DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 4, 130, 131, 132, 137, and 138

[CGD 91–005]

RIN 2115–AD76

Financial Responsibility for Water Pollution (Vessels)

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing its interim regulations implementing the provisions concerning financial responsibility for vessels under the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (Acts). These provisions require owners and operators of vessels (with certain exceptions) to establish and maintain evidence of insurance or other evidence of financial responsibility sufficient to meet their potential liability under the Acts for discharges or threatened discharges of oil or hazardous substances. The regulations are administrative in nature and concern procedures for evidencing financial responsibility. In addition, the Coast Guard is removing obsolete provisions, which duplicate provisions in the rule.

EFFECTIVE DATE: March 7, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Catellano, (703) 235–4810, Chief, Vessel Certification, National Pollution Funds Center.

SUPPLEMENTARY INFORMATION:

Regulatory Information

This final rule is being made effective on the date of publication because the requirements contained herein were made effective by an interim rule published July 1, 1994. This final rule makes minor technical amendments and clarifications to the interim rule. No new requirements are being imposed, and the technical amendments and clarifications result in a reduced regulatory burden. Therefore, the Coast Guard for good cause finds, under 5 U.S.C. 553(d)(3), that this rule should be made effective in less than 30 days after publication.

Regulatory History

On September 26, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Financial Responsibility for Water Pollution (Vessels)'' in the Federal Register (56 FR 49006). The Coast Guard received over 300 letters commenting on this proposal. On July 21, 1993, the Coast Guard published a notice of availability of a Preliminary Regulatory Impact Analysis (PRIA) in the Federal Register (58 FR 38994). Over 60 comments were received. On July 1, 1994, the Coast Guard published in the Federal Register (59 FR 34210) an interim rule with request for comments and a notice of availability of the Final Regulatory Impact Analysis (FRIA). Seventy-eight comments were received on the interim rule. One commenter requested a public hearing on the interim rule, but it was determined that a public hearing would not further illuminate the comments provided to the docket or otherwise facilitate development of the final rule. On July 21, 1994, a congressional subcommittee, however, held a hearing on the interim rule. *Vessel Certificates of Financial Responsibility: Hearing Before the Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries,* 103d Cong., 2d Sess. (1994). Accordingly, a public hearing was not held by the Coast Guard.

Background and Purpose

This rulemaking implements the vessel financial responsibility provisions of the Oil Pollution Act of 1990 (Pub. L. 101–380; 33 U.S.C. 2701 *et seq.*) (OPA 90) and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*) (CERCLA or Superfund). The history of vessel financial responsibility in the United States and the reasons for this rulemaking are documented in detail in the NPRM, the interim rule, the PRIA, and the FRIA and, therefore, are not repeated in this preamble.

Discussion of Comments and Changes

General Issues

The preamble to the interim rule (59 FR 34210) requested that commenters not resubmit or restate comments already filed to the docket in this rulemaking. Rather, commenters were asked to focus on the changes made to the NPRM. It is the comments on these changes that are discussed in this preamble. Comments concerning the fundamental issues raised during the NPRM and PRIA stages of this proceeding already have been addressed in the preamble to the interim rule and in the FRIA. They will not be repeated in this preamble, except to note that one of the international shipping community's primary concerns with OPA 90 (i.e., potential liability under some circumstances for total costs and damages) is unrelated to Certificates of Financial Responsibility. Moreover, that concern goes to a statutory rather than administrative issue and is, therefore, beyond the scope of this rulemaking. Other comments are discussed below. Some corrections of a typographical or grammatical nature have been made and are not discussed in this preamble.

Shipyards

Some commenter stated that shipyards should remain subject to 33 CFR part 130, with its attendant lesser financial responsibility regime, because the potential pollution in shipyards is far less than at sea. Title 33 CFR part 138 does not apply to shipyards unless they are responsible for vessels. In setting liability limits and financial responsibility levels, Congress did not distinguish between vessels at sea and vessels in shipyards. Accordingly, the Coast Guard has no discretion to exempt shipyards from the requirements of the law.

The Coast Guard's financial responsibility regulations have always recognized the special circumstances associated with vessels in shipyards and will continue to do so. For example, the Coast Guard does not require a shipyard to obtain separate Certificates of Financial Responsibility (COFR's) for vessels being built, repaired, or scrapped. Nor are separate COFR's required for vessels held for sale or lease. This approach constitutes a substantial relaxation from the burden and cost of obtaining and maintaining separate COFR's, records, reports, and insurance or other coverage each time a vessel is added to or removed from the builder's, repairer's, scrapper's, seller's, or lessor's responsibility.

In this connection, it should be noted that, in practice, the Coast Guard's COFR regulations always have considered persons who hold vessels for sale to be the same as persons who hold vessels for lease in that both are eligible for the blanket coverage provided by a Master Certificate. This is because neither physically operates the vessels in the traditional sense and because, after these persons sell or lease a vessel, the new operator must obtain a new COFR. To give a more official status to

this Coast Guard interpretation and practice, § 138.110 (a) and (c), the appendices to part 138, and the definition of ''operator'' in § 138.20(b) have been amended to include the word ''lessor'' or ''lease,'' as appropriate.

One commenter recommended that a shipyard constructing a vessel under contract to the U.S. Navy or Coast Guard not be required to demonstrate financial responsibility for that vessel while it is under construction. This already is the case, because only a ''vessel'' is required to hold a COFR. Until a vessel under construction actually becomes a ''vessel,'' (i.e., an artificial contrivance used or capable of being used as a means of transportation on water) no COFR is required. When a vessel under construction reaches the stage of taking on the attributes of a ''vessel,'' a COFR is not required if the vessel is a public vessel. Thus, a shipyard would not have to cover a vessel being built for the Navy or Coast Guard if the vessel is a public vessel. This is necessarily a fact-based determination, dependent upon who has title to and responsibility for the vessel. If title has not passed and if the shipyard is responsible for the vessel (until delivery), then the shipyard is required to cover the vessel under its Master Certificate (or obtain a separate, individual COFR). On the other hand, if under the contract the Government holds title to the vessel before delivery, which is a common situation for Navy and Coast Guard vessels, then no COFR is required for this public vessel.

This commenter also recommended that the shipyard not be required to maintain the COFR for the Navy or Coast Guard vessel under repair in the shipyard. Again,this already is the case so long as the vessel is a public vessel—a vessel owned or operated by the United States and not engaged in commercial service. A shipyard/repair yard would not have to cover the vessel with a COFR in that circumstance.

Some commenters asserted that shipyards should not have to demonstrate CERCLA financial responsibility when no hazardous substances are present on vessels under the shipyard's control. As noted in the preambles to the NPRM and the interim rule, Congress declared that all self-propelled vessels over 300 gross tons, whether or not carrying hazardous substances, must demonstrate financial responsibility under CERCLA. Therefore, the Coast Guard has no discretion to adopt this suggestion.

Mobile Offshore Drilling Units (MODU's)

Some commenters sought clarification of the rule's implementation date applicable to a non-self-propelled MODU (most MODU's are non-self-propelled). When actually operating on site as an offshore facility, a MODU is exposed to tank vessel liability with respect to discharges of oil on or above the surface of the water (see the discussion at 59 FR 34213–34214). Accordingly, a non-self-propelled MODU is considered by the Coast Guard to be a non-self-propelled tank vessel when operating as an offshore facility. The financial responsibility implementation date under 33 CFR part 138 with respect to non-self-propelled tank vessels was July 1, 1995. If a MODU is tied up at a shoreside dock or otherwise not operating as an offshore facility, the Coast Guard does not require that MODU to demonstrate tank-vessel financial responsibility during that period. However, on and after July 1, 1995, before that MODU may operate as an offshore facility, it must demonstrate financial responsibility under 33 CFR part 138 because it is subject to tank-vessel limits. If a MODU remains out of work and it holds an unexpired pre-OPA 90/CERCLA COFR, the MODU would not be required to comply with this final rule until December 28, 1997, or at the time its pre-OPA 90/CERCLA COFR expires, whichever is earlier. See 33 CFR 138.15(b).

Some commenters suggested that MODU's be covered by a leaseholder because a leaseholder is required to demonstrate financial responsibility for all offshore facilities operating on its lease. Nothing in this final rule precludes a leaseholder from becoming a financial guarantor to a MODU owner/operator. In that case, the leaseholder would have to qualify as a financial guarantor under § 138.80(b)(4) of this final rule. But, a leaseholder's satisfaction of the financial responsibility requirements for leaseholders under the Department of Interior's forthcoming regulations for offshore facilities, alone, would not fulfill a MODU operator's vessel-related obligations under 33 CFR part 138. The ability to grant this suggested change lies with Congress. However, MODU operators are remind that OPA 90 does not preclude indemnification agreements between parties. Therefore, a MODU owner/operator could seek to have the leaseholder indemnify the MODU owner/operator for its tank vessel liabilities.

Two commenters who were concerned primarily with MODU's commented that, during the transition period to new part 138, a vessel owner/operator demonstrating financial responsibility under part 138 should be deemed to have satisfied the financial responsibility requirements of part 132. The thrust of this comment is not clear because the interim and final rules provide that a vessel operator demonstrating financial responsibility under part 138 no longer is required to maintain financial responsibility under part 132. This is specified in paragraphs (a)(1) and (a)(4) of § 138.15. In any event, as explained later in this preamble, part 132 is being removed from the Code of Federal Regulations.

Some commenters asserted that the Coast Guard should delay implementation of the rule for MODU's until the Minerals Management Service (MMS) of the Department of the Interior completes its contemplated rulemaking under 33 U.S.C. 2716, concerning establishment of financial responsibility for offshore leaseholders. These commenters assert that, since a MODU has potential tank-vessel liability when operating as an ''offshore facility'', MMS's interpretation of ''offshore facility'' will be pertinent when deciding under what circumstance the MODU is operating as an ''offshore facility.'' Although MMS's rulemaking may be pertinent to deciding when a MODU is operating as a offshore facility, that rulemaking has no bearing on the MODU operator's obligation to obtain a COFR under 33 CFR part 138. Under 33 U.S.C. 2701(18), a MODU in the navigable waters of the United States or using a place subject to the jurisdiction of the United States is a vessel, whether or not it is operating as an offshore facility, and, therefore, must have a COFR. The Coast Guard issues a ''one-size-fits-all'' COFR. A commercial guarantor executes a one-size-fits-all guaranty that covers the vessel under the law or laws (OPA 90 and CERCLA) that may apply at any time, and for whatever removal cost and damage liability (up to statutory limits) the vessel incurs under OPA 90 and CERCLA. Accordingly, the necessity for a vessel COFR is not dependent upon the promulgation by MMS of its regulation governing financial responsibility for offshore leaseholders. The Coast Guard, therefore, has not adopted this suggestion.

