

(3) *News media requesters.* The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) *All other requesters.* The FOIA Officer shall charge requesters who do not fall into any of the categories in paragraphs (d)(1) through (3) of this section fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total cost exceeds \$14.99, except that the first 100 pages of duplication and the first two hours of manual search time shall not be charged.

(e) *Charges for unsuccessful searches.* If the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(f) *Nonpayment of fees.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting the thirty-first (31st) day following the day on which the bill was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717. MCC will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the remaining estimated fee before MCC will begin to process a new request or continue processing a then-pending request from the requester. The administrative response time limits prescribed in subsection (a)(6) of the FOIA will begin only after MCC has received fee payments described in this section.

(g) *Aggregating requests.* The requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the FOIA Officer reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the FOIA Officer may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment will be required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines the total fee will exceed \$250.00. When payment is required in advance of the processing of a request, the time limits prescribed in § 1304.5 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee. Where it is anticipated that the cost

of providing the requested record will exceed \$25.00 but fall below \$250.00 after the free duplication and search time has been calculated, MCC may, in its discretion may require either:

(1) An advance deposit of the entire estimated charges; or

(2) Written confirmation of the requester's willingness to pay such charges.

Dated: September 5, 2008.

John C. Mantini,
Chief FOIA Officer, Millennium Challenge Corporation.
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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 138

[Docket No. USCG-2005-21780]

RIN 1625-AA98

Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels and Deepwater Ports)

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulatory requirements, under the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation and Liability Act, for vessel operators (as defined in the rule) to establish and maintain evidence of financial responsibility. The amendments ensure that the amounts of financial responsibility that must be demonstrated by vessel operators are consistent with recent statutory increases, and future mandated increases, to the limits of liability under the Oil Pollution Act of 1990. The amendments also implement changes in the Coast Guard's administration of the certificate of financial responsibility program, and clarify the current rule.

DATES: This final rule is effective October 17, 2008.

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-2005-21780 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 on this rule, call Benjamin White, National Pollution Funds Center, Coast Guard, telephone 202-493-6863. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

I. Acronyms

CERCLA Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601-9675).

CFR Code of Federal Regulations.

COFR Certificate of Financial Responsibility.

DPA Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 *et seq.*).

DRPA Delaware River Protection Act of 2006, Title VI of the Coast Guard and Maritime Transportation Act of 2006, Public Law 109-241, July 11, 2006, 120 Stat. 516.

FRFA Final Regulatory Flexibility Analysis.

FR Federal Register.

Fund Oil Spill Liability Trust Fund.

IRFA Initial Regulatory Flexibility Analysis.

LOOP Louisiana Offshore Oil Port.

MODU Mobile Offshore Drilling Unit.

NEPA National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f).

NPRM Notice of Proposed Rulemaking.

OPA 90 The Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*).

U.S.C. United States Code.

U.S.C.A.N. United States Code Congressional and Administrative News.

II. Regulatory History

On August 18, 2006, before initiating this rulemaking, we published a notice of policy in the **Federal Register** (71 FR 47737) entitled "New Oil Pollution Limits of Liability for Vessels—Delaware River Protection Act of 2006 Amendment to the Oil Pollution Act of 1990" (hereafter the "Notice of Policy").

On February, 5, 2008, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (73 FR 6642), entitled "Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels and Deepwater Ports)".

On February 13, 2008, we published corrections to the NPRM in the **Federal Register** (73 FR 8250), to clarify the proposed effective date of the rule and the distinction between the financial responsibility applicable amounts of § 138.80(f) and the OPA 90 limits of liability in proposed Subpart B.

We received seven letters during the public comment period raising 13

issues, and one additional letter after the public comment period closed on May 5, 2008, raising one issue. No public meeting was requested and none was held.

III. Background and Purpose

In general, under the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*) (OPA 90), responsible parties (i.e., the owners and operators, including demise charterers) for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone are liable for the removal costs and damages specified in OPA 90 that result from such incident, up to prescribed limits of liability. (33 U.S.C. 2702(a); 33 U.S.C. 2704). Embodying the polluter pays principle, this liability is strict, joint and several.¹ Similar requirements apply under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9607) (CERCLA) to owners and

operators of vessels and facilities that release or threaten to release hazardous substances.

The OPA 90 limits of liability are set out in 33 U.S.C. 2704(a). The CERCLA limits of liability are set out in 42 U.S.C. 9607.

In addition to the limit of liability provisions, 33 U.S.C. 2716(a) of OPA 90 and 42 U.S.C. 9608(a) of CERCLA require that the owners and operators, including demise charterers, of certain vessels establish and maintain evidence of financial responsibility (i.e., ability to pay) sufficient to meet the maximum amount of liability to which they could be subjected under 33 U.S.C. 2704 and 42 U.S.C. 9607.

According to 33 U.S.C. 2716(a)(1) and (2), the evidence of financial responsibility requirements apply, in relevant part for purposes of OPA 90, to responsible parties for: Any vessel over 300 gross tons (except a non-self propelled vessel that does not carry oil as cargo or fuel) using any place subject to the jurisdiction of the United States; and any vessel using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to

the jurisdiction of the United States. OPA 90, at 33 U.S.C. 2716(c), also imposes evidence of financial responsibility requirements on offshore facilities and deepwater ports. This rulemaking, however, only concerns the OPA 90 evidence of financial responsibility requirements that must be met by vessels under 33 U.S.C. 2716(a).

The OPA 90 limits of liability are subject to amendment both by statute and, under 33 U.S.C. 2704(d), by regulation, and when the limits of liability are amended the financial responsibility requirements must be adjusted by regulation. On July 11, 2006, the President signed the Delaware River Protection Act of 2006, Title VI of the Coast Guard and Maritime Transportation Act of 2006, Public Law 109-241, July 11, 2006, 120 Stat. 516 (DRPA). Section 603(a) of DRPA amended the OPA 90 limits of liability for vessels at 33 U.S.C. 2704(a).

The following table shows the OPA 90 limits of liability in effect before DRPA, and the new limits of liability under OPA 90 as amended by DRPA Section 603(a), by vessel type:

CHANGES TO OPA 90 VESSEL LIMITS OF LIABILITY²

If the vessel is a	The original limit of liability limit was the greater of—	The amended limit of liability is the greater of—
Tank vessel greater than 3,000 gross tons with a single hull, with double sides only, or with a double bottom only.	\$1,200 per gross ton or \$10,000,000	\$3,000 per gross ton or \$22,000,000.
Tank vessel less than or equal to 3,000 gross tons with a single hull, with double sides only, or with a double bottom only.	\$1,200 per gross ton or \$2,000,000	\$3,000 per gross ton or \$6,000,000.
Tank vessel greater than 3,000 gross tons with a double hull.	\$1,200 per gross ton or \$10,000,000	\$1,900 per gross ton or \$16,000,000.
Tank vessel less than or equal to 3,000 gross tons with a double hull.	\$1,200 per gross ton or \$2,000,000	\$1,900 per gross ton or \$4,000,000.
Any vessel other than a tank vessel	\$600 per gross ton or \$500,000	\$950 per gross ton or \$800,000.

² Sources: 33 U.S.C. 2704(a) immediately prior to amendment by DRPA, and 33 U.S.C. 2704(a) as amended by DRPA Section 603(a). Although the original and current versions of 33 U.S.C. 2704(a) both distinguish between vessels on the basis of their gross tonnage and whether they are tank vessels, 33 U.S.C. 2704(a) as amended by DRPA Section 603(a) now also distinguishes between single-hulled and double-hulled tank vessels.

On August 18, 2006, before initiating this rulemaking, we published a Notice of Policy in the **Federal Register** (71 FR 47737, see, Regulatory History) explaining:

- That the OPA 90 limits of liability for vessels were changed by DRPA effective July 11, 2006 for non-tank vessels, and effective October 9, 2006 for tank vessels;
- The amounts of the new OPA 90 vessel limits of liability;

- That the OPA 90 proof of financial responsibility (applicable amount) requirements for vessels at 33 CFR part 138 would stay at the applicable amount levels in effect prior to the DRPA amendments until changed by rulemaking; and

- That a rulemaking project would be initiated to require vessel owners and operators to provide evidence of financial responsibility applicable

amounts under 33 CFR part 138 to the amended OPA 90 limits of liability.

Scope of the Rule

This rulemaking was initiated, as contemplated in the Notice of Policy, to ensure that the owners and operators (including demise charterers, hereafter referred to jointly as the operators) of any vessel required to have a certificate of financial responsibility under 33 U.S.C. 2716, demonstrate that they are

¹ See, *Oil Pollution Desk Book*, Environmental Law Institute 1991, hereinafter OPA 90 Desk Book, p. 88, H.R. Conf. Report 101-653, at p. 102, reprinted in 1990 U.S.C.C.A.N. 779, 780 [“The term ‘liable’ or ‘liability’ * * * is to be construed to be

the standard of liability * * * under section 311 of the [Federal Water Pollution Control Act, 33 U.S.C. 1321] * * *. That standard of liability has been determined repeatedly to be strict, joint and several liability.”]; OPA 90 Desk Book p. 93, H.R. Conf.

Report 101-653, at 118, 1990 U.S.C.C.A.N., at 797 (Aug. 3, 1990) [“[T]he primary responsibility to compensate victims of oil pollution rests with the person responsible for the source of the pollution[.]”].

financially able to meet their potential liability under OPA 90, 33 U.S.C. 2704, under the new limits of liability as amended by DRPA, in the event of an incident where an OPA 90 limit of liability applies. The rulemaking amends 33 CFR part 138 to ensure consistency between the OPA 90 vessel evidence of financial responsibility applicable amounts at § 138.80(f)(1) and the OPA 90 vessel limits of liability as amended by DRPA.³

This rulemaking also establishes the framework for ensuring consistency when regulatory changes to the OPA 90 limits of liability for vessels and deepwater ports are promulgated in the future under 33 U.S.C. 2704(d).

