

Accomplishment Instructions of Saab 2000 Service Bulletin 2000–71–025, dated June 13, 2007.

(1) Within 1,000 flight hours after the effective date of this AD, do a visual and a fluorescent penetrant inspection for cracking of the center bracket of both of the aft engine mounting assemblies.

(2) If no cracking is found during the inspections required by paragraph (f)(1) of this AD, within 4,000 flight hours after the effective date of this AD, rework the center bracket of the aft engine mounting assembly, do fluorescent penetrant inspections for cracking of the reworked bracket, and re-identify with new part numbers the reworked center bracket and the applicable aft engine mounting assembly.

(3) If any cracking is found during any inspection required by paragraph (f)(1) or (f)(2) of this AD, before further flight, replace the aft engine mounting assembly, and rework and re-identify the center bracket.

#### FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information as follows:

(1) Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (f)(3) of this AD requires that you replace the aft engine mounting assembly before further flight.

#### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

#### Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0204, dated August 8, 2007,

and Saab 2000 Service Bulletin 2000–71–025, dated June 13, 2007, for related information.

Issued in Renton, Washington, on January 24, 2008.

**Ali Bahrani,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 138

[USCG 2005–21780]

RIN 1625–AA98

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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

**DATES:** Comments and related material must reach the Docket Management Facility on or before May 5, 2008.

Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 5, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2005–21780 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

You must also send comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure that the comments are received on time, the preferred method is by e-mail at [nlessar@omb.eop.gov](mailto:nlessar@omb.eop.gov) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Benjamin White, National Pollution Funds Center, Coast Guard, telephone 202–493–6863. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

##### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2005–21780), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. For example, we may ask you to resubmit your comment if we are not able to read your original submission. You may submit your comments and material by electronic means, mail, fax,

or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**B. Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on "Search for Dockets," and enter the docket number for this rulemaking (USCG-2005-21780) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**C. Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor

union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

**D. Public Meeting**

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

**II. Background and Purpose**

Under the Oil Pollution Act of 1990, as amended (OPA 90), at 33 U.S.C. 2702, responsible parties for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, are jointly and severally liable for specified removal costs and damages up to prescribed limits of liability. Similar requirements apply to owners and operators of vessels and facilities under 42 U.S.C. 9607 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The OPA 90 limits of liability are set out in 33 U.S.C. 2704, and pursuant 33 U.S.C. 2704(d)(4) are subject to amendment by regulation issued not less often than every three years to reflect significant increases in the Consumer Price Index.

The CERCLA limits of liability are set out in 42 U.S.C. 9607, and are not subject to Consumer Price Index adjustments.

In addition, 33 U.S.C. 2716(a) of OPA 90 and 42 U.S.C. 9608(a) of CERCLA require that responsible parties of certain vessels establish and maintain evidence of financial responsibility (i.e., ability to pay) sufficient to meet the maximum amount of liability to which they could be subjected under 33 U.S.C. 2704 and 42 U.S.C. 9607.<sup>1</sup> According to 33 U.S.C. 2716(a)(1) and (2), those requirements apply, in relevant part for purposes of OPA 90, to responsible parties for: Any vessel over 300 gross tons (except a non-self propelled vessel that does not carry oil as cargo or fuel) using any place subject to the jurisdiction of the United States; and any vessel using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States.

On July 11, 2006, the President signed the Delaware River Protection Act of 2006 (Title VI of the Coast Guard and Maritime Transportation Act of 2006) (Pub. L. 109-241) (DRPA). Section 603 of DRPA amended the OPA 90 limits of liability for vessels at 33 U.S.C. 2704(a). The new OPA 90 limits of liability were effective for non-tank vessels on July 11, 2006 and for tank vessels on October 9, 2006.<sup>2</sup>

The following table shows the original and amended OPA 90 limits of liability by vessel type:

**OPA 90 VESSEL LIMITS OF LIABILITY**<sup>3</sup>, THNSP;<sup>4</sup>

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

On August 18, 2006, we published a Notice of Policy in the **Federal Register**

(71 FR 47737) entitled "New Oil Pollution Limits of Liability for Vessels—Delaware River Protection Act

of 2006 Amendment to the Oil Pollution Act of 1990". In this notice, we explained:

<sup>1</sup> OPA 90 also imposes evidence of financial responsibility requirements on offshore facilities and deepwater ports, at 33 U.S.C. 2716(c). These regulations, however, only concern the OPA 90 evidence of financial responsibility requirements applicable to vessels under 33 U.S.C. 2716(a).

<sup>2</sup> See, "New Oil Pollution Limits of Liability for Vessels—Delaware River Protection Act of 2006 Amendment to the Oil Pollution Act of 1990" (71 FR 47737, August 18, 2006).

<sup>3</sup> Source: 33 U.S.C. 2704(a) as now in effect, and immediately prior to amendment by Pub. L. 109-241, Section 603.