Some commenters believe that MODU's should not have to demonstrate financial responsibility at tank vessel limits, even under the limited circumstances required by OPA 90. This matter is fixed by statute (33 U.S.C. 2704(b)), and, accordingly, beyond the scope of this rulemaking.

Finally these commenters recommended that all MODU's (both self-propelled and non-self-propelled) have the same compliance date, with

that date being July 1, 1995, the non-self-propelled tank vessel compliance date. Given the date of this final rule, this issue is moot. The compliance dates for self-propelled MODU's and non-self-propelled MODU's operating as offshore facilities have passed.

Parts 130, 131, 132, and 137

Title 33 CFR parts 131, 132, and 137 are being removed since they no longer govern vessel financial responsibility. Section 131.0 provides that Trans-Alaska Pipeline COFR's will not be issued on or after July 1, 1995. Similarly, § 137.300 provides that Deepwater Port certifications of coverage of vessels will not be accepted on or after July 1, 1995. Accordingly, on and after July 1, 1995, by their terms, parts 131 and 137 are not operative and are being removed by this final rule.

Section 132.0 provides that Outer-Continental Shelf Lands Act COFR's for vessels will not be issued on or after December 28, 1997. At the time of publication of the interim rule, the Coast Guard was uncertain as to the number of non-tank vessels that carry Outer Continental Shelf-produced oil and, therefore, are required to hold part 132 COFR's. The Coast Guard has since determined that on or after July 1, 1995, no vessel operator will, in fact, be required or eligible to obtain or continue to hold a COFR under part 132. Accordingly, part 132 is also being removed.

Part 130, the remaining preexisting vessel financial responsibility part, is being phased out and will be removed after December 27, 1997, at the close of the transition schedule established by § 138.15(b) of the interim rule and, now, this final rule.

Section-by-Section Discussion

Section 138.12 Applicability

Paragraph (a)(2): Some commenters asked whether a vessel operating between the 3 and 12 mile limits and not engaged in transshipping or lightering oil is required to possess a COFR under 33 CFR part 138. Apparently, the confusion arises from the use of the phrase, ''navigable waters of the United States or any port or place subject to the jurisdiction of the United States,'' in 33 CFR 138.12(a)(2). The navigable waters of the United States, with respect to waters seaward of the coastline, are the territorial sea. OPA 90 defines ''territorial seas'' as extending to the three mile limit. Hence, the waters between the 3 and 12 mile limits are not part of the navigable waters of the United States.

''Port or place subject to the jurisdiction of the United States'' also is used in the Ports and Waterways Safety Act (33 U.S.C. 1223) and in 46 U.S.C. 2101(39) (definition of ''tank vessel''). The Coast Guard has interpreted this phrase to mean a port or place in the navigable waters of the United States, a deepwater port licensed by the United States, and an Outer Continental Shelf structure permitted under the Outer Continental Shelf Lands Act. It does not include, by itself, the waters between the 3 and 12 mile limits.

Accordingly, a vessel operating between the 3 and 12 mile limits and not engaged in lightering or transshipping oil to a place subject to the jurisdiction of the United States is neither operating in ''navigable waters of the United States'' nor in or at a ''port or place subject to the jurisdiction of the United States.'' That vessel would not require a COFR but would incur liability for an incident under OPA 90 and for a release or threatened release under CERCLA. Likewise, a MODU that arrives from foreign waters to a location on the U.S. Outer Continental Shelf, but that is not yet operating as an offshore facility, would not have to demonstrate financial responsibility under part 138. When the MODU is operating as an offshore facility, a COFR under part 138 would be required, since the offshore facility on the Outer Continental Shelf is a place subject to the jurisdiction of the United States.

Paragraph (a)(2)(ii): This paragraph states that a non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo is excepted from 33 CFR part 138. A commenter inquired as to whether a barge that carries only liquefied petroleum gas (LPG) (primarily butane or propane) and carries no oil as fuel or cargo and no hazardous substances as cargo is entitled to this exception. The Coast Guard confirms that this barge is not required to obtain a COFR under part 138, since propane and butane are not oil, and not CERCLA hazardous substances (42 U.S.C. 9601(14)). Similarly, liquefied natural gas (LNG) is neither a hazardous substance nor an oil. However, condensate from natural gas is a naturally occurring oil.

One commenter, on behalf of the inland and coastal barge and towing industry, referred to a situation involving dry cargo barges that from time to time use small, portable pumps to pump water out of void compartments or cargo boxes. These pumps carry not more than five gallons of fuel and are neither integral to nor stored aboard the barges in question. These small pumps are maintained aboard the towing vessels (which, if over 300 gross tons, must carry COFR's) and are hand-carried aboard certain dry cargo barges by deckhands for temporary operation while the barges are either underway or in fleeting areas.

The Coast Guard agrees that it is unnecessary to require dry cargo barges, that do not otherwise carry oil or hazardous substances, to obtain COFR's solely because hand-carried pumps are temporarily aboard. Requiring COFR's in this circumstance would constitute an overly narrow interpretation of OPA 90. Accordingly, the final rule makes it clear that the temporary use of small, portable, non-integral pumps aboard non-self-propelled vessels, which vessels do not otherwise require COFR's, should not be regarded as triggering a COFR requirement. The definition of ''fuel'' in § 138.20(b) has been amended to exclude from the term ''equipment'' the pumps discussed here, thereby clarifying the exception in paragraph (a)(2)(ii).

Section 138.15 Implementation Schedule

Some dry-cargo vessel representatives requested that there be a uniform implementation date of December 28, 1997, for all non-tank vessels. They argue that the phased implementation period places some vessels at a competitive disadvantage to others. The Coast Guard would have preferred a uniform implementation date for all non-tank vessels, but that date would have been one closer to July 1, 1995. Recognizing the impracticalities of replacing all non-tank vessel COFR's (about 14,000) by one date, the Coast Guard opted for the least disruptive approach (to the Coast Guard and to vessel owners and operators) of replacement—the expiration date of the old COFR. Of course, an operator, if it so chooses, may replace an old COFR at an earlier time.

There are other circumstances not germane to this discussion (such as a change of operator) in which a new OPA 90/CERCLA COFR may have to be obtained at an earlier date. In addition, compared to tank vessels, the cost of obtaining a non-tank vessel COFR guaranty from a commercial source is not likely to place one vessel operator at a significant competitive disadvantage over another. At this time, to change the implementation schedule would disadvantage those owners and operators that already have complied with the new COFR regime and those that have made business decisions respecting compliance. The Coast Guard believes that this final rule already has

been delayed too long. Accordingly, it has been decided that the implementation schedule in the interim rule is reasonable and should not be amended.

Some non-tank vessel representatives also recommended that, when an operator holding pre-OPA 90/CERCLA COFR's for vessels in its fleet decides to add a new vessel to the fleet, that operator should be allowed to obtain a pre-OPA 90/CERCLA COFR bearing the same expiration date as the COFR's for the other vessels in the fleet. Under the interim rule, the operator must obtain a new OPA 90/CERCLA COFR for that vessel.

The Coast Guard is not adopting this suggestion. OPA 90 was enacted five years ago, and it is desirable that all vessels be covered by new OPA 90/CERCLA COFR's as soon as possible. Accordingly, any vessel for which there is a new operator or that enters service after December 28, 1994, must be covered by a new OPA 90/CERCLA COFR. This process ensures that the greatest number of vessels are covered by new COFR's at the earliest possible time, without disturbing the principle that a vessel lawfully operating with a pre-OPA 90/CERCLA COFR may continue to do so until the conditions for obtaining a new COFR exist.

Section 138.20 Definitions

Exclusive Economic Zone (EEZ): Although this term is defined in section 1001(8) of OPA 90, there apparently is some confusion as to where the waters of the EEZ begin. For COFR purposes, the waters of the EEZ begin immediately after the three-mile territorial sea, i.e., waters seaward of the three-mile territorial sea are waters of the EEZ.

Fuel: As discussed earlier, this definition has been amended to exclude from the meaning of ''equipment'', portable water pumps holding not more than five gallons of fuel, provided these pumps are not permanently or continuously stored aboard the non-self-propelled vessels in question. This amendment will have the effect of narrowing the meaning of ''fuel'' and thus will preclude unintended and unnecessarily burdensome interpretations of OPA 90's CFR requirements.

Hazardous substance: One commenter recommended that the distinction between a ''hazardous substance'' and a ''hazardous material'' be clarified. Each of these terms is defined either in CERCLA or in the interim rule. The most important distinction is that ''hazardous material'' is relevant only to the determination of whether a vessel is a ''tank vessel'' under the rule. ''Hazardous substance'' is defined by section 101 of CERCLA (42 U.S.C. 9601) and relates to the substances for which CERCLA liability may attach with respect to a release or threatened release. Not all hazardous materials are hazardous substances. Butane and propane (liquefied petroleum gas (LPG)), for example, are hazardous materials, but not hazardous substances. Thus, under OPA 90, a self-propelled vessel carrying butane or propane is a tank vessel and must demonstrate financial responsibility in accordance with this rule. However, the escape of butane or propane alone (that is, not also triggering, for example, a substantial threat of a discharge of oil) would not result in either OPA 90 or CERCLA liability. (Non-self-propelled vessels carrying only LPG are exempt from these COFR requirements.) The Coast Guard has not further defined these two terms because they already are defined in § 138.20 and in CERCLA.

Hazardous material: Some commenters are still concerned that a vessel carrying non-liquid hazardous materials might be considered a tank vessel. Inasmuch as the definition of ''hazardous material'' contained in the interim rule and this final rule uses the modifier, ''liquid,'' the definition need not be further amended (see 59 FR 34217–34218). The meaning of this modifier is that a vessel that carries, or is constructed or adapted to carry, bulk liquid hazardous materials would be a tank vessel, provided it met at least one of the other criteria in 33 U.S.C. 2701(34). It also means that a vessel carrying non-liquid hazardous materials or liquid hazardous substances that are not hazardous materials, or both (and not constructed or adapted to carry bulk liquid hazardous materials or oil) is not a tank vessel.

Operator: One commenter observed that this definition should be reworded to define more clearly the intended meaning. The primary reason for this definition is to identify the operator entity who should apply for a COFR. The definition is not intended to address the issue of what other entities, because of their specific relationship to a vessel, Congress may have intended to be considered responsible parties under OPA 90 or CERCLA. The Coast Guard also designed this definition of a COFR applicant (1) to provide flexibility to those associated with the operation of vessels when deciding what constitutes a fleet; (2) to encompass persons who have custody of or are responsible for vessels held solely for building, repairing, sale, lease, or scrapping and; (3) to exclude certain so-called ''operators'' such as traditional time or voyage charterers (see 59 FR 34217).