Specifically, the rulemaking divides part 138 of Title 33 CFR into two subparts. The vessel financial responsibility requirements, former 33 CFR part 138, as amended by this rulemaking now appears under 33 CFR part 138, new subpart A. In addition, a new subpart has been created, at 33 CFR part 138, subpart B, to set forth the OPA 90 limits of liability for vessels and deepwater ports, and reserving paragraphs for other oil spill source categories that are regulated by the Coast Guard. Last, rather than specifically enumerating the OPA 90 financial responsibility applicable amounts for vessels in § 138.80(f)(1), that section now cross-references to the OPA 90 limits of liability for vessels as amended by DRPA or hereafter by regulation, as set forth in new subpart B. This change ensures that the OPA 90 financial responsibility applicable amounts that must be proven by vessel operators, under 33 CFR part 138, subpart A, will always be consistent with the OPA 90 limits of liability set forth in 33 CFR part 138, subpart B.

This rulemaking also eliminates the requirement in former § 138.65 that an original Certificate of Financial Responsibility (Certificate or COFR), or an authorized copy thereof, be carried aboard covered vessels. Improved technology now enables the Coast Guard to view vessel COFRs electronically, which is more cost effective than tasking inspectors to view a paper Certificate on board each vessel.

In addition, the rule increases the COFR application and certification fees found in § 138.130. The prior fee amounts were established in 1994 in the interim rule entitled "Financial Responsibility for Water Pollution (Vessels)" (59 FR 34210), and the

amounts had not been increased since that time. The new fee amounts established by this rulemaking approximate the fluctuations to the Consumer Price Index occurring as a result of inflation since 1994.

Finally, this rulemaking revises the definition of "owner" in § 138.20 to reflect amendments to OPA 90 by the Coast Guard and Maritime Transportation Act of 2004, Public Law 108–293, August 9, 2004, 118 Stat. 1045.

IV. Discussion of Comments and Changes

We received seven letters raising 13 issues during the public comment period for the proposed rule (73 FR 6642 and 73 FR 8250), and one additional letter raising one issue after the public comment period closed on May 5, 2008. The letters we received during the public comment period were from a private citizen, three COFR guarantors, a proposed liquid natural gas (LNG) deepwater port developer, a State environmental agency, and an association of oil spill regulatory agencies from Alaska, British Columbia, Washington, Oregon, Hawaii and California. The letter received after the public comment period closed was from an offshore drilling association. The following discussion summarizes the public comments we received and our responses to the comments.

One commenter was concerned with an oil spill off the coast of New Jersey more than one year ago where the responsible party was never identified, and proposed that, to improve security and prevent pollution, the U.S. have information on every ship carrying any cargo that enters any U.S. waters at any time. This rulemaking only addresses the requirements under 33 U.S.C. 2716 for vessels to provide evidence of financial responsibility. The comment is therefore beyond the scope of this rulemaking, and no change has been made in the final rule in response to this comment. The Coast Guard, however, agrees that maritime domain awareness is important to our national security and efforts to reduce pollution, and is taking steps to improve vessel tracking systems.

The same commenter proposed that the Coast Guard establish a requirement for vessels to post a five million dollar bond to pay for any damage in the event of an oil spill incident. This comment is beyond the scope of this rulemaking. OPA 90 does not authorize the Coast Guard to impose a bonding requirement on vessels including cargo vessels. Therefore, no change has been made to the final rule in response to this comment. OPA 90 does, however,

establish limits of liability at 33 U.S.C. 2704(a), applicable to all vessels. Those limits are generally more than five million dollars for tank vessels, and for most large ocean-going vessels. Furthermore, at 33 U.S.C. 2716 and in these regulations, OPA 90 requires that all vessels—including cargo vessels—over 300 gross tons establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under 33 U.S.C. 2704(a).

Two commenters recommended adding the following proviso at the end of the first sentence of § 138.80(d)(2) *Limitation on guarantor liability*: “, provided that the guarantor was immediately notified as required by 33 U.S.C. 2714 and given the same opportunity to respond to an incident or a release or threatened release, as that given to the responsible party.” This comment is beyond the scope of this rulemaking. This rulemaking only addresses the requirements under 33 U.S.C. 2716 for vessels to provide evidence of financial responsibility. The provisions of OPA 90 concerning designation of sources, and notification of responsible parties and guarantors, are set forth in 33 U.S.C. 2714(a), and are detailed further in regulations at 33 CFR part 136, subpart D (33 CFR 136.305(a)).

Furthermore, there is no provision in 33 U.S.C. 2714(a) or elsewhere in OPA 90 that limits a guarantor's liability for removal costs and damages in the event the government does not notify the responsible party or guarantor of a source designation. A failure to notify only affects the responsible party's and guarantor's obligations concerning advertisement to potential claimants, under 33 U.S.C. 2714(b) and implementing regulations at 33 CFR part 136. The Coast Guard therefore disagrees with the proposed change to § 138.80(d).

One commenter recommended changing the reference to the Louisiana Offshore Oil Port (LOOP) in § 138.220(b), to encompass any limit of liability established under 33 U.S.C. 2704(d)(2)(A)–(C). We agree that the wording in the proposed regulatory text was unnecessarily narrow and have amended § 138.220(b) accordingly.

One commenter asked that § 130.220(b) be expanded to describe the nature of any studies that might be required of deepwater port license applicants or license holders and the specific administrative process to be followed under 33 U.S.C. 2704(d)(2) for seeking adjustments to the limits of liability for deepwater ports under 33

³ This rulemaking does not change the limits of liability or applicable amount provisions for vessels under CERCLA at 42 U.S.C. 9607(c), 42 U.S.C. 9608(a), and § 138.80(f)(2).

U.S.C. 2704(a). This comment concerns issues that go beyond the scope of this rulemaking. This rulemaking identifies the existing limits of liability for vessels and deepwater ports, but it does not adjust any limits of liability. Nor does it concern the studies and other criteria under 33 U.S.C. 2704(d) for adjusting the limits. Instead, it primarily concerns the evidence of financial responsibility requirements applicable to vessels under 33 U.S.C. 2716.

One commenter asked several questions concerning how the Coast Guard determines a vessel's category for purposes of implementation of the COFR rule. First, the commenter wanted to know what documents will serve as a reference point for the Coast Guard to determine whether a vessel has a single or double hull, and whether the Coast Guard would use a classification society survey or some other official document that is generally accepted as an accurate record of the hull construction. The same commenter asked what document will be used by the Coast Guard as the reference point for classifying a vessel in circumstances where a vessel has changed type (e.g., from a Very-large Crude Carrier tanker to a dry cargo vessel).

The Coast Guard may confirm vessel details provided in the application for a certificate of financial responsibility, including any guarantee schedule, by referring to certificates of inspection and other normally available information sources such as Class Society surveys, Lloyds List, and Protection & Indemnity Club information. We have clarified the rule in response to these questions, consistent with legislative intent, by replacing the words "other than a vessel referred to in § 138.220(a)(1)," in § 138.220(a)(2) and (4), with the term "double hull", and by adding at the end of § 138.220(a) that the term "double hull" has the meaning used in 33 CFR part 157 and that the term "single hull" means any hull that is not a "double hull". (See, 152 Cong. Rec. H1640, H1663).

The commenter also asked how the Coast Guard intends to enforce the imminent phase-out of single-hull tank vessels? Specifically, the commenter asked, in a hypothetical instance where a single-hull tank vessel owner misstates in an application for a guaranty that the vessel is double hulled: How would the Coast Guard determine that the vessel should not enter the U.S. Exclusive Economic Zone? What would the consequence be to the vessel owner? Would there be any consequence for the guarantor? Enforcement of the phase-out of single-hull tankers is outside the scope of this

rulemaking. Furthermore, the consequences of any illegal vessel entry would depend in part on the circumstances of the entry and the applicable law(s). No change is made to the rule in response to these questions.

Two commenters noted that the rulemaking did not increase the OPA 90 limits of liability, under 33 U.S.C. 2704(d), to reflect significant increases in the Consumer Price Index. One of the commenters noted that the notice of proposed rulemaking did not increase the limits of liability for facilities under the Coast Guard's jurisdiction for inflation. The same commenter also stated that "the proposed increases for vessels, including tank barges, is at the 2006 DRPA level only: No [Consumer Price Index] increases since 2006 are reflected in the proposed rule[.]" and noted that DRPA also amended the provision 33 U.S.C. 2704(d) authorizing increases to limits of liability based on the Consumer Price Index.

The other commenter stated that "the limits of liability for non-tank vessels should be increased". The same commenter stated that the "proposed rulemaking fails to address the issue of limits of liability for oil handling facilities", and erroneously characterized the NPRM as proposing to change the limits of liability for vessels "based on the consumer price index".

These commenters misunderstand the scope of this rulemaking. This rulemaking does not adjust the OPA 90 limits of liability for any source category. Nor does this rulemaking adjust any limits of liability for inflation. This rulemaking is primarily intended to conform the OPA 90 financial responsibility "applicable amounts" for vessels under 33 U.S.C. 2716 (at 33 CFR part 138, subpart A, § 138.80(f)), to the limits of liability for vessels under OPA 90 as amended by DRPA.

Although the rulemaking establishes a new subpart B setting forth the OPA 90 limits of liability for vessels and deepwater ports, and establishes the framework for future regulatory changes to the OPA 90 limits of liability, including adjustments for inflation, the primary purpose of this rulemaking is to ensure consistency between the OPA 90 vessel financial responsibility applicable amounts at § 138.80(f) and the OPA 90 limits of liability now in effect and as may hereafter be amended by regulation. Consumer Price Index increases to the OPA 90 limits of liability for Coast Guard delegated source categories, including oil handling facilities, other facilities, tank barges and other vessels, will be promulgated by regulation, in

accordance with 33 U.S.C. 2704(d), in separate rulemakings.

