispersants within the performance criteria in ASTM F1413–07 (incorporated by reference, see § 155.140). The adequacy of dispersant-application systems not fully covered by ASTM F1413–07, such as fire monitor-type applicators, must be documented by presentation of independent evaluation materials (*e.g.,* laboratory tests, field tests, and reports of actual use).

(iv) Dispersant-application systems ensured to be available, including trained personnel, that are capable of applying dispersants in accordance with the recommended procedures in ASTM F1737–07 (incorporated by reference, see § 155.140).

TABLE 155.1050(K)—TIERS FOR EFFECTIVE DAILY APPLICATION CAPABILITY

	Response time for completed application	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 Coast Guard Headquarters, Office of Incident Management & Preparedness (CG–533) of peer-reviewed scientific evidence of improved capability.

(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), or in quantities sufficient to meet the requirements in Table 155.1050(k), whichever is the lesser amount.

(l) 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 their availability through contract or other approved means, response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities. Vessels operating on inland rivers are not required to comply with this paragraph.

(1) Aerial oil tracking resources must be capable of arriving at the site of a discharge in advance of the arrival of response resources identified in the plan for tiers 1, 2, and 3 Worst Case Discharge response times, and for a distance up to 50 nautical miles from shore (excluding inland rivers).

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

(i) Appropriately located aircraft and personnel capable of meeting the response time requirement for oil tracking in § 155.1050(l)(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 burning, 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 in ASTM F1779–08 (incorporated by reference, see § 155.140), and familiar with the use of pertinent guides, including, but not limited to, NOAA's ''Open Water Oil Identification Job Aid for Aerial Observation'' and the ''Characteristic Coastal Habitats'' guide; and

(iv) The capability of supporting oil spill removal operations continuously for three 10-hour operational periods during the initial 72 hours of the discharge.

* * * * *

(q) The Coast Guard will continue to evaluate the environmental benefits, cost efficiency and practicality of increasing mechanical recovery capability requirements. This continuing evaluation is part of the Coast Guard's long term commitment to achieving and maintaining an optimum mix of oil spill response capability across the full spectrum of response modes. As best available technology demonstrates a need to evaluate or change mechanical recovery capacities, a review of cap increases and other requirements contained within this subpart may be performed. Any changes in the requirements of this section will occur through a public notice and comment process. During this review, the Coast Guard will determine if established caps remain practicable and if increased caps will provide any benefit to oil spill recovery operations. The review will include and evaluation of:

(1) Best available technologies for containment and recovery;

(2) Oil spill tracking technology;

(3) High rate response techniques;

(4) Other applicable response technologies; and

(5) Increases in the availability of private response resources.

■ 20. In § 155.1070, add new paragraph (i) to read as follows:

§ 155.1070 Procedures for plan review, revision, amendment and appeal.

* * * * *

(i) If required by §§ 155.1035(i), 155.1040(j), and 155.1050 (k) and (l), a new or existing vessel owner or operator must submit the required dispersant and aerial oil tracking resource revisions to a previously submitted or approved plan, made pursuant to §§ 155.1035(i), 155.1040(j), and 155.1050(k) and (l), to Coast Guard Headquarters, Office of Vessel Activities (CG–543) and all other holders of the response plan for information or approval no later than February 22, 2011.

§ 155.4020 [Amended]

■ 21. In § 155.4020, amend paragraphs (a) and (c)(1) by removing the date ''June 1, 2010'' and adding in its place ''February 22, 2011''.

■ 22. In Appendix B to Part 155:

■ A. Amend section 7.2.4. by removing the last 3 sentences and adding 2 sentences in their place.

■ B. Revise section 8.

■ C. Amend Table 6 in section 9 by revising the entries for ''February 18, 2003''.

The additions and revisions read as follows:

APPENDIX B TO PART 155—DETERMINING AND EVALUATING REQUIRED RESPONSE RESOURCES FOR VESSEL RESPONSE PLANS

* * * * *

7. Calculating the Worst Case Discharge Planning Volumes

* * * * *

7.2.4 * * * If the required capacity exceeds the applicable cap described in Table 6 of this appendix, then a vessel owner or operator must contract for at least the quantity of resources required to meet the cap, but must identify sources of additional resources as indicated in § 155.1050(p). For a vessel that carries multiple groups of oil, the required effective daily recovery capacity for each group is calculated and summed before applying the cap.