During the tank vessel implementation phase of the interim rule, this definition accommodated persons who wished to become responsible parties for a fleet of consolidated, subsidiary/affiliated company vessels. These persons wished to become ''operators'' of fleets for purposes of determining the amount of net worth required to satisfy the self-insurance/financial guarantor criteria. This consolidation of subsidiary/affiliated company vessels into one fleet also benefits potential claimants in that the parent or other ''operator'' is clearly the responsible party for all the vessels, thereby bypassing any arguments associated with limiting the available assets to those of a single vessel-owning and operating company.

The Coast Guard is not aware of a general problem with the current definition, which seems to have struck a balance between the objectives of the law and the far broader meaning of ''operator'' sometimes used in the maritime industry. Therefore, this suggestion was not adopted.

Tank vessel: A few commenters continue to assert that liquefied natural gas (LNG) and LPG carriers are not tank vessels. The Coast Guard has reviewed this issue once more and concludes that its interpretation, as stated in the interim rule preamble (59 FR 34218), is correct. A vessel carrying LNG or LPG clearly meets one criterion in 33 U.S.C. 2701(34) (the definition of ''tank vessel'') as these materials meet at least the combustibility criterion in the definition of ''hazardous material.''

Alternatively, one commenter recommends that LNG be exempted from the definition of ''hazardous material,'' citing as precedent another Coast Guard rule published at 58 FR 67988 (December 22, 1993). This regulation amended 33 CFR part 155, which concerns discharge removal equipment for vessels carrying oil. The reason that the preamble to part 155 states that LNG is not defined as oil or a hazardous material is because the applicable definition of ''hazardous material'' for purposes of 33 CFR part 155 is contained at 33 CFR 154.105, which provides that *Harzardous material* means a liquid material or substance, other than oil or liquefied gases, listed under 46 CFR 153.40 (a), (b), (c), or (e).'' The statutory basis for this is 33 U.S.C. 1231, not OPA 90. Accordingly, part 155, having a different purpose and statutory basis, does not serve as any precedent for 33 CFR part 138. Since Congress has clearly expressed its intent in OPA 90 that bulk

liquid hazardous material carriers meeting the criteria in 33 U.S.C. 2701(34) be considered tank vessels, the Coast Guard does not have the discretion to adopt this recommendation. It is worthy of mention again, however, that LNG and LPG barges (that do not otherwise carry oil or hazardous substances) are not required by OPA 90 or CERCLA to obtain COFR's, not because LNG and LPG are not hazardous materials, but because they are not hazardous substances as defined in CERCLA.

One commenter suggested that the types of fishing vessels that are considered tank vessels should be clarified. If there is ambiguity in this regard, it stems from the language of section 5209 of Public Law 102–587, which provides that a fishing or fish tender vessel of 750 gross tons or less, that transfers fuel without charge to a fishing vessel owned by the same person, is not a tank vessel. Nevertheless, it is clear that any other fish tender or fishing vessel that transfers fuel to another vessel and that otherwise meets the criteria of the definition must be considered a tank vessel. A fish tender or fishing vessel that is also a tank vessel, as defined in this rule, must demonstrate financial responsibility in accordance with this rule. Part 138 needs no further clarification on this point.

Section 138.30 General

Paragraphs (c), (d), and (e) (gross tons): One commenter asserted that the sentence specifying use of gross tons as measured under the International Convention on Tonnage Measurement of Ships, 1969, for purposes of determining the limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA was not properly adopted under 46 U.S.C. 14302. The Coast Guard disagrees. Title 46 U.S.C. 14302 clearly authorizes the Secretary (the Secretary delegated this authority to the Commandant of the Coast Guard) to specify the statutes for which tonnage as measured under the Tonnage Convention is to be used to determine the application and effect of those statutes. The Coast Guard has properly exercised this authority, and the authority citation to 33 CFR part 138 identifies 46 U.S.C. 14302 as the authority for paragraphs (c) through (e).

Section 138.80 Financial Responsibility, How Established

A commenter recommended that the Coast Guard adopt a particular State's method of financial responsibility in fulfillment of OPA 90's requirements, if the State scheme is at least as stringent as the Federal scheme. One State suggested that the Coast Guard not implement the Federal law because the resulting regulations would conflict with and cause disruption to the implementation of that State's own regulations, which did not require direct action and which allowed an unlimited number of defenses and exclusions.

OPA 90 does not preempt State law, and therefore, each State may design its own version of a financial responsibility regime. On the other hand, the Coast Guard believes that a uniform financial responsibility regime in the United States is desirable and, rather than adopt a particular State regime, the Coast Guard believes that its regime should serve as the model. In any event, State financial responsibility regimes may address issues not covered by the Federal system or may lack some of the elements in the Federal system. The Coast Guard, therefore, has not adopted this recommendation.

One commenter stated that the Coast Guard should promulgate acceptability standards for guarantors, including insurance guarantors. This issue was discussed in the preamble to the interim rule at 59 FR 34219, wherein the Coast Guard indicated it was evaluating the possibility of a future rulemaking on this subject. No rulemaking on this matter is mandated by statute or other principle of law. Rather, this would be a purely discretionary regulation. In the time period since publication of the interim rule, there has been much debate about regulations in general, with the primary focus being to eliminate all but the most necessary rules. Consequently, the Coast Guard has decided not to proceed with a discretionary rulemaking on this subject, but rather to continue to make its 25-year old acceptability policy available to any interested person upon request.

Also, this section has been amended in response to the passage of the Edible Oil Regulatory Reform Act (Pub. L. 104–55), which was signed by the President on November 20, 1995. This law requires that, in issuing a regulation, the head of any Federal agency shall differentiate between fats, oils, and greases of animal, marine, or vegetable origin and other oils and greases. It also lowers the liability limit of certain tank vessels carrying fats, oils, and greases of animal, marine, or vegetable origin.

Paragraph (b)(1) (Insurance): Two commenters stated that the Coast Guard has failed to address ''bad faith'' issues respecting an insurance guarantor. The concern is that if an insurer is found by a court to have acted in bad faith with respect to the insured party or a third party claimant, a court might hold a guarantor liable in excess of the amount of the part 138 insurance guaranty. ''Bad faith'' is an insurance concept that has existed for many years. In some situations, an insurer against whom a bad faith claim has been successfully prosecuted (by an insured) may have to pay a penalty which results in a total payment exceeding policy limits. This is because the bad faith action often may be pursued as a tort, which is an action separate from enforcement of the insurance contract.

The chance of success of a bad faith claim asserted by a claimant other than the insured against a COFR guarantor, for some act or omission by the guarantor, is unknown. COFR guaranties have been required in this country since 1971 and in other countries since the mid seventies. The Coast Guard is unaware of any case in which bad faith has been asserted successfully by a third party claimant against an insurer in the capacity of a COFR guarantor, i.e., financial responsibility provider.

The Coast Guard nevertheless reads the law to mean that the costs and damages for which a person, as a guarantor, may be liable under OPA 90 or CERCLA are strictly limited to the amount of the guaranty. If a bad faith action were to be pursued successfully in court by a third party claimant against an insurance guarantor, any awarded amount exceeding the guaranty amount would not be considered as compensation under OPA 90 or CERCLA. Such a court award would be considered liability for an amount outside the scope of OPA 90 or CERCLA. Even CERCLA section 108(d)(2) (42 U.S.C. 9608(d)(2)), referenced by one of the commenters, acknowledges the possibility of bad faith actions under laws other than CERCLA. CERCLA, however, does not generally provide third parties with a cause of action for damages. The well known concept of bad faith pertaining to the insurance industry is beyond the scope of this rule, and the Coast Guard has no intent or authority to expand or restrict causes of action related to bad faith.

The Coast Guard does not intend anything in this discussion of bad faith to detract from the central, underlying principle of guarantorship under OPA 90/CERCLA and this rule (as well as predecessor laws and rules). This principle is that, in return for the statutorily guarantied right to limit liability and right to the defenses specified in a guaranty form, a guarantor agrees to waive all other defenses, including nonpayment of premium, non-United States venue, and lack of

personal jurisdiction by United States courts.

Paragraph (b)(2) (Surety bond): A few commenters objected to the reinstatement provision of the surety bond guaranty form, which provides that for any monies paid by a surety guarantor, the amount of the surety bond guaranty automatically is reinstated to an applicable amount not exceeding its original penal amount, until the bond is cancelled. These commenters asserted that no surety company would undertake this obligation. In fact, over 140 vessels are covered by surety bond guaranties that contain the reinstatement clause, and the surety bond guaranty form published in 33 CFR part 130 for many years has contained a clause of similar impact. Accordingly, the Coast Guard does not see a reason to delete this clause from the surety bond guaranty form.

In the interim rule, the Coast Guard limited joint participation by co-guarantors to a system in which up to four signatory guarantors could appoint a lead guarantor and execute a guaranty form. One commenter involved in arranging surety bond guaranties recommended that up to 10 guarantors be allowed to participate in a surety bond guaranty. This would expand the availability of high-dollar limit surety bond guaranties, due to the United States Treasury-imposed underwriting limits on individual surety companies. The Coast Guard will accede to this request and has increased to 10 the number of co-guarantors allowed on a single surety bond guaranty. The Coast Guard has not adopted this number for the other types of guaranties, as no commenter requested an increase in the number of guarantors for other forms of guaranty, and no independent justification was apparent.

Although the Coast Guard will allow up to 10 sureties to sign a single surety bond guaranty, co-guarantors are reminded that § 138.80(c) provides that, if one or more guarantors do not specify percentages of participation, then, as between or among them, they share joint and several liability for the total of the unspecified portion. Those guarantors specifying percentages will be liable only up to their respective specified limits.

Minor technical improvements to the surety bond guaranty form were suggested. These are: changing the signature page to provide only one, generic signature area for a principal without unnecessarily distinguishing the type of principal signing; requiring that the State of incorporation be shown with the principal's name (rather than elsewhere on the bond); and allowing notice of termination to be sent by means other than only certified mail. The latter suggestion is being adopted, and an amendment is being made to the prescribed surety bond guaranty form itself. The other suggested minor changes are not objectionable, but will not be made to the prescribed form. Rather, these other minor changes regarding the signature page will be acceptable to the Coast Guard if individual sureties choose to make the changes themselves on particular forms filed with the Coast Guard.

Paragraph (b)(3) (Self-insurance): One commenter stated that the amount of net worth required by the interim rule is insufficient in that there may not be sufficient funds available should more than one vessel within a self-insured fleet suffer incidents. This commenter also recommended that quarterly reports be filed and that only equity assets be counted in the net worth and working capital computations. The Coast Guard sympathizes with this comment and has stated before that self-insurance is far from an ideal method of demonstrating financial responsibility. Nevertheless, self-insurance has been allowed for the past 25 years because it has been a method specifically intended by Congress.