To eliminate some of the confusion concerning the scope of this rulemaking, we have eliminated the reference to the Consumer Price Index that appeared in proposed § 138.200. We also have edited the regulatory text of § 138.85 to clarify the distinction between the effective date of this rule and the date by which operators must establish evidence of financial responsibility in an amount equal to or greater than the new applicable amounts. Finally we have amended subpart B for clarity and to reserve space for future regulatory adjustments to the limits of liability under 33 U.S.C. 2704(d), including adjustments to reflect significant increases in the Consumer Price Index.

One commenter commented favorably that the rulemaking would "eliminate the requirement for vessel operators to maintain their certificates of financial responsibility (COFR) on board ships. We support this direction towards electronic certification. We currently use the USCG online database for vessel contingency plans. In addition the addition of the online COFR database will prove to be beneficial for cross-agency partnership work." No changes have been made to the rule in response to this comment.

One commenter, who submitted a comment after the close of the public comment period, asked for a supplemental rulemaking to treat all mobile offshore drilling units (MODUs) as double hull tank vessels for purposes of the financial responsibility requirements of 33 CFR part 138, subpart A. OPA 90 at 33 U.S.C. 2716(a) requires that evidence of financial responsibility be provided up to the applicable limits of liability. OPA 90 at 33 U.S.C. 2704(b), in turn, provides that when a MODU is used as an offshore facility it is generally treated as a tank vessel for purposes of OPA 90. There, however, is no provision in OPA 90 authorizing treatment of single-hulled MODUs when used as offshore facilities as double-hulled tank vessels for purposes of determining the applicable limit of liability or the financial responsibility requirements. The Coast Guard therefore will not initiate a supplemental rulemaking in response to this comment.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. 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 is available in the docket as indicated under **ADDRESSES**. A summary of the Regulatory Assessment follows:

On February 5, 2008, an NPRM was published (73 FR 6642) which included a supplemental Preliminary Regulatory Assessment of the costs and benefits of the proposed rule. The comment period ended on May 5, 2008. No comments were received on the Preliminary Regulatory Assessment. Prior to developing the Final Regulatory Assessment, we confirmed that the data contained in the Preliminary Regulatory Assessment had not changed.

There are two regulatory costs of this rule:

Regulatory Cost 1: The rule increases the cost to responsible parties associated with application for and certification of COFRs. This rule increases the cost per application from \$150 to \$200 and the cost per certification from \$80 to \$100. We estimate that there will be 1,600 COFR application fees submitted per year and 8,600 COFR certification fees submitted per year for the foreseeable future. The aggregated annual increase in cost due to these fee increases is approximately \$252,000 per year.

Regulatory Cost 2: The rule increases the cost associated with establishing financial responsibility under 33 CFR part 138. This occurs in two ways: Responsible parties using commercial insurance as their method of guaranty will incur higher insurance premiums; and, responsible parties using self-insurance as their method of guaranty will need to seek out and acquire commercial insurance for vessels they operate that are no longer eligible for self-insurance based on their working capital and net worth.

There are approximately 16,982 vessels using commercial insurance and 823 vessels using self insurance methods of guaranty. The 10-year present value of this regulatory cost at a 3 percent discount rate is between \$73.8 million and \$83.4 million. The 10-year present value of this regulatory cost at a 7 percent discount rate is between \$63.3 million and \$71.9 million. The ranges reflect two vessel profiles that were developed and analyzed separately to account for the uncertainty, due to

data gaps, of when existing single-hulled tank vessels will be phased out.

The 10-year present value of the total cost of the rule (Regulatory Cost 1 + Regulatory Cost 2) at a 3 percent discount rate is between \$76 million and \$85.6 million. The 10-year present value of the total cost of the rule (Regulatory Cost 1 + Regulatory Cost 2) at a 7 percent discount rate is between \$65.2 million and \$73.8 million.

There are two regulatory benefits of this rule: First, the rule aligns the financial responsibility amounts for vessels in 33 CFR part 138 in subpart A with the amended statutory limits of liability under OPA 90, as specified in 33 U.S.C. 2704. This ensures the ability of responsible parties to meet their maximum liability limit under OPA 90 in the event of an incident. Second, the rule eliminates the burden on owners and operators of maintaining COFRs onboard vessels.

B. Small Entities

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

A Final Regulatory Flexibility Analysis (FRFA) discussing the impact of this rule on small entities is available in the docket where indicated under the **ADDRESSES** section of this preamble.

The NPRM for this rulemaking published on February 5, 2008 (73 FR 6642) included an Initial Regulatory Flexibility Analysis (IRFA) which quantified the economic impacts to small entities of the proposed rule. The comment period ended on May 5, 2008. No comments were received on either the IRFA or with respect to any aspects of the NPRM that might concern small entities. Prior to developing the FRFA, we confirmed that the data contained in the IRFA had not changed.

In our analysis, we researched vessel operator size and revenue data using public and proprietary business databases. We then determined which entities were small based on the U.S. Small Business Administration’s criteria as they pertain to business size standards for all sectors of the North American Industry Classification System (NAICS).

There are an estimated 600 small entities affected by this rule. We found that 82 distinct NAICS codes are

represented in the population of small entities (of which 32 contained more than 5 entities). The available data indicate that: increases in insurance premiums will result in an average annual cost of \$523 per vessel, increases in self-insurer costs will result in an average annual cost of \$7,200 per vessel, and increases in COFR application fees will result in an average annual cost of \$12 per vessel.

The data further indicate that, of the small entities impacted, 92 percent will experience an annual economic impact that is less than 1 percent of their annual sales. Furthermore, 98 percent of the small entities will experience an economic impact less than 3 percent of their total sales. Two percent will experience an annual economic impact that is equal to or greater than 3 percent of their annual sales and none will experience an annual economic annual impact greater than 10 percent of their annual sales. Based on this analysis, we believe that implementation of this rule would not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered in the NPRM to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. No assistance was requested from 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).

D. Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the

information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Financial Responsibility for Water Pollution (Vessels) and Limits of Liability.

Summary of the Collection of Information: Not later than 90 days after the effective date of this regulation, operators are required to establish evidence of financial responsibility to the amended applicable amounts in § 138.80(f).

This rule eliminates the existing recordkeeping burden associated with 33 CFR part 138, and revises the current information collection entitled, *Financial Responsibility for Water Pollution (Vessels)* (Office of Management and Budget control number 1625–0046, approved December 7, 2006).

Need for Information: This information collection is necessary to enforce this rule. Without this collection, it would not be possible for the Coast Guard to know which operators were in compliance with the amended financial responsibility applicable amounts determined under § 138.80(f), and which were not. Vessels not in compliance will be subject to the penalties provided under § 138.140.

Use of Information: The Coast Guard will use this information to verify that vessel operators have established evidence of financial responsibility to reflect the amended financial responsibility applicable amounts determined under § 138.80(f).

Description of the Respondents: Operators, as this term is defined in 33 CFR part 138, subpart A, and guarantors of vessels that require COFRs under 33 CFR part 138, Subpart A.

Number of Respondents: There are approximately 900 United States operators, 9,000 foreign operators and 100 guarantors of vessels that will submit information to the Coast Guard.

Frequency of Response: This is a one-time submission occurring not later than 90 days after the effective date of this regulation. Subsequent submissions that may be required as a result of regulatory changes to limits of liability under 33 U.S.C. 2704(d) are not included here because they will be addressed in future rulemakings.

Burden of Response:

Increased burden associated with reporting requirements: 10,000

respondents \times 1.0 hours per response = 10,000 hours.

Reduced burden associated with recordkeeping requirements: 9,900 respondents \times 0.0138 hours/respondent = 137 hours.

Estimate of Total Annual Burden: We used the “All Occupations” average hourly wage of \$18.21 per hour, found in the May 2005 *National Occupational Employment and Wage Estimates United States*, published by the Department of Labor’s Bureau of Labor Statistics, and applied a 43 percent overhead factor to estimate employee benefits to calculate the burdened labor rate. Bureau of Labor Statistics data show that total employee benefits is approximately 30 percent of total compensation. By applying a benefit factor of 43 percent to the hourly wage, we calculated total compensation: \$18.21 per hour + (\$18.21 per hour \times 43 percent) = \$26 per hour.

We then multiplied the number of net burden hours by the burdened labor rate calculated above.

Increased burden associated with reporting requirements: 10,000 hours \times \$26 per hour = \$260,000.

Reduced burden associated with recordkeeping requirements: 137 hours \times \$26 per hour = \$3,562.

As required by 44 U.S.C. 3507(d), we submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has yet to complete its review of this collection. Therefore, § 138.85 may not be enforced until this collection is approved by OMB. We will publish notice in the **Federal Register** of OMB’s decision to approve, modify, or disapprove the collection.

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

E. 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.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. 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.

H. 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.

I. 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.

J. Indian Tribal Governments

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

K. 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 because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. 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 does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. This rulemaking only addresses the requirements under 33 U.S.C. 2716 for vessels to provide evidence of financial responsibility. It has no effect on the environment. A final environmental analysis checklist and a final categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 138

Hazardous materials transportation, Insurance, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

■ For the reasons discussed in the preamble, the Coast Guard revises 33 CFR part 138 as follows:

PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS AND DEEPWATER PORTS)

Subpart A—Financial Responsibility for Water Pollution (Vessels)

- Sec.
- 138.10 Scope.
 - 138.15 Applicability.
 - 138.20 Definitions.
 - 138.30 General.
 - 138.40 Forms.
 - 138.45 Where to apply for and renew Certificates.
 - 138.50 Time to apply.
 - 138.60 Applications, general instructions.
 - 138.65 Issuance of Certificates.
 - 138.70 Renewal of Certificates.
 - 138.80 Financial responsibility, how established.