* * * * *

8. Determining the Capability of High-Rate Response Methods

8.1 Calculate cumulative dispersant application capacity requirements as follows:

8.1.1 A vessel owner or operator must 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(k)(3) of this chapter, 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 carried in gallons, and the appropriate oil group for the type of petroleum oil carried (Groups II, III, IV). For vessels carrying different oil groups, assume a WCD using the oil group that constitutes the largest portion of the oil being carried, or the oil group with the smallest natural dissipation factor;

8.1.3 Multiply the WCD in gallons by the natural dissipation factor for the appropriate oil 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 oil that can be expected to be lost to natural dissipation. Subtract the WCD lost to natural dissipation from the total oil amount carried to determine the remaining oil available for treatment by dispersant-application; and

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 resulting number represents the cumulative total dispersant-application capability that must be ensured available within the first 60 hours.

8.1.5(i) The following is an example of the procedure described in paragraphs 8.1.1 through 8.1.4 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.

WCD: 1,000,000 gallons, Group III oil.

Natural Dissipation Factor for Group III: 30 percent.

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 × 0.30) = 700,000 gallons of available oil.

Cumulative application capacity = Available oil × planning application ratio (1 gal dispersant/20 gals oil = 0.05).

E.g., 700,000 gal oil × (0.05) = 35,000 gallons cumulative dispersant-application capacity.

(ii) The requirements for cumulative dispersant-application capacity (35,000) for this vessel's WCD is less than the overall dispersant capability cap for non-Gulf Coast waters required by § 155.1050(k) of this chapter. Because paragraph 8.1.1 of this appendix requires owners and operators to ensure the availability of the lesser of a vessel's dispersant requirements for WCD or the amount of the dispersant cap provided for in § 155.1050(k)(3), the vessel in this example would be required to ensure the availability of 35,000 gallons of dispersant. More specifically, this vessel would be required to meet the following tier requirements in § 155.1050(k), which total 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 ''EDACs'' for dispersant response systems as follows:

8.2.1 EDAC planning estimates for compliance with the dispersant application

requirements in § 155.1050(k)(3) are to be based on:

8.2.1.1 The spill occurring at sites 50 nautical miles off shore furthest from the primary dispersant staging site(s);

8.2.1.2 Specific dispersant application platform operational characteristics identified in the Dispersant Mission Planner 2 or as demonstrated by operational tests;

8.2.1.3 Locations of primary dispersant staging sites; and

8.2.1.4 Locations and quantities of dispersant stockpiles.

8.2.2 EDAC calculations with supporting documentation must be submitted to the NSFCC for classification as a Dispersant Oil Spill Removal Organization.

8.2.3(i) EDAC can also be calculated using the Dispersant Mission Planner 2 (DMP2). The DMP2 is a downloadable application that calculates EDAC for different dispersant response systems. It is located on the Internet at: *http://www.response.restoration.noaa.gov/spilltools*

(ii) The DMP2 contains operating information for the vast majority of dispersant application platforms, to include aircraft, both rotary and fixed wing, and vessels. The DMP2 produces EDAC estimates by performing calculations that are based on performance parameters of dispersant application platforms, locations of primary dispersant staging sites, home based airport or port locations, and for planning purposes, a 50 mile from shore dispersant application site. The 50 mile offshore site used in the DMP2 would be the location furthest from the primary dispersant staging site identified in the vessel response plan.

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

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

8.2.4.2 The amount and location of available dispersant stockpiles to support each platform; and

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

8.3 In addition to the equipment and supplies required, a vessel owner or operator must identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable Local and Area Contingency Plans.

8.4 Identification of the resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the National Oil and Hazardous Substances Contingency Plan (40 CFR part 300) and the applicable Local or Area Contingency Plan.

9. Additional Equipment Necessary To Sustain Response Operations

* * * * *

TABLE 6—RESPONSE CAPABILITY CAPS BY OPERATING AREA

	Tier 1	Tier 2	Tier 3
* * * *	*	*	*
February 18, 2003:			
All except rivers & canals & Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day.
Great Lakes	6.25K bbls/day	12.3K bbls/day	25K bbls/day.
Rivers & canals	1,875 bbls/day	3,750 bbls/day	7,500 bbls/day.
* * * *	*	*	*

Dated: August 14, 2009.

Lincoln D. Stroh,

Captain, U.S. Coast Guard, Acting Director of Prevention Policy.

[FR Doc. E9–20311 Filed 8–28–09; 8:45 am]

BILLING CODE 4910–15–P