Until December 27, 1994, self-insurance and financial guaranties (the latter being based on self-insurance criteria) had formed a very small component of the body of ''evidence of financial responsibility'' related to vessels operating in U.S. waters. Since December 27, 1994, however, a far greater number of vessels have obtained COFR's based on these two methods. While this tends to support the commenter's point, rather than escalating the self-insurance criteria at this time, the Coast Guard intends to watch very carefully the performance of self-insurers and financial guarantors. Should one or the other of these methods prove to be inadequate, the Coast Guard will initiate a rulemaking to revise the criteria underlying these methods.

One commenter asked that the rule allow for a waiver of the U.S.-based asset requirement. The interim rule and the FRIA explain the principle underlying the use of only U.S. assets. A waiver of the U.S. asset test would be inconsistent with this principle. Accordingly, this suggestion has not been adopted.

A commenter on behalf of the American Institute of Certified Public Accountants recommended minor technical amendments to accord with standard accounting terminology and practice. Most of these recommendations have been adopted and incorporated in § 138.80(b)(3)(i). These changes are not substantive.

Paragraph (b)(4) (Financial Guaranty): One commenter asserted that no acceptability criteria were specified for financial guarantors. In fact, financial guarantors must meet the self-insurance requirements specified in § 138.80(b)(3), which provide very specific acceptability criteria.

Some commenters recommended that, when a parent company serves as financial guarantor for one or more subsidiary companies, the subsidiaries should be treated as one, collective ''fleet'' for purposes of determining the required amount of net worth and working capital. Section 138.80(b)(4) of the interim rule provides that ''* * * a person that is a financial guarantor for more than one applicant or certificant shall have working capital and net worth no less than the aggregate total applicable amounts of financial responsibility provided as a guarantor for each applicant or certificant * * *.'' Title 33 CFR 130.80(b)(4) contained a similar restriction. Since each subsidiary is considered a separate applicant, the aggregation requirement pertains. On the other hand, if the parent company bareboat charters all of the subsidiary companies' vessels, or organizes itself so that it meets the rule's definition of ''operator'' and serves as the responsible party (operator) of all of those vessels (that is, all of the subsidiaries' vessels are ''operated'' by the ''responsible party'' parent), then the parent may self-insure and thus avoid the aggregation requirement.

The commenters assert that in some situations, labor relations or other considerations may preclude a parent from serving as ''operator'' (and thus as a self-insurer) for all the subsidiaries' vessels. These commenters argue that the aggregation requirement is unfair in not recognizing that the source of funds is the same, the collective company. These commenters assert, therefore, that there is no rational basis for requiring the parent to demonstrate aggregate amounts of net worth where the parent wishes to be a financial guarantor for all the vessels in the subsidiaries' fleets, rather than a self-insurer with responsible party status for those vessels. A specific amendment was proposed, namely, that the rule allow the parent to serve as financial guarantor without the aggregation requirement in cases where the subsidiaries are wholly owned by the parent, or where the parent owns at least 80 percent of the total combined voting power of all classes of stock

entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the subsidiary corporations.

The Coast Guard has decided not to adopt this recommendation. From claimants' and taxpayers' standpoints, the Coast Guard does not consider self-insurance and financial guaranties to be ironclad methods of evidencing financial responsibility. Assets can be dissipated without the Coast Guard's knowledge, and continuous monitoring of a self-insured entity's asset base is not feasible. Despite the fact that most of the companies that self-insure or use financial guaranties are large, solvent companies that are not expected to ''walk away'' from a spill, insurance and surety bond guaranty methods (as well as the ''other evidence'' method) provide per vessel, per incident protection backed by reserves and independent reinsurance. The larger the insured or bonded fleet, the larger the amounts of applicable reserves and reinsurance. This generally is not true in the case of self-insurance and financial guaranty.

Accordingly, the Coast Guard believes that any amendment to the financial guarantor provision that reduces the protections afforded by that provision is inconsistent with the concept of financial responsibility. Although there may be a perceived anomaly in the rule, the Coast Guard believes the benefits of the aggregation principle far outweigh any possible anomalies or inequities. For these reasons, the Coast Guard has not adopted this suggestion.

Paragraph (b)(5) (Other evidence): Some commenters felt that before an ''other evidence'' method is accepted by the Coast Guard, public notice of the proposed method should be published in the Federal Register, so that interested organizations might comment on the proposal. The concern is that by accepting an innocent looking ''other evidence'' method, the Coast Guard might allow a guarantor to avoid direct action or other provisions designed to ensure the availability of funds for claimants.

The Coast Guard has repeatedly stated its position that any ''other evidence'' provider is a statutory ''guarantor'' subject to all the rights and obligations of a guarantor. The interim rule at 33 CFR 138.80(b)(5) explicitly requires an ''other evidence'' provider to include in the guaranty form all the elements described in paragraphs (c) and (d) of § 138.80. These are the paragraphs that preclude loss of the protections afforded claimants, no matter what novel approach a new ''other evidence'' method may take. Because of these built-in constraints, the Coast Guard does not believe the concerns expressed are warranted or justify the delays necessarily inherent in affording the public an opportunity to comment on proposed ''other evidence'' schemes. Also, the public already has commented, twice, on the parameters and substance of the ''other evidence'' method.

Paragraph (c): This paragraph is being amended to specify that not more than 10 guarantors, rather than four as contained in the interim rule, may execute a surety bond guaranty. The reasons for this change are explained under paragraph (b)(2) of this section.

Paragraph (d) (Direct action): One commenter recommended that fraud or intentional misdeclaration be allowed as an insurance guarantor's defense to a direct action. The Coast Guard is not adopting this recommendation because to do so would be inconsistent with the purpose of the guaranty—to ensure that the polluter pays for removal costs and damages resulting from an incident or a release or threatened release. The key here is that the Coast Guard cannot accept insurance policies alone in the financial responsibility program because only insurance guarantors are able to provide the assurance mandated by OPA 90 and CERCLA. Not even the international COFR regime, prescribed by international treaty, accepts a standard insurance policy as evidence of financial responsibility—direct action without policy defenses is required by the international regime, and no standard marine liability insurance policy of which the Coast Guard is aware meets that requirement.

One commenter observed that the third enumerated defense does not provide for concursus of claims. ''Concursus'' is a procedure associated with a limitation action under the 1851 Limitation of Liability Act (1851 Act). Concursus technically is a ''procedure'' rather than a ''defense,'' and was not provided for under OPA 90 or CERCLA. The third defense was not intended to serve as a concursus mechanism, but, in view of the unavailability of the 1851 Act in court actions under OPA 90 or CERCLA, was intended to reinforce OPA 90 and CERCLA's limitation of a guarantor's liability with respect to an incident, release, or threatened release. In addition, its purpose was to ensure that, by becoming a guarantor under this regulation, the guarantor has not thereby also agreed to be a guarantor under State or local law, or other Federal law, solely by virtue of being an OPA 90/CERCLA guarantor. As stated at 59 FR 34223, ''Right or defense number three confirms that a guarantor shall have the right to limit its OPA 90/CERCLA liability under its guaranty to the amount of that guaranty, despite the number of claimants and venues in which claims are brought against the guarantor for the same incident, release or threatened release.'' The Coast Guard has no authority by regulation to create, or to impose on claimants and the courts, a concursus mechanism.

Paragraph (f) (Total applicable amount): Some commenters pointed out that an oil carrying barge that does not carry hazardous substances as cargo is exempt from CERCLA's COFR requirements and, therefore, should not be required to demonstrate evidence of financial responsibility for CERCLA liabilities. The Coast Guard agrees. It appears that the discussion in the preamble to the interim rule on a closely related point may have created confusion, but the fact remains that the interim rule does not require the above described barge to demonstrate evidence of financial responsibility under CERCLA. Indeed, the rule cannot contain such a requirement since section 108(a) of CERCLA (42 U.S.C. 9608(a)) excepts from the CERCLA financial responsibility requirement a non-self-propelled barge that does not carry hazardous substances as cargo.

The preamble to the interim rule (in particular, the discussion at 59 FR 34215) did not discuss every possible fact situation involving the requirement to comply with CERCLA's financial responsibility requirements. It focussed instead on self-propelled vessels (which always must comply) and on barges that sometimes must comply with the CERCLA requirement, that is, that sometimes carry oil and sometimes carry hazardous substances, but not both at the same time. The preamble discussion did not discuss the oil barge operator that intends never to carry hazardous substances as cargo, which is the type of barge referred to by this commenter.

The interim rule, 33 CFR 138.12(a)(2)(ii), exempts from part 138 only a barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo. If a barge, otherwise subject to part 138, carries either of these commodities, the barge is subject to the COFR requirements. Since an oil-carrying barge that is not carrying hazardous substances as cargo is not subject to CERCLA's financial responsibility requirement, and probably unable to incur liability under CERCLA, its operator has been in the past able to obtain a premium savings, all else being equal, when purchasing a commercial

COFR guaranty for its OPA 90 (and part 138) financial responsibility obligation.

The Coast Guard did not under 33 CFR part 130 and does not now provide COFR's or guaranty forms for the carriage of oil only or hazardous substances only. This is because of the benefits, to both the Coast Guard and the regulated community, of having a one-size-fits-all COFR and guaranty. The paperwork, delays, personnel resources, increased user fees and enforcement burden on industry simply could not be justified. (As noted in the preamble to the interim rule (59 FR 34211), Congress intended that COFR's be one-size-fits-all.) Under this one-size-fits-all scheme, in the event that a barge operator illegally or otherwise carried a hazardous substance as cargo and experienced a release, the commercial COFR guarantor ultimately might be responsible under its guaranty for the costs and damages associated with the release. However, so long as the barge does not carry hazardous substances as cargo, the CERCLA reference on the COFR and in the guaranty have no operative effect, and both the industry and Government benefit. (See 59 FR 34215.)

An accidental but welcome benefit of the Coast Guard's one-size-fits-all COFR policy is that operators who innocently carry hazardous substances without realizing it are protected not only with respect to OPA 90/CERCLA removal and damage liability, but from the rather stringent penalty and vessel seizure sanctions as well. Instances of mistaken identity of cargo are not unknown.

A self-insurer of a barge that carries only oil (as ''oil'' is defined in OPA 90) also receives a one-size-fits-all COFR, but that fact does not mean that the self-insurer in this case had to demonstrate evidence of financial responsibility for CERCLA purposes. Rather, this self-insurer, in order to qualify as such under the rule, shows net worth in the flat amount of $5 million, plus the applicable amount under part I of the applicable amount table. This is meant to require all self-insurers to demonstrate that, even in the event of some economic misfortune, they still may be able to satisfy a statutory limit of liability. This $5 million minimum ''buffer'' in the self-insurance standard is imposed by a simple cross reference (33 CFR 138.80(b)(3), introductory paragraph) to the CERCLA $5 million minimum in the applicable amount table for a vessel carrying hazardous substances as cargo. The Coast Guard could have chosen to fashion additional regulatory formulae by which to compute a larger amount of net worth. Instead, it settled on $5 million as a balance between its (and at least one commenter's) desire for larger amounts of net worth and the desires of those who advocate no minimum. The use of the cross-reference to the CERCLA minimum in the applicable amount table is an easily understood, no-calculation-required, convenient method of determining a self-insurance net worth requirement. It is a method that covers all types of cargo for all types of vessels. There is no need for more complicated formulae.