- 138.85 Implementation schedule for amendments to applicable amounts by regulation.
- 138.90 Individual and Fleet Certificates.
- 138.100 Non-owning operator's responsibility for identification.
- 138.110 Master Certificates.
- 138.120 Certificates, denial or revocation.
- 138.130 Fees.
- 138.140 Enforcement.
- 138.150 Service of process.

Subpart B—OPA 90 Limits of Liability (Vessels and Deepwater Ports)

- 138.200 Scope.
 - 138.210 Applicability.
 - 138.220 Limits of liability.
- Authority:** 33 U.S.C. 2716, 2716a; 42 U.S.C. 9608, 9609; Sec. 1512 of the Homeland Security Act of 2002, Pub. L. 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552); E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 198; E.O. 12777, 3 CFR, 1991 Comp., p. 351; E.O. 13286, Sec. 89 (68 FR 10619, Feb. 28, 2003); Department of Homeland Security Delegation Nos. 0170.1 and 5110. Section 138.30 also issued under the authority of 46 U.S.C. 2103, 46 U.S.C. 14302.

Subpart A—Financial Responsibility for Water Pollution (Vessels)

§ 138.10 Scope.

This subpart sets forth the procedures by which an operator of a vessel must establish and maintain, for itself and for the owners and demise charterers of the vessel, evidence of financial responsibility required by Section 1016(a) of the Oil Pollution Act of 1990, as amended (OPA 90) (33 U.S.C. 2716), and Section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) (42 U.S.C. 9608), equal to the total applicable amount determined under this subpart and sufficient to cover their liability arising under—

- (a) Sections 1002 and 1004 of OPA 90 (33 U.S.C. 2702, 2704); and
- (b) Section 107 of CERCLA (42 U.S.C. 9607).

§ 138.15 Applicability.

- (a) This subpart applies to the operator as defined herein of —
 - (1) A tank vessel of any size, and a foreign-flag vessel of any size, using the waters of the exclusive economic zone to transship or lighter oil (whether delivering or receiving) destined for a place subject to the jurisdiction of the United States; and
 - (2) Any vessel using the navigable waters of the United States or any port or other place subject to the jurisdiction of the United States, including a vessel using an offshore facility subject to the jurisdiction of the United States, except—

- (i) A vessel that is 300 gross tons or less; or

- (ii) A non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.

(b) For the purposes of financial responsibility under OPA 90, a mobile offshore drilling unit is treated as a tank vessel when it is being used as an offshore facility and there is a discharge, or a substantial threat of a discharge, of oil on or above the surface of the water. A mobile offshore drilling unit is treated as a vessel other than a tank vessel when it is not being used as an offshore facility.

(c) In addition to a non-self-propelled barge over 300 gross tons that carries hazardous substances as cargo, for the purposes of financial responsibility under CERCLA, this subpart applies to a self-propelled vessel over 300 gross tons, even if it does not carry hazardous substances.

(d) This subpart does not apply to operators of public vessels.

§ 138.20 Definitions.

(a) As used in this subpart, the following terms have the meaning as set forth in—

(1) Section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701), respecting the financial responsibility referred to in § 138.10(a): *claim, claimant, damages, discharge, exclusive economic zone, liable, liability, navigable waters, mobile offshore drilling unit, natural resources, offshore facility, oil, owner or operator, person, remove, removal, removal costs, security interest, and United States*; and

(2) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), respecting the financial responsibility referred to in § 138.10(b): *claim, claimant, damages, environment, hazardous substance, liable, liability, navigable waters, natural resources, offshore facility, owner or operator, person, release, remove, removal, security interest, and United States*.

(b) As used in this subpart —
Acts means OPA 90 and CERCLA.

Applicable amount means an amount of financial responsibility that must be demonstrated under this subpart, determined under § 138.80(f)(1) for OPA 90 or § 138.80(f)(2) for CERCLA.

Applicant means an operator who has applied for a Certificate or for the renewal of a Certificate under this subpart.

Application means an Application for Vessel Certificate of Financial Responsibility (Water Pollution) (Form CG–5585), which can be obtained from the U.S. Coast Guard National Pollution

Funds Center as provided in §§ 138.40 and 138.45.

Cargo means goods or materials on board a vessel for purposes of transportation, whether proprietary or nonproprietary. A hazardous substance or oil carried solely for use aboard the carrying vessel is not Cargo.

CERCLA means title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601–9675).

Certificant means an operator who has a current Certificate issued by the U.S. Coast Guard National Pollution Funds Center (NPFC) under this subpart.

Certificate means a Vessel Certificate of Financial Responsibility (Water Pollution) (Form CG–5585) issued by the NPFC under this subpart, as provided in § 138.65.

Day or days means calendar days. If a deadline specified in this subpart falls on a weekend or Federal holiday, the deadline will occur on the next working day. Compliance with a submission deadline will be determined based on the day the submission is received by NPFC.

Director, NPFC means the head of the NPFC.

E-COFR means the Electronic Certificate of Financial Responsibility web-based process located on the NPFC Web site (<http://www.npfc.gov/cofr>), which may be used by operators to apply for and renew Certificates.

Financial guarantor means a guarantor who provides a financial guaranty under § 138.80(b)(4), and is distinct from an insurer, a self-insurer or a surety.

Financial responsibility means the statutorily required financial ability to meet a responsible party's liability under the Acts.

Fish tender vessel and *fishing vessel* have the same meaning as set forth in 46 U.S.C. 2101.

Fuel means any oil or hazardous substance used or capable of being used to produce heat or power by burning, including power to operate equipment. A hand-carried pump with not more than five gallons of fuel capacity, that is neither integral to nor regularly stored aboard a non-self-propelled barge, is not equipment.

Guarantor means any person, other than a responsible party, who provides evidence of financial responsibility under the Acts on behalf of a vessel's responsible parties. A responsible party who can qualify as a self-insurer under § 138.80(b)(3) may act as both a self-insurer of vessels owned, operated or demise chartered by the responsible party, and as a financial guarantor for

the responsible parties of other vessels under § 138.80(b)(4).

Hazardous material means a liquid material or substance that is—

- (1) Flammable or combustible;
- (2) A hazardous substance designated under Section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)); or
- (3) Designated a hazardous material under the Hazardous Materials Transportation Act, Section 104 (46 U.S.C. 5103(a)) (1994).

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone.

Insurer is a type of guarantor and means one or more insurance companies, associations of underwriters, ship owners' protection and indemnity associations, or other persons, each of which must be acceptable to the Director, NPFC.

Master Certificate means a Certificate issued under this subpart to a person who is a builder, repairer, scrapper, lessor, or seller of a vessel and is acting as the vessel's operator.

Offshore supply vessel has the same meaning as set forth in 46 U.S.C. 2101.

OPA 90 means the Oil Pollution Act of 1990 (33 U.S.C. 2701, *et seq.*).

Operator means a person who is an owner, a demise charterer, or other contractor, who conducts the operation of, or who is responsible for the operation of, a vessel. A builder, repairer, scrapper, lessor, or seller who is responsible, or who agrees by contract to become responsible, for a vessel is an operator. A time or voyage charterer that does not assume responsibility for the operation of a vessel is not an operator for the purposes of this subpart.

Owner means any person holding legal or equitable title to a vessel. In a case where a U.S. Coast Guard Certificate of Documentation or equivalent document has been issued, the owner is considered to be the person or persons whose name or names appear thereon as owner. Owner does not include a person who, without participating in the management of a vessel, holds indicia of ownership primarily to protect the owner's security interest in the vessel.

Public vessel means a vessel owned or bareboat chartered by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

Responsible party, for purposes of OPA 90 financial responsibility has the same meaning as defined at 33 U.S.C. 2701(32), and for purposes of CERCLA financial responsibility means any person who is an owner or operator, as defined at 42 U.S.C. 9601(20), including any person chartering a vessel by demise.

Self-elevating lift vessel means a vessel with movable legs capable of raising its hull above the surface of the sea and that is an offshore work boat (such as a work barge) that does not engage in drilling operations.

Tank vessel means a vessel (other than an offshore supply vessel, a fishing vessel or a fish tender vessel of 750 gross tons or less that transfers fuel without charge to a fishing vessel owned by the same person, or a towing or pushing vessel (tug) simply because it has in its custody a tank barge) that is constructed or adapted to carry, or that carries, oil or liquid hazardous material in bulk as cargo or cargo residue, and that—

- (1) Is a vessel of the United States;
 - (2) Operates on the navigable waters;
- or
- (3) Transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

Total applicable amount means the amount determined under § 138.80(f)(3).

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

§ 138.30 General.

(a) The regulations in this subpart set forth the procedures for an operator of a vessel subject to this subpart to demonstrate that the responsible parties of the vessel are financially able to meet their potential liability for costs and damages in the applicable amounts set forth in this subpart at § 138.80(f). Although the owners, operators, and demise charterers of a vessel are strictly, jointly and severally liable under OPA 90 and CERCLA for the costs and damages resulting from each incident or release or threatened release, together they need only establish and maintain evidence of financial responsibility under this subpart equal to the combined OPA 90 and CERCLA limits of liability arising from a single incident and a single release, or threatened release. Only that portion of the total applicable amount of financial responsibility demonstrated under this subpart with respect to—

- (1) OPA 90 is required to be made available by a vessel's responsible parties and guarantors for the costs and damages related to an incident where

there is not also a release or threatened release; and

(2) CERCLA is required to be made available by a vessel's responsible parties and guarantors for the costs and damages related to a release or threatened release where there is not also an incident. A guarantor (or a self-insurer for whom the exceptions to limitations of liability are not applicable), therefore, is not required to apply the entire total applicable amount of financial responsibility demonstrated under this subpart to an incident involving oil alone or a release or threatened release involving a hazardous substance alone.