This ''$5 million plus'' net worth requirement follows precedent established for self-insurers demonstrating OPA 90-like evidence of financial responsibility under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653) (TAPAA) (see 33 CFR part 131). TAPAA, which required evidence of financial responsibility for vessels, established a limit of liability, per vessel per incident, of $14 million. A self-insurer of one vessel under part 131 had to demonstrate a U.S.-based net worth of at least $19 million. Thus, to increase the chance that adequate funds would be available in the event of an oil spill, for many years the Coast Guard required (with respect to self-insurance) for these vessels a minimum of $5 million more in net worth than the liability limit set by statute. This requirement was imposed on the basis of the rulemaking authority granted by Congress to assure that there would be sufficient resources available to meet the liability imposed by the statute and is the approach retained in 33 CFR 138.80(b)(3) for all self-insurers, including a self-insurer of a barge carrying only oil.

This $5 million buffer in the part 138 self-insurance standard is far less stringent than in the part 131 self-insurance standard. For example, a self-insured operator of two TAPAA oil barges under part 131 was required to demonstrate $24 million, which is a $10 million buffer. Part 138 does not require multiple buffer amounts in the case of self-insurance.

A financial guarantor under part 138 also must show net worth of at least $5 million since a financial guarantor must satisfy the self-insurance formula. The financial guarantor would also be required to execute the one-size-fits-all financial guaranty, but, so long as a barge was not carrying hazardous substances as cargo, the reference in the financial guaranty to CERCLA would have no operative effect—the same as for commercial guarantors.

If all that was required of a self-insurer or financial guarantor was a single incident dollar limit, self-insurance and financial guaranty could not be justified as a method of demonstrating financial responsibility under OPA 90 or CERCLA. Accordingly, the Coast Guard is not amending this paragraph.

Paragraphs (f)(1)(i) and (f)(1)(ii): These paragraphs are being changed to conform this final rulemaking to the Edible Oil Regulatory Reform Act (Pub. L. 104–55), which amends section 1016(a) of OPA 90 (33 U.S.C. 2716(a)) on financial responsibility. These changes in the final rule reflect Congress's intent that tank vessels on which (1) no liquid hazardous material in bulk is being carried as cargo or cargo residue and (2) the only oil carried as cargo or cargo residue is oil defined in section 2 of Public Law 104–55 have the same limits of liability as non-tank vessels.

Section 138.90 Individual and Fleet Certificates

One commenter asserted that the Coast Guard's concept of a fleet certificate is much too narrow. This commenter believes the Coast Guard should allow for a fleet certificate in the form this commenter believes is provided for in OPA 90 (33 U.S.C. 2716(a)), namely, one Certificate (COFR) to cover any and all vessels in a fleet. The commenter misconstrues this provision of the law to the extent the commenter believes it creates a ''fleet certificate.'' What this provision of law does is to allow a fleet operator to avoid having to aggregate the gross tons of all the vessels of a fleet in order to determine the amount of financial responsibility to be demonstrated. The provision does not mean that only one COFR is required for the entire fleet. Therefore even though an operator of a fleet is permitted to demonstrate financial responsibility without regard to the aggregated tonnage of the fleet, the operator generally must obtain a COFR for each vessel in the fleet. As used in 33 CFR 138.90, ''fleet certificate'' is an unrelated regulatory creation of the interim (and final) rule for the benefit of a limited class of barges, that is, non-tank barges that normally do not require COFR's. The commenter's recommendation has not been adopted.

It appears, however, that there is some confusion as to exactly what type of non-tank barges are eligible for coverage under this new fleet certificate concept. In the preamble to the interim rule at 59 FR 34221, one example was a fleet of deck barges over 300 gross tons, most of which might never carry oil or hazardous substances, but, one or two of which possibly might have to carry a barrel of oil, or a hazardous substance, or both on short notice in the future.

The fleet certificate concept has no applicability to barges that normally require COFR's because of the routine carriage of oil as cargo or fuel, or hazardous substances as cargo. A construction company's barge, over 300 gross tons, that is used as a more or less permanent platform for a gasoline or oil-powered crane, requires an individual COFR that names the barge. If, however, that same barge had no crane or other oil or gas-powered equipment on board, and carried no oil or hazardous substances as cargo, that barge and its sister barges would be candidates for a fleet certificate (i.e., sooner or later one or more of the barges would be needed immediately to move a crane or other equipment down river, a few barrels of gasoline from one place to another, etc.). In the final analysis, except in the case of a self-insurer, the eligible types of non-tank barges will be determined by the guarantor willing to issue a guaranty for a fleet certificate. If the reader notices in the fleet certificate concept a high degree of flexibility, that is in fact that the Coast Guard has in mind for these low risk, non-tank barges that might one day suddenly discover a need to comply with OPA 90/CERCLA financial responsibility, but have no time to accomplish the paperwork process attendant to individual COFR's.

Appendices B Through F

These appendices are, respectively, the insurance guaranty form, the master insurance guaranty form, the surety bond guaranty form, the financial guaranty form and the master financial guaranty form.

Several commenters recommended that each of the guaranty forms be amended to reflect the Coast Guard's policy and intent under 33 CFR part 138 that all payments for costs and damages made by or on behalf of a responsible party under OPA 90 with respect to an incident or under CERCLA with respect to a release or threatened release, reduce the guarantor's obligation with respect to that incident or release or threatened release by a corresponding amount. For example, assume that a vessel operator has obtained an insurance guaranty containing OPA 90 coverage of $40 million (the amount of that operator's particular statutory limit of liability under OPA 90) and that an oil spill occurs resulting in OPA 90 removal costs and damages of $45 million. Assume further that the operator's Protection and Indemnity Club (P&I Club) (which is not the insurance guarantor) agrees to pay, under its indemnity policy, only $40 million on behalf of its assured. In this case, the guarantor has no further liability under its guaranty, with respect to that incident, because the responsible party's limits under OPA 90 have been paid—which under this rule is all any guarantor is required to ensure. Had the Club paid only $39 million, the guarantor's liability under its guaranty would have been reduced by $39 million.

The purpose of financial responsibility is to assure that the responsible party can pay removal costs and damages up to its statutory limit of liability. In the above hypothetical case, that purpose has been served to the extent of the Club's payment.

Assume further in this example that there is a basis for breaking the vessel operator's statutory limits and that the Club still decides to pay, but still only $40 million. The $5 million balance would not be owed by the guarantor solely based on the guaranty, but must be sought from some other source, for example, the responsible party directly, the Oil Spill Liability Trust Fund, or any party (including the guarantor) based on a separate contractual obligation other than the guaranty. This principle of a dollar for dollar reduction of a guarantor's liability is an important one. It not only fulfills the statutory pronouncement in 33 U.S.C. 2716(g) (i.e., the guarantor's liability is limited to the amount of the guaranty), but it also permits the Coast Guard to carry out another purpose of the rule—to provide a continuing market for guarantors, which is an underpinning of the law's ''polluter-pays'' philosophy. Once the guaranty obligation is satisfied, the guarantor has no further liability, on the basis of the guaranty, with respect to that incident. The Coast Guard agrees that this is a necessary element of the guaranty obligation and that it should be stated explicitly in the guaranty forms to avoid any potential for ambiguity. Accordingly, each guaranty form has been amended to clearly reflect this principle.

A few commenters were concerned about the inflexibility of the termination clause in each of the forms. Each provides for a 30-day notice of termination before a guarantor is relieved of responsibility under the guaranty for incidents, releases, or threatened releases occurring after the 30-day period elapses. One commenter felt the 30-day period should be shortened to 10 days. Others felt that, to facilitate the provision of guaranties by United States oil companies to vessels engaged in the spot charter market, there should be a mechanism for terminating the guaranty in less than 30 days.

Under the international regime, the termination period in most cases is 90 days. Under the Coast Guard's predecessor rules, the termination period in many cases was 60 days. The Coast Guard, in the interim rule, shortened this to 30 days. This 30-day period balances the guarantors' desire to have a shorter period with the Coast Guard's need to allow sufficient time to determine that a vessel for which a termination notice has been issued is not operating in United States waters without a financial responsibility guaranty.

At the time the issue of a 30-day notice for spot charters was raised, prospective new insurance guarantors were still negotiating with the P&I Clubs and had not been firmly established. Many cargo owners, therefore, were contemplating either surety bond guaranties or contingency plans under which they might serve as financial guarantors for ships carrying their cargoes. These potential financial guarantors naturally wanted to terminate their obligations as soon as possible after delivery of their cargoes, thereby reducing the chance their guaranties would apply to the vessels while working for new charterers. That is, they did not want to take a chance that, for a few days, they might serve as financial guarantors for vessels that would then be carrying other cargo owners' cargoes. While the likelihood of that happening is extremely remote, theoretically it could happen.

The emergence of the commercial insurance guarantors (and existence of surety bond guarantors) has, for the most part, eliminated the concern underlying this suggestion because vessel operators now can purchase their own guaranties. Adoption of the suggestion also would impose undue administrative burdens on the Coast Guard. Since the original underlying concern (lack of commercial insurance guarantors) does not exist, the Coast Guard has decided to leave the already shortened 30-day termination notice intact.

One commentor expressed concern that the Coast Guard's definition of an owner or operator, as expressed in the interim rule's guaranty forms (e.g., ''vessel owners, operators, and demise charterers'' in the insurance guaranty), conflicts with the statutory definition in 33 U.S.C. 2701(26) which refers to any person owning, operating, or chartering by demise. The commenter requests that the Coast Guard amend its rule by changing ''and'' to ''or'' in order to reduce the number of separate operators covered by a guaranty.

The Coast Guard has not adopted this suggestion. First, routinely, there are at most only two persons responsible for a vessel: an owner and an operator. Often the operator is a demise charterer, but it can be some other type of contractor who is responsible for a vessel. Second, and more importantly, even if three or more persons (e.g., an owner and two or more operators) could be liable for a discharge or substantial threat of a discharge of oil from a vessel, the guarantor of that vessel would not a reliable for more than one limit of liability. *See* 59 FR 34218. Third, the Coast Guard used the word ''and'' to implement Congress' imposition of joint and several liability on the constituent elements of a responsible party. *See* 34218. The Coast Guard's use of the word ''and'' should not be considered an attempt to define the identity of those constituent elements with respect to any particular guaranty. That identity necessarily is dependent on the facts of a specific case.

The Applicable Amount Table in Appendices B, C, D, E, and F are being amended to conform with the Edible Oil Regulatory Reform Act (Pub. L. 104–55).