(b) Where a vessel is operated by its owner or demise charterer, or the owner or demise charterer is responsible for its operation, the owner or demise charterer is considered to be the operator for purposes of this subpart, and must submit the Application and requests for renewal for a Certificate. In all other cases, the vessel operator must submit the Application or requests for renewal.

(c) For a United States-flag vessel, the applicable gross tons or gross tonnage, as referred to in this part, is determined as follows:

(1) For a documented U.S. vessel measured under both 46 U.S.C. Chapters 143 (Convention Measurement) and 145 (Regulatory Measurement). The vessel's regulatory gross tonnage is used to determine whether the vessel exceeds 300 gross tons where that threshold applies under the Acts. If the vessel's regulatory gross tonnage is determined under the Dual Measurement System in 46 CFR part 69, subpart D, the higher gross tonnage is the regulatory gross tonnage for the purposes of determining whether the vessel meets the 300 gross ton threshold. The vessel's gross tonnage as measured under the International Convention on Tonnage Measurement of Ships, 1969 (Convention), is used to determine the vessel's required applicable amounts of financial responsibility, and limit of liability under Section 1004 of OPA 90 (33 U.S.C. 2704), including subpart B of this part, and Section 107 of CERCLA (42 U.S.C. 9607).

(2) For all other United States vessels. The vessel's gross tonnage under 46 CFR part 69 is used for determining the vessel's 300 gross ton threshold, the required applicable amounts of financial responsibility, and limits of liability under Section 1004 of OPA 90 (33 U.S.C. 2704), including subpart B of this part, and Section 107 of CERCLA (42 U.S.C. 9607). If the vessel's gross tonnage is determined under the Dual

Measurement System, the higher gross tonnage is used in all determinations.

(d) For a vessel of a foreign country that is a party to the Convention, gross tons or gross tonnage, as referred to in this part, is determined as follows:

(1) For a vessel assigned, or presently required to be assigned, gross tonnage under Annex I of the Convention. The vessel's gross tonnage as measured under Annex I of the Convention is used for determining the 300 gross ton threshold, if applicable, the required applicable amounts of financial responsibility, and limits of liability under Section 1004(a) of OPA 90 (33 U.S.C. 2704), including subpart B of this part, and under Section 107 of CERCLA (42 U.S.C. 9607).

(2) For a vessel not presently required to be assigned gross tonnage under Annex I of the Convention. The highest gross tonnage that appears on the vessel's U.S. Coast Guard Certificate of Documentation or equivalent document and that is acceptable to the Coast Guard under 46 U.S.C. chapter 143 is used for determining the 300 gross ton threshold, if applicable, the required applicable amounts of financial responsibility, and limits of liability under Section 1004 of OPA 90 (33 U.S.C. 2704), including subpart B of this part, and Section 107 of CERCLA (42 U.S.C. 9607). If the vessel has no document, or the gross tonnage appearing on the document is not acceptable under 46 U.S.C. chapter 143, the vessel's gross tonnage is determined by applying the Convention Measurement System under 46 CFR part 69, subpart B, or if applicable, the Simplified Measurement System under 46 CFR part 69, subpart E. The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(e) For a vessel of a foreign country that is not a party to the Convention, gross tons or gross tonnage, as referred to in this part, is determined as follows:

(1) For a vessel measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention. The vessel's gross tonnage under the similar laws and regulations is used for determining the 300 gross ton threshold, if applicable, the required applicable amounts of financial responsibility, and limits of liability under Section 1004 of OPA 90 (33 U.S.C. 2704), including subpart B of this part, and Section 107 of CERCLA (42 U.S.C. 9607). The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(2) For a vessel not measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention. The vessel's gross tonnage under 46 CFR part 69, subpart B, or, if applicable, subpart E, is used for determining the 300 gross ton threshold, if applicable, the required applicable amount of financial responsibility, and the limits of liability under Section 1004 of OPA 90 (33 U.S.C. 2704), including subpart B of this part, and Section 107 of CERCLA (42 U.S.C. 9607). The measurement standards applied are subject to applicable international agreements to which the United States is a party.

(f) A person who agrees to act as a guarantor or a self-insurer is bound by the vessel's gross tonnage as determined under paragraphs (c), (d), or (e) of this section, regardless of what gross tonnage is specified in an Application or guaranty form submitted under this subpart. Guarantors, however, may limit their liability under a guaranty of financial responsibility to the applicable gross tonnage appearing on a vessel's International Tonnage Certificate or other official, applicable certificate of measurement and will not incur any greater liability with respect to that guaranty, except when the guarantors knew or should have known that the applicable tonnage certificate was incorrect.

§ 138.40 Forms.

All forms referred to in this subpart may be obtained from NPFC by requesting them in writing at the address given in § 138.45(a) or by clicking on the Forms link at the NPFC E-COFR Web site, <http://www.npfc.gov/cofr>.

§ 138.45 Where to apply for and renew Certificates.

(a) An operator must submit all Applications for a Certificate and all requests for renewal of a Certificate, together with all evidence of financial responsibility required under § 138.80 and all fees required under § 138.130, to the NPFC at the following address: U.S. Coast Guard, National Pollution Funds Center (Cv), 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203-1804, telephone (202) 493-6780, Telefax (202) 493-6781; or electronically using NPFC's E-COFR Web-based process at <http://www.npfc.gov/cofr>.

(b) All requests you have for assistance in completing Applications, requests for renewal and other submissions under this subpart, including telephone inquiries, should be directed to the U.S. Coast Guard

NPFC at the addresses in paragraph (a) of this section.

§ 138.50 Time to apply.

(a) A vessel operator who wishes to obtain a Certificate must submit a completed Application form and all required supporting evidence of financial responsibility, and must pay all applicable fees, at least 21 days prior to the date the Certificate is required. The Director, NPFC, may grant an extension of this 21-day deadline upon written request and for good cause shown. An applicant seeking an extension of this deadline must set forth the reasons for the extension request and deliver the request to the Director, NPFC, at least 15 days before the deadline. The Director, NPFC, will not consider a request for an extension of more than 60 days.

(b) The Director, NPFC, generally processes Applications and requests for renewal in the order in which they are received at the NPFC.

§ 138.60 Applications, general instructions.

(a) You may obtain an Application for Vessel Certificate of Financial Responsibility (Water Pollution) (Form CG-5585) by following the instructions in §§ 138.40 and 138.45.

(b) Your Application and all supporting documents must be in English, and express all monetary terms in United States dollars.

(c) An authorized official of the applicant must sign the signature page of the Application. The title of the signer must be shown in the space provided on the Application. The operator must submit the original signature page of the Application to NPFC in hard copy.

(d) If the signer is not identified on the Application as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director, chief executive officer, or any other duly authorized officer of a corporate applicant, the Application must be accompanied by a written statement certifying the signer's authority to sign on behalf of the applicant.

(e) If, before the issuance of a Certificate, the applicant becomes aware of a change in any of the facts contained in the Application or supporting documentation, the applicant must, within 5 business days of becoming aware of the change, notify the Director, NPFC, in writing, of the changed facts.

§ 138.65 Issuance of Certificates.

Upon the satisfactory demonstration of financial responsibility and payment of all fees due, the Director, NPFC, will

issue a Vessel Certificate of Financial Responsibility (Water Pollution) (Form CG-5585) in electronic form. Copies of the Certificate may be downloaded from NPFC's E-COFR Web site.

§ 138.70 Renewal of Certificates.

(a) The operator of a vessel required to have a Certificate under this subpart must submit a written or E-COFR request for renewal of the Certificate to the NPFC at least 21 days, but not earlier than 90 days, before the expiration date of the Certificate. A letter may be used for this purpose. The request for renewal must comply in all other respects with the requirements in § 138.60 concerning Applications. The Director, NPFC, may waive this 21-day requirement for good cause shown.

(b) The operator must identify in the request for renewal any changes which have occurred since the original Application for a Certificate was filed, and must set forth the correct information in full.

§ 138.80 Financial responsibility, how established.

(a) General. In addition to submitting an Application, requests for renewal, and fees, an applicant must file, or cause to be filed, with the Director, NPFC, evidence of financial responsibility acceptable to the Director, NPFC, in an amount equal to the total applicable amount determined under § 138.80(f)(3). A guarantor may file the evidence of financial responsibility on behalf of the applicant directly with the Director, NPFC.

(b) Methods. An applicant or certificant must establish and maintain evidence of financial responsibility by one or more of the following methods:

(1) Insurance. By filing with the Director, NPFC, an Insurance Guaranty (Form CG-5586) or, when applying for a Master Certificate under § 138.110, a Master Insurance Guaranty (Form CG-5586-1), executed by not more than four insurers that have been found acceptable by, and remain acceptable to, the Director, NPFC, for purposes of this subpart.

(2) Surety bond. By filing with the Director, NPFC, a Surety Bond Guaranty (Form CG-5586-2), executed by not more than 10 acceptable surety companies certified by the United States Department of the Treasury with respect to the issuance of Federal bonds in the maximum penal sum of each bond to be issued under this subpart.

(3) Self-insurance. By filing with the Director, NPFC, the financial statements specified in paragraph (b)(3)(i) of this section for the applicant's fiscal year preceding the date of Application and

by demonstrating that the applicant or certificant maintains, in the United States, working capital and net worth each in amounts equal to or greater than the total applicable amount determined under § 138.80(f)(3), based on a vessel carrying hazardous substances as cargo. As used in this paragraph, working capital means the amount of current assets located in the United States, less all current liabilities anywhere in the world; and net worth means the amount of all assets located in the United States, less all liabilities anywhere in the world. For each fiscal year after the initial filing, the applicant or certificant must also submit statements as follows:

(i) Initial and annual filings. An applicant or certificant must submit annual, current, and audited non-consolidated financial statements prepared in accordance with Generally Accepted Accounting Principles, and audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards. These financial statements must be accompanied by an additional statement from the Treasurer (or equivalent official) of the applicant or certificant certifying both the amount of current assets and the amount of total assets included in the accompanying balance sheet, which are located in the United States. If the financial statements cannot be submitted in non-consolidated form, a consolidated statement may be submitted if accompanied by an additional statement prepared by the same Certified Public Accountant, verifying the amount by which the applicant's or certificant's—

(A) Total assets located in the United States exceed its total (i.e., worldwide) liabilities; and

(B) Current assets located in the United States exceed its total (i.e., worldwide) current liabilities. This additional Certified Public Accountant statement must specifically name the applicant or certificant, indicate that the amounts so verified relate only to the applicant or certificant, apart from any other affiliated entity, and identify the consolidated financial statement to which it applies.

(ii) Semiannual self-insurance submissions. When the self-insuring applicant's or certificant's demonstrated net worth is not at least ten times the total applicable amount of financial responsibility determined under § 138.80(f)(3), the applicant's or certificant's Treasurer (or equivalent official) must file affidavits with the Director, NPFC, covering the first six months of the applicant's or certificant's current fiscal year. The affidavits must state that neither the working capital

nor the net worth have, during the first six months of the current fiscal year, fallen below the applicant's or certificant's required total applicable amount of financial responsibility as determined under this subpart.

(iii) Additional self-insurance submissions. A self-insuring applicant or certificant—

(A) Must, upon request of the Director, NPFC, within the time specified in the request, file additional financial information; and

(B) Must notify the Director, NPFC, within 5 business days of the date the applicant or certificant knows, or has reason to know, that its working capital or net worth has fallen below the total applicable amounts required by this subpart.

(iv) Time for self-insurance filings. All required annual financial statements must be received by the Director, NPFC, within 90 days after the close of the applicant's or certificant's fiscal year, and all affidavits required by paragraph (b)(3)(ii) of this section must be received by the Director, NPFC, within 30 days after the close of the applicable six-month period. The Director, NPFC, may grant an extension of the time limits for filing the annual financial statements, semi-annual affidavits or additional financial information upon written request and for good cause shown. An applicant or certificant seeking an extension of any deadline must set forth the reasons for the extension request and deliver the request to the Director, NPFC, at least 15 days before the annual financial statements, affidavits or additional information are due. The Director, NPFC, will not consider a request for an extension of more than 60 days.

(v) Failure to submit. The Director, NPFC, may deny or revoke a Certificate for failure of the applicant or certificant to timely file any statement, data, notification, or affidavit required by paragraph (b)(3) of this section.

(vi) Waiver of working capital. The Director, NPFC, may waive the working capital requirement for any applicant or certificant that—

(A) Is a regulated public utility, a municipal or higher-level governmental entity, or an entity operating solely as a charitable, non-profit organization qualifying under Section 501(c) Internal Revenue Code. The applicant or certificant must demonstrate in writing that the grant of a waiver would benefit a local public interest; or

(B) Demonstrates in writing that working capital is not a significant factor in the applicant's or certificant's financial condition. An applicant's or certificant's net worth in relation to the

amount of its required total applicable amount of financial responsibility and a history of stable operations are the major elements considered by the Director, NPFC.

(4) Financial Guaranty. By filing with the Director, NPFC, a Financial Guaranty (Form CG-5586-3), or, when applying for a Master Certificate, a Master Financial Guaranty (Form CG-5586-4), executed by not more than four financial guarantors, including, but not limited to, a parent or affiliate acceptable to the Director, NPFC. A financial guarantor must comply with all of the self-insurance provisions of paragraph (b)(3) of this section. In addition, a person who is a financial guarantor for more than one applicant or certificant must have working capital and net worth no less than the aggregate total applicable amounts of financial responsibility determined under § 138.80(f)(3) provided as a financial guarantor for each applicant or certificant, plus the total applicable amount required to be demonstrated by a self-insurer under this subpart if the financial guarantor is also acting as a self-insurer.

(5) Other evidence of financial responsibility. The Director, NPFC, will not accept a self-insurance method other than the one described in paragraph (b)(3) of this section. An applicant may in writing request that the Director, NPFC, accept a method different from one described in paragraph (b)(1), (2), or (4) of this section to demonstrate evidence of financial responsibility. An applicant submitting a request under this paragraph must submit the request to the Director, NPFC, at least 45 days prior to the date the Certificate is required. The applicant must describe in detail the method proposed, the reasons why the applicant does not wish to use or is unable to use one of the methods described in paragraph (b)(1), (2), or (4) of this section, and how the proposed method assures that the responsible parties for the vessel are able to fulfill their obligations to pay costs and damages in the event of an incident or a release or threatened release. The Director, NPFC, will not accept a method under this paragraph that merely deletes or alters a provision of one of the methods described in paragraph (b)(1), (2), or (4) of this section (for example, one that alters the termination clause of the Insurance Guaranty (Form CG-5586)). An applicant that makes a request under this paragraph must provide the Director, NPFC, a proposed guaranty form that includes all the elements described in paragraphs (c) and (d) of this section. A decision of the Director, NPFC, not to

accept a method requested by an applicant under this paragraph is final agency action.

(c) Forms—(1) Multiple guarantors. Four or fewer insurers (a lead underwriter is considered to be one insurer) may jointly execute an Insurance Guaranty (Form CG-5586) or a Master Insurance Guaranty (Form CG-5586-1). Ten or fewer sureties (including lead sureties) may jointly execute a Surety Bond Guaranty (Form CG-5586-2). Four or fewer financial guarantors may jointly execute a Financial Guaranty (Form CG-5586-3). If more than one insurer, surety, or financial guarantor executes the relevant form—

(i) Each is bound for the payment of sums only in accordance with the percentage of vertical participation specified on the relevant form for that insurer, surety, or financial guarantor. Participation in the form of layering (tiers, one in excess of another) is not acceptable; only vertical participation on a percentage basis and participation with no specified percentage allocation is acceptable. If no percentage of participation is specified for an insurer, surety, or financial guarantor, the liability of that insurer, surety, or financial guarantor is joint and several for the total of the unspecified portions; and

(ii) The guarantors must designate a lead guarantor having authority to bind all guarantors for actions required of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims.

(2) Operator name. An applicant or certificant must ensure that each form submitted under this subpart sets forth in full the correct legal name of the vessel operator to whom a Certificate is to be issued.

(d) Direct Action—(1) Acknowledgment. Any evidence of financial responsibility filed with the Director, NPFC, under this subpart must contain an acknowledgment by each insurer or other guarantor that an action in court by a claimant (including a claimant by right of subrogation) for costs or damages arising under the provisions of the Acts, may be brought directly against the insurer or other guarantor. The evidence of financial responsibility must also provide that, in the event an action is brought under the Acts directly against the insurer or other guarantor, the insurer or other guarantor may invoke only the following rights and defenses:

(i) The incident, release, or threatened release was caused by the willful

misconduct of the person for whom the guaranty is provided.

(ii) Any defense that the person for whom the guaranty is provided may raise under the Acts.

(iii) A defense that the amount of a claim or claims, filed in any action in any court or other proceeding, exceeds the amount of the guaranty with respect to an incident or with respect to a release or threatened release.

(iv) A defense that the amount of a claim or claims that exceeds the amount of the guaranty, which amount is based on the gross tonnage of the vessel as entered on the vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except when the guarantor knew or should have known that the applicable tonnage certificate was incorrect.

(v) The claim is not one made under either of the Acts.

(2) **Limitation on guarantor liability.** A guarantor that participates in any evidence of financial responsibility under this subpart will be liable because of that participation, with respect to an incident or a release or threatened release, in any proceeding only for the amount and type of costs and damages specified in the evidence of financial responsibility. A guarantor will not be considered to have consented to direct action under any law other than the Acts, or to unlimited liability under any law or in any venue, solely because of the guarantor's participation in providing any evidence of financial responsibility under this subpart. In the event of any finding that liability of a guarantor exceeds the amount of the guaranty provided under this subpart, that guaranty is considered null and void with respect to that excess.

(e) **Public access to data.** Financial data filed with the Director, NPFC, by an applicant, certificant, and any other person is considered public information to the extent required by the Freedom of Information Act (5 U.S.C. 552) and permitted by the Privacy Act (5 U.S.C. 552a).

(f) **Total applicable amount.** The total applicable amount is determined as follows:

(1) The applicable amount under OPA 90 is equal to the applicable vessel limit of liability, which is determined as provided in subpart B of this part.

(2) The applicable amount under CERCLA is determined as follows:

(i) For a vessel over 300 gross tons carrying a hazardous substance as cargo, the greater of \$5,000,000 or \$300 per gross ton.

(ii) For any other vessel over 300 gross tons, the greater of \$500,000 or \$300 per gross ton.

(3) The total applicable amount is the applicable amount determined under paragraph (f)(1) of this section plus the applicable amount determined under paragraph (f)(2) of this section.

§ 138.85 Implementation schedule for amendments to applicable amounts by regulation.

Each operator of a vessel described in § 138.15 must establish evidence of financial responsibility acceptable to the Director, NPFC, in an amount equal to or greater than the total applicable amounts determined under § 138.80(f), by not later than January 15, 2009. In the event an applicable amount determined under § 138.80(f) is thereafter amended by regulation, each operator of a vessel described in § 138.15 must establish evidence of financial responsibility acceptable to the Director, NPFC, in an amount equal to or greater than the amended total applicable amount, by not later than 90 days after the effective date of the final rule, unless another date is required by statute or specified in the amending regulation.

§ 138.90 Individual and Fleet Certificates.