Appendix D—Surety Bond Guaranty Form

The surety bond guaranty form has been amended to allow up to 10 guarantors to participate in a single surety bond guaranty. The reason for this change is explained in the discussion under § 138.80(b)(2).

One non-guarantor commenter stated that a surety's actual dollar limit of liability should be required to be stated on each executed surety bond guaranty form so that the maximum aggregate amount of liability for which a guarantor may be liable under each form is clearly stated on the face of each form. That request might have relevance to a traditional ''finite pot of money'' bond, but not to the regulatory creation of a ''surety bond guaranty.'' That request, moreover, cannot be granted with respect to the prescribed surety bond guaranty for two reasons: First, the potential (but unlikely) effect of the prescribed form's reinstatement clause and, second, the form's clause that, if necessary, automatically changes a stated penal sum calculated on the basis of a vessel not carrying hazardous substances as cargo to the correct higher penal sum calculated on the basis of a vessel that is carrying hazardous substances as cargo. Nevertheless, if a surety bond guarantor wished to execute a surety bond guaranty for a single tank vessel, with a penal sum calculated on the basis of the vessel also carrying hazardous substances as cargo, and if the guarantor intended to provide 30-days notice of termination as soon as an incident, release, or threatened release occurred, the guarantor could be more than reasonably assured that the panel sum of the surety bond guaranty would reflect the guarantor's maximum, theoretical aggregate amount of liability. Even then, since the vessel likely would be entered in a P&I Club, the guarantor would enjoy the probable shield provided by the P&I Club coverage.

This commenter also recommended that the surety bond guaranty terminate automatically upon a covered vessel's departure from United States' waters, or that the termination period be reduced to 10 days. This suggestion also has been made with respect to other guaranty forms, and the reasons this recommendation has been rejected are stated in the introductory paragraphs to the appendices.

Another non-guarantor commenter recommended that an ''interpleader'' provision be adopted whereby a surety bond guarantor could deposit, with the National Pollution Funds Center (NPFC) or with a court, the amount of the guaranty, so that the surety does not become involved in multiple disputes. This is similar to the suggestion that the regulation provide for ''concursus.'' Each guaranty appended to this rule was designed to allow claimants to seek compensation directly from the responsible party or guarantor, not the courts or the Coast Guard. The intent is to remove the Government from the process as much as possible. Accordingly, the Coast Guard has not adopted this suggestion.

Another commenter suggested technical improvements to the surety bond guaranty form and signature page options, which already have been discussed and, on the whole, adopted.

Assessment

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A final regulatory impact analysis (discussed in 59 FR 34224; July 1, 1994) is available from the National Pollution Funds Center or may be copied where indicated under ''ADDRESSES.''

The changes to the interim rule are technical in nature and impose no new requirements. This rule is promulgated under OPA 90 and CERCLA, which require the ''establishment and maintenance'' of evidence of financial responsibility for vessels. This rulemaking is intended to implement that joint statutory mandate and, therefore, primarily is limited to matters relating to ''establishment and maintenance'' of financial responsibility, such as how to apply for a COFR and how to establish evidence of financial responsibility.

This rule imposes no new paperwork burdens on vessel operators. The methods for applying for a COFR and establishing evidence are similar to those in the preexisting regulations under the Federal Water Pollution Control Act (33 U.S.C. 1321) (FWPCA), the Trans-Alaska Pipeline Authorization Act (42 U.S.C. 1653) (TAPAA), title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1814) (OCSLAA), and the Deepwater Port Act of 1974 (33 U.S.C. 1517) (DPA). Vessel operators are required to complete and submit a prescribed application form for a COFR and, if other than a self-insurer, a prescribed form, completed by their guarantors, evidencing acceptable financial responsibility. A similar requirement was imposed under preexisting 33 CFR parts 130, 131, and 132, and subpart D of part 137. This rule not only adopts these former application procedures but actually reduces the paperwork burden by requiring that only one application be submitted under OPA 90/CERCLA, rather than separate applications under the FWPCA, TAPAA, and OCSLAA, which was the case.

Small Entities

This rule will have minimal direct economic impact on small business. The rule retains procedures presently in effect and, through consolidation, eliminates duplication of effort on the part of the regulated industry. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted these requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The information collection requirements under this rule continue previous requirements. OMB Control Number 2115–0545 was assigned to 33 CFR parts 130, 131, 132,

and 137. The collection-of-information requirements in these four parts have been consolidated into part 138. Under this rule, the need to apply for separate Certificates under separate laws is eliminated, along with the associated paperwork. Because of the phase-in provisions in this rule, the constantly decreasing information collection requirements in 33 CFR part 130 remain in effect until December 27, 1997, when they will end entirely. The table in 33 CFR part 4 was amended to show this approval number. Due to the removal of 33 CFR parts 131, 132, and 137, the table in 33 CFR part 4 has been amended to remove the approval number for these parts. Therefore, 33 CFR part 4 shows the approval number for 33 CFR parts 130 and 138.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612. Section 1018 of OPA 90 specifically allows States to enact their own liability laws, and many States have indeed established their own requirements. Therefore, the Coast Guard has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rulemaking is administrative in nature and has no environmental impact. This rule provides the procedure by which a vessel operator establishes evidence of financial responsibility.

A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 4

Reporting and recordkeeping requirements.

33 CFR Part 130

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 131

Alaska, Insurance, Maritime carriers, Oil pollution, Pipelines, Reporting and recordkeeping requirements.

33 CFR Part 132

Continental shelf, Insurance, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 137

Claims, Harbors, Insurance, Oil pollution, Reporting and recordkeeping requirements, Vessels.

33 CFR Part 138

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard adopts, as a final rule, the interim rule which was published at 59 FR 34210 on July 1, 1994, and in addition, the Coast Guard is amending 33 CFR Parts 4, 130, 131, 132, 137 and 138 as follows:

Dated: February 29, 1996.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

PART 4—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

1. The authority citation for part 4 continues to read as follows:

Authority: 44 U.S.C. 3507; 49 CFR 1.45(a).

§ 4.02 [Amended]

2. In § 4.02, remove the following entries from the table:

Part 131	2115–0545
Part 132	2115–0545
Part 137	2115–0545

PART 131—[REMOVED]

3. Part 131 is removed.

PART 132—[REMOVED]

4. Part 132 is removed.

PART 137—[REMOVED]

5. Part 137 is removed.

PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS)

6. The authority citation for part 138 continues to read as follows:

Authority: 33 U.S.C. 2716; 42 U.S.C. 9608; sec. 7(b), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 198; 49 CFR 1.46; § 138.30 also issued under the authority of 46 U.S.C. 2103; 46 U.S.C. 14302; 49 CFR 1.46.

§ 138.10 [Amended]

7. In § 138.10(b), remove the word ''Senate'' and add, in its place, the word ''Section''.

§ 138.12 [Amended]

8. In § 138.12, in paragraph (c), remove the word ''For'' and add, in its place, the words ''In addition to a non-self-propelled barge over 300 gross tons that carries hazardous substances as cargo, for''.

§ 138.20 [Amended]

9. In § 138.20(b), at the end of definition for *fuel,* add the new sentence ''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.''; in the definition for *operator,* after the word ''scrapper,'' add the word ''lessor,''; and, in the definition for *tank vessel,* after the word ''gross'', add the word ''tons''.

10. In § 138.80, in paragraph (b)(2), remove the word ''four'' and add, in its place, the number ''10''; in paragraph (b)(3)(i) introductory text, remove the words ''with the associated notes, certified'' and add, in their place, the words ''prepared in accordance with Generally Accepted Accounting Principles, and audited''; in the same paragraph, following the first sentence, add the sentence ''These financial statements must be audited in accordance with Generally Accepted Auditing Standards.''; in the same paragraph, remove the words ''certifying to'' and add, in their place, the word ''verifying''; in paragraph (b)(3)(i)(B), remove the word ''certified'' and add, in its place, the word ''verified''; in paragraph (c)(1) introductory text, in the second sentence, remove the word ''Four'' and add, in its place, the word ''Ten''; in paragraph (f)(1)(i) introductory text, after the words ''tank vessel'', add the words ''(except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104–55))''; and paragraph (f)(1)(ii) is revised to read as follows:

§ 138.80 Financial Responsibility, how established.

* * * * *

(f) * * *

(1) * * *

(ii) For a vessel other than a tank vessel under paragraph (f)(1)(i) of this section that is over 300 gross tons or that is 300 gross tons or less using the waters of the Exclusive Economic Zone of the United States to transship or lighter oil destined for a place subject to the jurisdiction of the United States, the

greater of $500,000 or $600 per gross ton.

* * * * *

§ 138.110 [Amended]

11. In § 138.110, in paragraph (a), in the first sentence, remove the words ''a scrapper'' and add, in their place, the words ''scrapper, lessor,''; in the same paragraph, in the second sentence, after the word ''scrapping,'' add the word ''lease,''; in the same paragraph, in the third sentence, after the word ''scrapping,'' add the word ''leasing,''; and, in paragraph (c)(1), after the word ''scrapper,'' add the word ''lessor,''.

Appendices B, C, D, E, and F to Part 138 [Amended]

12. Appendices B, C, D, E, and F to part 138 are revised to read as follows:

BILLING CODE 4910–14–M

Appendix B to Part 138 - Insurance Guaranty Form

Insurance Co. Form No._____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586

INSURANCE GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

The undersigned insurer or insurers ("Insurer") hereby certifies that for purposes of complying with the financial responsibility provisions of the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), (referred to collectively as the "Acts"), the vessel owners and operators ("Assured" or "Assureds") of each respective vessel named in the schedules below ("covered vessel") are insured by it against liability for costs and damages to which the Assureds may be subject under either section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below, respecting each covered vessel.

The amount and scope of insurance coverage hereby provided by the Insurer is not conditioned or dependent in any way upon any contract, agreement, or understanding between an Assured and the Insurer. Coverage hereunder is for purposes of evidencing financial responsibility under each of the Acts, separately, at the levels in effect at the time of the incident(s), release(s) or threatened release(s) giving rise to claims.

_____,
(Name of Agent)

with offices at _____

_____,

is designated as the Insurer's agent in the United States for service of process for the purposes of this guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National Pollution Funds Center ("Center"), is the agent for these purposes.

The Insurer consents to be sued directly with respect to any claim, including any claim by right of subrogation, for costs and damages arising under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, against any Assured. However, in any direct action under OPA 90 the Insurer's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA,

the Insurer's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Insurer's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Assured under OPA 90 or CERCLA or both, as applicable, for which the Assured is liable. The Insurer shall be entitled to invoke only the following rights and defenses in any direct action:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Assured.

(2) Any defense that the Assured may raise under the Acts.

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

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

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

No more than four Insurers (including lead underwriters) may execute this guaranty. If more than one Insurer executes this guaranty, each Insurer binds itself jointly and severally for the purpose of allowing joint action or actions against any or all of the Insurers, and for all other purposes each Insurer is bound for the payment of sums only in accordance with the percentage of participation set forth opposite the name of the Insurer below. If no percentage of participation is indicated for an Insurer or Insurers, the liability of such Insurer or Insurers shall be joint and several for the total of the unspecified portions.

_____

(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions 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 (inapplicable if only one Insurer executes this guaranty).

The insurance evidenced by this guaranty shall be applicable only in relation to each incident, release, and threatened release occurring on or after the effective date and before the termination date of this guaranty and shall be applicable only in relation to each incident, release and threatened release giving rise to claims

under section 1002 of OPA 90 or section 107(a)(1) of CERCLA, or both, with respect to any of the covered vessels.

The effective date of this guaranty for each covered vessel is the date the vessel is named in or added to the schedules below. For each covered vessel, the termination date of this guaranty is 30 days after the date of receipt by the Center of written notice that the Insurer has elected to terminate the insurance evidenced by this guaranty and has so notified the vessel operator identified on the schedule below.

Termination of this guaranty as to any covered vessel shall not affect the liability of the Insurer in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

If, during the currency of this guaranty, an Assured requests that an additional vessel be made subject to this guaranty and if the Insurer accedes to that request and so notifies the Center, then that vessel is considered included in the schedules below as a covered vessel.

Title 33 CFR part 138 governs this guaranty.

Effective date of coverage for vessels originally named in this guaranty:

_____
(day/month/year)

_____
(Name of Insurer)

_____
(Percentage of Participation)

_____
(Mailing Address)

_____

_____

By: _____
(Signature of Official Signing
On Behalf of Insurer)

_____
(Typed Name and Title of Signer)

[NOTE: For each additional Insurer, provide information in the same manner as for Insurer above.]

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

VESSEL TYPE	VESSEL'S GROSS TONS	APPLICABLE AMOUNT
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of $2,000,000 or $1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of $10,000,000 or $1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons. *	The greater of $500,000 or $600 per gross ton.

* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

VESSEL TYPE	APPLICABLE AMOUNT
Vessel over 300 gross tons carrying hazardous substance as cargo	The greater of $5,000,000 or $300 per gross ton.
Any other vessel over 300 gross tons	The greater of $500,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

SCHEDULE OF VESSELS

VESSEL	GROSS TONS	ASSURED OPERATOR

Insurance Guaranty Form CG–5586 No._____

SCHEDULE OF VESSELS
ADDED TO ABOVE VESSELS

VESSEL	GROSS TONS	ASSURED OPERATOR	DATE ADDED

Insurance Guaranty Form CG–5586 No._____

Appendix C to Part 138 - Master Insurance Guaranty Form

Insurance Co. Form No._____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586-1

MASTER INSURANCE GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY FOR BUILDERS, REPAIRERS, SCRAPPERS, LESSORS, OR SELLERS OF VESSELS UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

The undersigned insurer or insurers ("Insurer") hereby certifies that for purposes of complying with the financial responsibility provisions of the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), (referred to collectively as the "Acts"),

_____
(Name of Assured Operator)

and any owner (collectively referred to as "Assured") of each vessel covered hereunder are insured by it against liability for costs and damages to which the Assured may be subject under either section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below, respecting each covered vessel. This guaranty is applicable in relation to any vessel for which either or both Acts require financial responsibility and which the Assured holds for purposes of construction, repair, scrapping, lease, or sale.

The amount and scope of insurance coverage hereby provided by the Insurer is not conditioned or dependent in any way upon any contract, agreement, or understanding between the Assured and the Insurer. Coverage hereunder is for purposes of evidencing financial responsibility under each of the Acts, separately, at the levels in effect at the time of the incident(s), release(s), or threatened release(s) giving rise to claims.

_____
(Name of Agent)

with offices at _____

_____,

is designated as the Insurer's agent in the United States for service of process for purposes of this guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National

Pollution Funds Center ("Center"), is the agent for these purposes.

The Insurer consents to be sued directly with respect to any claim, including any claim by right of subrogation, for costs and damages arising under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, against the Assured. However, in any direct action under OPA 90, the Insurer's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA, the Insurer's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Insurer's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Assured under OPA 90 or CERCLA or both, as applicable, for which the Assured is liable. The Insurer shall be entitled to invoke only the following rights and defenses in any direct action:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Assured.

(2) Any defense that the Assured may raise under the Acts.

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

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

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

No more than four Insurers (including lead underwriters) may execute this guaranty. If more than one Insurer executes this guaranty, each Insurer binds itself jointly and severally for the purpose of allowing joint action or actions against any or all of the Insurers, and for all other purposes each Insurer is bound for the payment of sums only in accordance with the percentage of participation set forth opposite the name of the Insurer below. If no percentage of participation is indicated for an Insurer or Insurers, the liability of such Insurer or Insurers shall be joint and several for the total of the unspecified portions.

_____

(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions 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 (inapplicable if only one Insurer executes this guaranty).

The insurance evidenced by this guaranty shall be applicable only in relation to each incident, release, or threatened release occurring on or after the effective date of this guaranty and before the termination date of this guaranty and shall be applicable only in relation to each incident, release and threatened release giving rise to claims under section 1002 of OPA 90 or section 107(a)(1) of CERCLA, or both, with respect to any covered vessel. The termination date is 30 days after the date of receipt by the Center of written notice that the Insurer has elected to terminate the insurance evidenced by this guaranty and has so notified the above named Assured operator.

Termination of this guaranty does not affect the liability of the Insurer in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

Title 33 CFR part 138 governs this guaranty.

Effective Date: _____
(day/month/year)

_____
(Name of Insurer)

_____
(Percentage of Participation)

_____
(Mailing Address)

_____

_____

By: _____
(Signature of Official Signing
On Behalf of Insurer)

_____
(Typed Name and Title of Signer)

[NOTE: For each additional Insurer, provide information in the same manner as for Insurer above.]

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

VESSEL TYPE	VESSEL'S GROSS TONS	APPLICABLE AMOUNT
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of $2,000,000 or $1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of $10,000,000 or $1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons. *	The greater of $500,000 or $600 per gross ton.

* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

CG-5586-1

(II) Applicable Amount Under the **Comprehensive Environmental Response, Compensation, and Liability Act**, as Amended.

VESSEL TYPE	APPLICABLE AMOUNT
Vessel over 300 gross tons carrying hazardous substance as cargo	The greater of $5,000,000 or $300 per gross ton.
Any other vessel over 300 gross tons	The greater of $500,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

Appendix D to Part 138 - Surety Bond Guaranty Form

Surety Co. Bond No._____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586-2

SURETY BOND GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

_____
(Name of Vessel Operator)

of _____,
(City, State and Country)

("Principal"), and the undersigned surety company or companies ("Surety" or "Sureties"), each authorized by the United States Department of the Treasury to do business in the United States as an approved surety, are held and firmly bound unto the United States of America and other claimants in the penal sum of

$_____

for costs and damages for which the Principal is liable under the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") (referred to collectively as the "Acts"). "Principal" includes, in addition to the vessel operator and the owner of each vessel covered by this guaranty ("covered vessel").

The Principal has elected to file with the Director, Coast Guard National Pollution Funds Center ("Center") this surety bond guaranty as evidence of financial responsibility to obtain from the Coast Guard a Certificate, or Certificates, of Financial Responsibility (Water Pollution) under 33 CFR part 138, to meet any liability for costs and damages incurred in connection with a covered vessel under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both.

The Surety agrees that the penal sum of this surety bond guaranty shall be available to pay to the United States of America or other claimants under the Acts any sum or sums for which the Principal may be held liable under the Acts. The penal sum shall be the total applicable amount, determined in accordance with the Applicable Amount Table below, for which payment we, the undersigned, bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally.

No more than 10 Sureties (including lead Sureties) may execute this guaranty. If there is more than one surety company executing this guaranty, we, the Sureties, bind ourselves in the penal sum jointly and severally for the purpose of allowing a

joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of the percentage of the penal sum only as is set forth opposite the name of each Surety.

If no percentage is indicated for a Surety or Sureties, the liability of such Surety or Sureties shall be joint and several for the total of the unspecified portions.

_____
(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions 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 (inapplicable if only one Surety executes this guaranty).

Principal and the Surety or Sureties agree that if all or a portion of the penal sum is paid, the penal sum is considered reinstated to its full amount until 30 days after receipt from the Surety of written notice to the Director, NPFC, that the penal sum has not been reinstated. Principal and the Surety or Sureties further agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the penal sum of this surety bond guaranty automatically increases, if necessary, to the total applicable amount appropriate for such vessel as determined in accordance with the Applicable Amount Table below. In no case, however, shall the penal sum be increased to an amount greater than the total applicable amount.

The penal sum is not further conditioned or dependent in any way upon any contract, agreement or understanding between the Principal and Surety. If the Principal is responsible for more than one vessel covered by this guaranty, then the penal sum is the total applicable amount for the vessel having the greatest liability under the Acts.

The liability of the Surety as guarantor under OPA or CERCLA, or both, shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments amount in the aggregate to the penal sum of this bond guaranty.

Any claim, including any claim by right of subrogation, against the Principal for costs and damages arising under either section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, may be brought directly against the Surety, and the Surety consents to suit with respect to these claims. However, in any direct action under OPA 90 the Surety's liability shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA the Surety's liability shall not exceed the amount determined under part II of the Applicable Amount Table below. The Surety's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Principal under OPA 90 or CERCLA or both, as applicable, for which the Principal is liable. In the event of a direct claim, the Surety may invoke only the following rights and defenses:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Principal.

(2) Any defense that the Principal may raise under the Acts.

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

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this 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 where the surety knew or should have known that the applicable tonnage certificate was incorrect.

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

This bond is effective the _____ day of _____, _____, 12:01 a.m., standard time at the address of the Surety first named herein, and shall continue in force until discharged or terminated as herein provided. The above named Vessel Operator or the Surety may at any time terminate this bond guaranty by written notice sent by certified mail, registered mail, overnight delivery, or other comparable service to the other party, with a copy (showing that the original notice was sent to the other party by certified mail, registered mail, overnight delivery, or other comparable service) to the Center. The termination is effective thirty (30) days after the Center receives the written notice of termination. The Surety shall not be liable hereunder in connection with an incident, release, or threatened release occurring after the termination of this bond guaranty as herein provided, but the termination shall not affect the liability of the Surety in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective. Nor shall the Surety be liable hereunder in connection with a non-covered vessel, which is a vessel specifically named in other evidence of financial responsibility, which is applicable to that vessel on behalf of the above named Vessel Operator, and which is accepted by and on file with the Center during an incident, release, or threatened release giving rise to a claim against the Surety or Principal.