(a) The Director, NPFC, issues an individual Certificate for each vessel listed on a completed Application or request for renewal when the Director, NPFC, determines that acceptable evidence of financial responsibility has been provided and appropriate fees have been paid, except where a Fleet Certificate is issued under this section or where a Master Certificate is issued under § 138.110. Each Certificate of any type issued under this subpart is issued only in the name of a vessel operator and is effective for not more than 3 years from the date of issuance, as indicated on each Certificate. An authorized official of the applicant may submit to the Director, NPFC, a letter requesting that additional vessels be added to a previously submitted Application for an individual Certificate. The letter must set forth all information required in item 5 of the Application form. The authorized official must also file, or cause to be filed with the Director, NPFC, acceptable evidence of financial responsibility, if required, and must pay all applicable certification fees for the additional vessels.

(b) An operator of a fleet of two or more barges that are not tank vessels and that from time to time may be subject to this subpart (*e.g.*, a hopper barge over 300 gross tons when carrying oily metal shavings or similar cargo) may apply to the Director, NPFC, for issuance of a Fleet Certificate, so long as

the operator of such a fleet is a self-insurer or arranges with an acceptable guarantor to cover, automatically, all such barges for which the operator may from time to time be responsible.

(c) A person must not make any alteration on any copy of a Certificate issued under this subpart.

(d) If, at any time after a Certificate has been issued, a certificant becomes aware of a change in any of the facts contained in the Application or supporting documentation, the certificant must notify the Director, NPFC, in writing within 10 days of becoming aware of the change. A vessel or operator name change or change of a guarantor must be reported by the operator as soon as possible by telefax or other electronic means to the Director, NPFC, and followed by a written notice sent within 3 business days. (See, § 138.45, Where to apply for and renew Certificates, for contact information).

(e) Except as provided in § 138.90(f), at the moment a certificant ceases to be the operator of a vessel for any reason, including a vessel that is scrapped or transferred to a new operator, the individual Certificate naming the vessel is void and its further use is prohibited. In that case, the certificant must, within 10 business days of the Certificate becoming void, submit the following information in writing to the Director, NPFC:

(1) The number of the individual Certificate and the name of the vessel.

(2) The date and reason why the certificant ceased to be the operator of the vessel.

(3) The location of the vessel on the date the certificant ceased to be the operator.

(4) The name and mailing address of the person to whom the vessel was sold or transferred.

(f) In the event of the temporary transfer of custody of an unmanned barge with a Certificate under this subpart, where the certificant transferring the barge continues to be liable under the Acts and continues to maintain on file with the Director, NPFC, acceptable evidence of financial responsibility with respect to the barge, the existing Certificate remains in effect in respect to that vessel, and a temporary new Certificate is not required for the vessel. The temporary transferee is encouraged to require the transferring certificant to acknowledge in writing that the transferring certificant agrees to remain responsible for pollution liabilities.

§ 138.100 Non-owning operator's responsibility for identification.

(a) Each operator that is not an owner of a vessel with a Certificate under this subpart, other than an unmanned barge, must ensure that the original or a legible copy of the demise charter-party (or other written document on the owner's letterhead, signed by the vessel owner, which specifically identifies the vessel operator named on the Certificate) is maintained on board the vessel.

(b) The demise charter-party or other document required by paragraph (a) of this section must be presented, upon request, for examination and copying, to a United States Government official.

§ 138.110 Master Certificates.

(a) A contractor or other person who is responsible for a vessel in the capacity of a builder, scrapper, lessor, or seller (including a repairer who agrees to be responsible for a vessel under its custody) may apply for a Master Certificate instead of applying for an individual Certificate or Fleet Certificate for each vessel. A Master Certificate covers all of the vessels subject to this subpart held by the applicant solely for purposes of construction, repair, scrapping, lease, or sale. A vessel which is being operated commercially in any business venture, including the business of building, repairing, scrapping, leasing, or selling (e.g., a slop barge used by a shipyard) cannot be covered by a Master Certificate. Any vessel for which a Certificate is required, but which is not eligible for a Master Certificate, must be covered by either an individual Certificate or a Fleet Certificate.

(b) An applicant for a Master Certificate must submit an Application form in the manner prescribed by §§ 138.40 through 138.60. An applicant must establish evidence of financial responsibility in accordance with § 138.80, by submission, for example, of an acceptable Master Insurance Guaranty Form, Surety Bond Guaranty Form, Master Financial Guaranty Form, or acceptable self-insurance documentation. An Application for a Master Certificate must be completed in full, except for Item 5. The applicant must make the following statement in Item 5: "This is an application for a Master Certificate. The largest tank vessel to be covered by this application is [insert applicable gross tons] gross tons. The largest vessel other than a tank vessel is [insert applicable gross tons] gross tons." The dollar amount of financial responsibility evidenced by the applicant must be sufficient to meet the amount required under this subpart.

(c) Each Master Certificate issued by the Director, NPFPC, indicates—

(1) The name of the applicant (i.e., the builder, repairer, scrapper, lessor, or seller);

(2) The date of issuance and termination, encompassing a period of not more than 3 years; and

(3) The gross tons of the largest tank vessel and gross tons of the largest vessel other than a tank vessel eligible for coverage by that Master Certificate. (The Master Certificate does not identify the name of each vessel covered by the Certificate.)

(d) Each additional vessel which does not exceed the respective tonnages indicated on the Master Certificate and which is eligible for coverage by a Master Certificate is automatically covered by that Master Certificate. Before acquiring a vessel, by any means, including conversion of an existing vessel, that would have the effect of increasing the certificant's required applicable amount of financial responsibility (above that provided for issuance of the existing Master Certificate), the certificant must submit to the Director, NPFPC, the following:

(1) Evidence of increased financial responsibility.

(2) A new certification fee.

(3) Either a new Application or a letter amending the existing Application to reflect the new gross tonnage which is to be indicated on a new Master Certificate.

(e) A person to whom a Master Certificate has been issued must submit to the Director, NPFPC, every six months beginning the month after the month in which the Master Certificate is issued, a report indicating the name, previous name, type, and gross tonnage of each vessel covered by the Master Certificate during the preceding six-month reporting period and indicating which vessels, if any, are tank vessels.

§ 138.120 Certificates, denial or revocation.

(a) The Director, NPFPC, may deny a Certificate when an applicant—

(1) Willfully or knowingly makes a false statement in connection with an Application or other submission or filing under this subpart for an initial or renewal Certificate;

(2) Fails to establish acceptable evidence of financial responsibility as required by this subpart;

(3) Fails to pay the required Application or certification fees;

(4) Fails to comply with or respond to lawful inquiries, regulations, or orders of the Coast Guard pertaining to the activities subject to this subpart; or

(5) Fails to timely file with the Director, NPFPC, required statements, data, notifications, or affidavits.

(b) The Director, NPFPC, may revoke a Certificate when a certificant—

(1) Willfully or knowingly makes a false statement in connection with an Application for an initial or a renewal Certificate, or in connection with any other filing required by this subpart;

(2) Fails to comply with or respond to lawful inquiries, regulations, or orders of the Coast Guard pertaining to the activities subject to this subpart; or

(3) Fails to timely file with the Director, NPFPC, required statements, data, notifications, or affidavits.

(c) A Certificate is immediately invalid, and considered revoked, without prior notice, when the certificant—

(1) Fails to maintain acceptable evidence of financial responsibility as required by this subpart;

(2) Is no longer the responsible operator of the vessel or fleet in question; or

(3) Alters any copy of a Certificate.

(d) The Director, NPFPC, will advise the applicant or certificant, in writing, of the intention to deny or revoke a Certificate under paragraph (a) or (b) of this section and will state the reason for the decision. Written advice from the Director, NPFPC, that an incomplete Application will be considered withdrawn unless it is completed within a stated period, is the equivalent of a denial.

(e) If the intended revocation under paragraph (b) of this section is based on failure to timely file required financial statements, data, notifications, or affidavits with the Director, NPFPC, the revocation is effective 10 days after the date of the notice of intention to revoke, unless, before the effective date of the revocation, the certificant demonstrates to the satisfaction of the Director, NPFPC, that the required documents were timely filed or have been filed.

(f) If the intended denial is based on paragraph (a)(1) or (a)(4) of this section, or the intended revocation is based on paragraph (b)(1) or (b)(2) of this section, the applicant or certificant may request, in writing, an opportunity to present information for the purpose of showing that the applicant or certificant is in compliance with the subpart. The request must be received by the Director, NPFPC, within 10 days after the date of the notification of intention to deny or revoke. A Certificate subject to revocation under this paragraph remains valid until the Director, NPFPC, issues a written decision revoking the Certificate.

(g) An applicant or certificant whose Certificate has been denied under paragraph (a) of this section or revoked under paragraph (b) or (c) of this section

may request the Director, NPFPC, to reconsider the denial or revocation. The certificant must submit a request for reconsideration, in writing, to the Director, NPFPC, within 20 days of the date of the denial or revocation. The certificant must state the reasons for requesting reconsideration. The Director, NPFPC, will generally issue a written decision on the request within 30 days of receipt, provided that, if the Director, NPFPC, does not issue a decision within 30 days, the request for reconsideration will be deemed to have been denied, and the denial or revocation will be deemed to have been affirmed. Unless the Director, NPFPC, issues a decision reversing the revocation, a revoked Certificate remains invalid. A decision by the Director, NPFPC, affirming a denial or revocation, is final agency action.

§ 138.130 Fees.

(a) The Director, NPFPC, will not issue or renew a Certificate until the fees set forth in paragraphs (c) and (d) of this section have been paid.

(b) For those using E-COFR, credit card payment is required. Otherwise, fees must be paid in United States currency by check, draft, or postal money order made payable to the "U.S. Coast Guard".

(c) An applicant who submits an Application under this subpart must pay a non-refundable Application fee of \$200 for each Application (i.e., individual Certificate, Fleet Certificate, or Master Certificate), except as follows:

(1) An Application for an additional (i.e., supplemental) individual Certificate,

(2) A request to amend or renew an existing Certificate, or

(3) An Application submitted within 90 days following a revocation or other invalidation of a Certificate.

(d) In addition to the Application fee of \$200, an applicant must pay a certification fee of \$100 for each vessel for which a Certificate is requested. An applicant must pay the \$100 certification fee for each vessel listed in, or later added to, an Application for an individual Certificate(s). An applicant must pay the \$100 certification fee to renew or to reissue a Certificate for any reason, including, but not limited to, a vessel or operator name change.

(e) A certification fee is refunded, upon receipt of a written request, if the Application is denied or withdrawn before issuance of the Certificate. Overpayments of Application and certification fees are refunded, on request, only if the refund is for \$100 or more. However, any overpayments not refunded will be credited, for a period

of 3 years from the date of receipt of the monies by the Coast Guard, for the applicant's possible future use or transfer to another applicant under this subpart.

§ 138.140 Enforcement.

(a) Any person who fails to comply with this subpart with respect to evidence of financial responsibility under Section 1016 of OPA 90 (33 U.S.C. 2716) is subject to a civil penalty under Section 4303(a) of OPA 90 (33 U.S.C. 2716a(a)). In addition, under Section 4303(b) of OPA 90 (33 U.S.C. 2716a(b)), the Attorney General may secure such relief as may be necessary to compel compliance with the OPA 90 requirements of this subpart, including termination of operations. Further, any person who fails to comply with this subpart with respect to evidence of financial responsibility under Section 108(a) of CERCLA (42 U.S.C. 9608(a)), is subject to a Class I administrative civil penalty, a Class II administrative civil penalty or a judicial penalty under Section 109 of CERCLA (42 U.S.C. 9609).

(b) The Secretary of the Department in which the U.S. Coast Guard is operating will withhold or revoke the clearance required by 46 U.S.C. 60105 to any vessel subject to this subpart that has not provided the evidence of financial responsibility required by this subpart.

(c) The Coast Guard may deny entry to any port or place in the United States or the navigable waters of the United States, and may detain at a port or place in the United States in which it is located, any vessel subject to this subpart, which has not provided the evidence of financial responsibility required by this subpart.

(d) Any vessel subject to this subpart which is found operating in the navigable waters without having been issued a Certificate or maintained the necessary evidence of financial responsibility as required by this subpart is subject to seizure by, and forfeiture to, the United States.

(e) Knowingly and willfully using an altered copy of a Certificate, or using a copy of a revoked, expired or voided Certificate for anything other than recordkeeping purposes, is prohibited. If a Certificate is revoked, has expired or is rendered void for any reason, the certificant must cease using all copies of the Certificate for anything other than the operator's own historical recordkeeping purposes.

§ 138.150 Service of process.

(a) When executing the forms required by this subpart, each applicant, certificant and guarantor must designate

thereon a person located in the United States as its agent for service of process for purposes of this subpart and for receipt of notices of responsible party designations and presentations of claims under the Acts (collectively referred to herein as "service of process"). Each designated agent must acknowledge the agency designation in writing unless the agent has already furnished the Director, NPFPC, with a master (i.e., blanket) agency acknowledgment showing that the agent has agreed in advance to act as the United States agent for service of process for the applicant, certificant, or guarantor in question.

(b) If any applicant, certificant, or guarantor desires, for any reason, to change any designated agent, the applicant, certificant, or guarantor must notify the Director, NPFPC, of the change. If a master agency acknowledgment for the new agent is not on file with NPFPC, the applicant, certificant, or guarantor must furnish to the Director, NPFPC, all the relevant information, including the new agent's acknowledgment, required in accordance with paragraph (a) of this section. In the event of death, disability, unavailability, or similar event of a designated agent, the applicant, certificant, or guarantor must designate another agent in accordance with paragraph (a) of this section within 10 days of knowledge of any such event. The applicant, certificant, or guarantor must submit the new designation to the Director, NPFPC. The Director, NPFPC, may deny or revoke a Certificate if an applicant, certificant, or guarantor fails to designate and maintain an agent for service of process.

(c) If a designated agent cannot be served because of death, disability, unavailability, or similar event, and another agent has not been designated under this section, then service of process on the Director, NPFPC, will constitute valid service of process. Service of process on the Director, NPFPC, will not be effective unless the server—

(1) Sends the applicant, certificant, or guarantor, as applicable (by registered mail, at the last known address on file with the Director, NPFPC), a copy of each document served on the Director, NPFPC; and

(2) Attests to this registered mailing, at the time process is served upon the Director, NPFPC, indicating that the intent of the mailing is to effect service of process on the applicant, certificant, or guarantor and that service on the designated agent is not possible, stating the reason why.

Subpart B—OPA 90 Limits of Liability (Vessels and Deepwater Ports)**§ 138.200 Scope.**

This subpart sets forth the limits of liability for vessels and deepwater ports under section 1004 of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2704) (OPA 90), including adjustments pursuant to section 1004(d) of OPA 90 (33 U.S.C. 2704(d)).

§ 138.210 Applicability.

This subpart applies to you if you are a responsible party for a vessel as defined under Section 1001(37) of OPA 90 (33 U.S.C. 2701(37)) or a deepwater port as defined under Section 1001(6) of OPA 90 (33 U.S.C. 2701(6)), unless your OPA 90 liability is unlimited under Section 1004(c) of OPA 90 (33 U.S.C. 2704(c)).

§ 138.220 Limits of liability.

(a) Vessels. (1) The OPA 90 limits of liability for vessels are—

(i) For a tank vessel greater than 3,000 gross tons with a single hull, including a single-hull vessel fitted with double sides only or a double bottom only, the greater of \$3,000 per gross ton or \$22,000,000;

(ii) For a tank vessel greater than 3,000 gross tons with a double hull, the greater of \$1,900 per gross ton or \$16,000,000.

(iii) For a tank vessel less than or equal to 3,000 gross tons with a single hull, including a single-hull vessel fitted with double sides only or a double bottom only, the greater of \$3,000 per gross ton or \$6,000,000.

(iv) For a tank vessel less than or equal to 3,000 gross tons with a double hull, the greater of \$1,900 per gross ton or \$4,000,000.

(v) For any other vessel, the greater of \$950 per gross ton or \$800,000.

(2) As used in this paragraph (a), the term *double hull* has the meaning set forth in 33 CFR part 157 and the term *single hull* means any hull other than a double hull.

(b) Deepwater ports. The OPA 90 limits of liability for deepwater ports are—

(1) Generally. For any deepwater port other than a deepwater port with a limit of liability established by regulation under Section 1004(d)(2) of OPA 90 (33 U.S.C. 2704(d)(2)) and set forth in paragraph (b)(2) of this section, \$350,000,000; and

(2) For deepwater ports with limits of liability established by regulation under Section 1004(d)(2) of OPA 90 (33 U.S.C. 2704(d)(2)):

(i) For the Louisiana Offshore Oil Port (LOOP), \$62,000,000;

(ii) [Reserved].

(c) [Reserved].

Dated: September 3, 2008.

Craig A. Bennett,

*Director, National Pollution Funds Center,
United States Coast Guard.*

[FR Doc. E8-21554 Filed 9-16-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Parts 215 and 218****RIN 0596-AC15****Predecisional Administrative Review Process for Hazardous Fuel Reduction Projects Authorized Under the Healthy Forests Restoration Act of 2003**

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This document makes final the interim rule that was published on January 9, 2004, with minor changes to both parts 215 and 218. This rule establishes a process by which the public may file objections to seek administrative review of proposed hazardous fuel reduction projects authorized by the Healthy Forests Restoration Act of 2003 (HFRA), Public Law 108-148. Section 105 of the act directs the Secretary of Agriculture to publish final regulations following public comment on the interim final regulations. This final rule refines the HFRA objection procedures based on public comment and agency experience applying the interim final rule. These changes add clarity to the procedural direction, describe authorized hazardous fuel reduction projects not subject to objection, clarify notification requirements, clarify the eligibility criteria for who may file an objection, provide for the incorporation of certain documents into objections by reference, and clarify how timeliness of objection filing will be determined.

DATE: *Effective Date:* This rule is effective October 17, 2008.

ADDRESSES: The Forest Service objection procedures for proposed hazardous fuel reduction projects authorized by the HFRA are set out in 36 CFR part 218, which is available electronically on the World Wide Web at http://www.fs.fed.us/objections/objections_related.php#app_work. Single paper copies are available by contacting Kevin Lawrence, Forest Service-USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW.,

Washington, DC 20250-1104.

Additional information can be found at <http://www.fs.fed.us/emc/applit/>.

FOR FURTHER INFORMATION CONTACT:

Assistant Director for Appeals and Litigation Deborah Beighley at (202) 205-1277 or Appeal Specialist Kevin Lawrence at (202) 205-2613.

Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On

December 3, 2003, President George W. Bush signed into law the Healthy Forests Restoration Act of 2003 (HFRA) to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during planning processes.

One of the provisions of the Act (section 105) required the Secretary of Agriculture to issue an interim final rule to establish a predecisional administrative review process for hazardous fuel reduction projects authorized by the HFRA and to promulgate final regulations after providing for public comments.

On January 9, 2004, the Forest Service published an interim final rule and request for comments (69 FR 1529). The interim final rule established a predecisional administrative review process at 36 CFR part 218, subpart A, and 36 CFR part 215 was amended to exempt hazardous fuel reduction projects authorized by the HFRA from the notice, comment, and appeal procedures set out at part 215.

In giving direct notice of the interim final rule, the Department also set a 90-day comment period and invited comments from individuals, industry, national organizations, and Federal agencies. A total of 67 comment letters were received from individuals, representatives of State government agencies, environmental groups, professional organizations, and industry. Each comment received consideration in the development of the final rule.

The Department has also used the intervening time since the comment period on the interim final rule to gain additional experience with its implementation. Forest Service records indicate approximately 80 decisions have been issued for fuels reduction projects under HFRA Title I authority since the beginning of 2005. The Agency's application of the predecisional objection process to these projects has provided valuable insight to