The Surety designates _____
(Name of Agent)

with offices at _____

_____

as the Surety's agent in the United States for service of process for the purposes of this surety bond guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National Pollution Funds Center, is the agent for these purposes.

Title 33 CFR part 138 governs this bond guaranty.

In witness whereof, the Vessel Operator, for itself and owners, and Surety have executed this instrument on the _____ day of _____, _____.

VESSEL OPERATOR

_____ (Signature of Sole Proprietor or Partner)

_____ (Business Address)

_____ (Typed)

_____ (Signature of Sole Proprietor or Partner)

_____ (Business Address)

_____ (Typed)

_____ (Signature of Sole Proprietor or Partner)

_____ (Business Address)

_____ (Typed)

_____ (Corporation)

_____ (Business Address)

_____

(Affix Corporate Seal)

_____ (Signature)

_____ (Typed Name and Title)

CG-5586-2

SURETY

(Name) _____ (Percentage of Participation) _____

(Address) _____ (Affix Corporate Seal)

_____

(Signature(s)) _____

(State of Incorporation) _____

(Typed Name(s) and Title(s)) _____

[NOTE: For every co-Surety, provide information in the same manner as for Surety above.]

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

VESSEL TYPE	VESSEL'S GROSS TONS	APPLICABLE AMOUNT
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of $2,000,000 or $1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of $10,000,000 or $1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons.*	The greater of $500,000 or $600 per gross ton.

* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

VESSEL TYPE	APPLICABLE AMOUNT
Vessel over 300 gross tons carrying hazardous substance as cargo	The greater of $5,000,000 or $300 per gross ton.
Any other vessel over 300 gross tons	The greater of $500,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

Appendix E to Part 138 - Financial Guaranty Form

Financial Guaranty No._____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586-3

FINANCIAL GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

1. _____,
(Name of Vessel Operator)

the operator of each vessel named in the annexed schedules ("covered vessel"), desires to establish evidence of financial responsibility for the owner and operator (referred to collectively as "Operator") of each covered vessel in accordance with the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") (referred to collectively as the "Acts"). The undersigned Financial Guarantor or Guarantors ("Guarantor") hereby guarantees, subject to the provisions hereof, to discharge the Operator's liability with respect to each covered vessel for costs and damages under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(B) and (A), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below. The Operator and the Guarantor agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the limit of liability of the Guarantor hereunder shall be the total applicable amount appropriate for such a vessel determined in accordance with the Applicable Amount Table below. The amount and scope of the Guarantor's liability are not further conditioned or dependent in any way upon any contract, agreement, or understanding between the Operator and the Guarantor. The Guarantor shall furnish written notice to the Director, Coast Guard National Pollution Funds Center ("Center"), of all judgments rendered and payments made by the Guarantor under this Financial Guaranty.

2. Any claim, including any claim by right of subrogation, against the Operator for costs and damages arising under either section 1002 of OPA 90 as limited by section 1004(a), or section 107(a)(1) of CERCLA as limited by sections 107(c)(1)(A) and (B), or both, may be brought directly against the Guarantor and the Guarantor consents to suit with respect to these claims. However, in any direct action under OPA 90 the Guarantor's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA the Guarantor's liability per vessel per release or threatened release shall not exceed the

amount determined under part II of the Applicable Amount Table below. The Guarantor's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Operator under OPA 90 or CERCLA or both, as applicable, for which the Operator is liable. The Guarantor shall be entitled to invoke only the following rights and defenses in any direct action:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Operator.

(2) Any defense that the Operator may raise under the Acts.

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

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this Guaranty, which amount is based on the gross tonnage of the covered vessel as entered on the Vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable certificate was incorrect.

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

3. The Guarantor's liability under this Guaranty shall attach only in relation to each incident, release, or threatened release occurring on or after the effective date and before the termination date of this Guaranty. The effective date of this Guaranty for each covered vessel listed below is the date the vessel is named in or added to the schedules below. For each covered vessel, the termination date of the Guaranty is 30 days after the date of receipt by the Center of written notice that the Guarantor has elected to terminate this Guaranty, with respect to any of the covered vessels, and has so notified the vessel Operator identified above on the schedule below. Termination of this Guaranty as to any vessel does not affect the liability of the Guarantor in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

4. If, during the currency of this Guaranty, the Operator requests that a vessel become subject to this Guaranty, and if the Guarantor accedes to that request and so notifies the Center in writing, then that vessel shall be considered included in Schedule B as a covered vessel and subject to this Guaranty.

FINANCIAL GUARANTY NO. _____

5. The Guarantor designates _____
(Name of Agent)
with offices at _____

_____
as the Guarantor's agent in the United States for service of process for purposes of this Guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability or unavailability, the Director, Coast Guard National Pollution Funds Center, is the agent for service of process.

6. No more than four Financial Guarantors may execute this Guaranty. If more than one Guarantor executes this Guaranty, each Guarantor binds itself jointly and severally for the purpose of allowing a joint action or actions against any or all of the Guarantors, and for all other purposes each Guarantor binds itself, jointly and severally with the Operator, for the payment of the percentage of sums only as is set forth opposite the name of the Guarantor. If no limit is indicated for a Guarantor or Guarantors, the liability of such Guarantor or Guarantors shall be joint and several for the total of the unspecified portions.

_____
(Name of Lead Guarantor)
is designated as the lead guarantor having authority to bind all guarantors for actions 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 (inapplicable if only one Financial Guarantor executes this Guaranty).

7. Title 33 CFR part 138 governs this Financial Guaranty.

EFFECTIVE DATE: _____
(Month/Day/Year and Place of Execution)

_____
(Typed Name of Guarantor)

_____
(Address of Guarantor)

_____

_____
(Percentage of Participation)

By: _____
(Signature)

_____
(Type Name and Title of Person Signing Above)

[NOTE: For each co-Guarantor, provide information in the same manner as for Guarantor above.]

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

VESSEL TYPE	VESSEL'S GROSS TONS	APPLICABLE AMOUNT
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of $2,000,000 or $1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of $10,000,000 or $1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons. *	The greater of $500,000 or $600 per gross ton.

* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United0 States (as specified in 33 CFR 138.12(a)(1)).

CG-5586-3

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

VESSEL TYPE	APPLICABLE AMOUNT
Vessel over 300 gross tons carrying hazardous substance as cargo	The greater of $5,000,000 or $300 per gross ton.
Any other vessel over 300 gross tons	The greater of $500,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

SCHEDULE A

VESSELS INITIALLY LISTED

VESSEL	GROSS TONS	OPERATOR

SCHEDULE B

VESSELS ADDED IN ACCORDANCE WITH CLAUSE 4

VESSEL	GROSS TONS	OPERATOR	DATE ADDED

Appendix F to Part 138 - Master Financial Guaranty Form

Financial Guaranty No._____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586-4

MASTER FINANCIAL GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY FOR BUILDERS, REPAIRERS, SCRAPPERS, LESSORS, OR SELLERS OF VESSELS UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

1. _____
(Name of Builder, Repairer, Scrapper, Lessor, or Seller)
is in, or from time to time may come into, possession of a vessel or vessels ("Vessel" or "Vessels") held for purposes of construction, repair, scrapping, lease, or sale, and desires to establish evidence of financial responsibility for itself and any owner (collectively referred to as "Operator") of each Vessel in accordance with the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") (referred to collectively as the "Acts"). The undersigned Financial Guarantor or Guarantors ("Guarantor") hereby guarantees, subject to the provisions hereof, to discharge the Operator's liability with respect to each Vessel for costs and damages under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below. The Operator and the Guarantor agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the limit of liability of the Guarantor hereunder shall be the total applicable amount appropriate for such vessel determined in accordance with the Applicable Amount Table below. The amount and scope of liability are not further conditioned or dependent in any way upon any contract, agreement or understanding between the Operator and the Guarantor. The Guarantor shall furnish written notice to the Director, Coast Guard National Pollution Funds Center ("Center"), of all judgments rendered and payments made by the Guarantor under this Financial Guaranty.

2. Any claim, including any claim by right of subrogation, against the Operator for costs and damages arising under either section 1002 of OPA 90 as limited by section 1004(a), or section 107(a)(1) of CERCLA as limited by sections 107(c)(1)(A) and (B), or both, may be brought directly against the Guarantor and the Guarantor consents to suit with respect to these claims. However, in any direct action under OPA 90 the Guarantor's

liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA the Guarantor's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Guarantor's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Operator under OPA 90 or CERCLA or both, as applicable, for which the Operator is liable. The Guarantor shall be entitled to invoke only the following rights and defenses in any direct action:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Operator.

(2) Any defense that the Operator may raise under the Acts.

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

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this Guaranty, which amount is based on the gross tonnage of the covered vessel as entered on the Vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable tonnage certificate was incorrect.

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

3. The Guarantor's liability under this Guaranty shall attach only in relation to each incident, release, or threatened release occurring on or after the effective date and before the termination date of this Guaranty. The termination date is 30 days after the date of receipt by the Center of written notice that the Guarantor has elected to terminate this Guaranty and has so notified the Operator. Termination of this Guaranty shall not affect the liability of the Guarantor in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

4. The Guarantor designates _____, (Name of Agent)

with offices at _____

_____,

as the Guarantor's agent in the United States for service of process for purposes of this Guaranty and for receipt of notices

of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, National Pollution Funds Center, is the agent for these purposes.

5. No more than four Financial Guarantors may execute this Guaranty. If more than one Guarantor executes this Guaranty, each Guarantor binds itself jointly and severally for the purpose of allowing a joint action or actions against any or all of the Guarantors, and for all other purposes each Guarantor binds itself, jointly and severally with the Operator, for the payment of the percentage of sums only as is set forth opposite the name of the Guarantor. If no percentage is indicated for a Guarantor or Guarantors, the liability of such Guarantor or Guarantors shall be joint and several for the total of the unspecified portions.

_____

(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions 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 (inapplicable if only one Financial Guarantor executes this Guaranty).

6. Title 33 CFR part 138 governs this Financial Guaranty.

EFFECTIVE DATE: _____

(Month/Day/Year and Place of Execution)

_____

(Typed Name of Guarantor)

_____

(Address of Guarantor)

_____

_____

(Percentage of Participation)

By: _____

(Signature)

_____

(Type Name and Title of Person Signing Above)

[NOTE: For each co-Guarantor, provide information in the same manner as for Guarantor above.]

CG-5586-4

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

VESSEL TYPE	VESSEL'S GROSS TONS	APPLICABLE AMOUNT
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of $2,000,000 or $1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of $10,000,000 or $1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons. *	The greater of $500,000 or $600 per gross ton.

* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

VESSEL TYPE	APPLICABLE AMOUNT
Vessel over 300 gross tons carrying hazardous substance as cargo	The greater of $5,000,000 or $300 per gross ton.
Any other vessel over 300 gross tons	The greater of $500,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

CG-5586-4

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