<sup>4</sup> Although, both the amended and original versions of 33 U.S.C. 2704(a) distinguish between vessels on the basis of gross tonnage and whether they are tank vessels, the statute as amended by DRPA Section 603 now also distinguishes between single and double hulled tank vessels.

- That the OPA 90 limits of liability for vessels have been changed effective July 11, 2006 for non-tank vessels, and effective October 9, 2006 for tank vessels;

- The amounts of the new OPA 90 vessel limits;

- That the OPA 90 proof of financial responsibility requirements for vessels at 33 CFR part 138 would stay at existing levels until changed by rulemaking; and

- That a rulemaking project would be initiated to require vessel owners and operators to provide evidence of financial responsibility under 33 CFR part 138 to the amended OPA 90 limits of liability.

As a result of the 2006 changes to the OPA 90 vessel limit of liability provisions, this rulemaking was initiated to ensure the ability of responsible parties to meet their potential liability limit under OPA 90, as specified in 33 U.S.C. 2704, in the event of an incident. In order to provide the necessary consistency between the new OPA 90 vessel limits of liability and the vessel evidence of financial responsibility requirements, we propose to amend the applicable amount provisions for OPA 90 at § 138.80(f)(1).<sup>5</sup>

Section 603(b) of the DRPA also amended 33 U.S.C. 2704(d)(4) of OPA 90, adding a requirement that the President adjust the OPA 90 limits of liability specified in 33 U.S.C. 2704(a) within three years following enactment of DRPA and not less than every 3 years thereafter to reflect significant increases in the Consumer Price Index. The requirement to adjust the OPA 90 limits of liability for vessels and deepwater ports has been delegated to the Director, National Pollution Funds Center, United States Coast Guard. Therefore, to facilitate future updates to the CFR, we propose dividing part 138 of the CFR into two subparts, with the current rule appearing under subpart A, adding a new subpart B to set forth the OPA 90 limits of liability for both vessels and deepwater ports, and deleting the specifically enumerated OPA 90 applicable amounts for vessels from § 138.80(f)(1).

In addition, we propose to eliminate the requirement in § 138.65 that an original Certificate of Financial Responsibility (Certificate or COFR), or an authorized copy thereof, be carried aboard covered vessels. Improved technology now enables the Coast Guard to view vessel COFRs electronically, which is more cost effective than

tasking inspectors to view a paper Certificate on board each vessel.

The proposed rule would also increase the COFR application and certification fees found in § 137.130. Existing fee amounts were established in 1994 in the interim rule entitled “Financial Responsibility for Water Pollution (Vessels)” (59 FR 34210). A final rule was subsequently published in 1996 entitled “Financial Responsibility for Water Pollution (Vessels)” (61 FR 9264) which did not change the fee amounts established in the interim rule. These proposed fee increases approximate the fluctuations to the Consumer Price Index occurring as a result of inflation since 1994.

Finally, we propose a conforming revision to the definition of “owner” in § 138.20 to reflect amendments to OPA 90 by the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293) (the 2004 Act).

### III. Discussion of Proposed Rule

Throughout proposed Part 138, regulatory provisions have been rewritten using plain language when necessary to clarify the rule. These revisions are not intended to change substantive requirements, and are only discussed when helpful to explain substantial revisions resulting from this proposed rule.

*Part 138.* The word “subpart” would be substituted for “part”, as appropriate, throughout to reflect the proposal to divide the rule into two subparts. References to “appendices to this part” have been deleted throughout. (See discussion of Appendices A–F below).

*Section 138.10.* We propose to revise the introductory paragraph to clarify the statutory background of the rule for the reader. The revision includes references to the requirements, in OPA section 1016 and CERCLA section 108, that responsible parties establish and maintain evidence of financial responsibility sufficient to cover specified amounts of liability arising under those acts.

The revised section also reiterates the requirement, in § 138.80 of the existing and proposed regulations, that responsible parties establish and maintain evidence of financial responsibility equal to the total applicable amount. For more information on the total applicable amount, see proposed § 138.80, particularly paragraphs (a) and (f).

*Section 138.15.* We propose removing all of the content of existing § 138.15, entitled “Implementation Schedule” and replacing it with the applicability provisions currently located at § 138.12. The language that would be removed

from § 138.15 is associated with the phase-in requirements established by the interim rule entitled “Financial Responsibility for Water Pollution (Vessels)” (59 FR 34210), which was published in the **Federal Register** on July 1, 1994, and reiterated in a final rule published in the **Federal Register** on March 7, 1996 (61 FR 9264). Because the phase-in was completed on December 27, 1997, this language is obsolete.

*Section 138.15(a)(2).* This part of the proposed rule would correct a typographical error. The current regulation, at § 138.12(a)(2), states that it applies to “A vessel \* \* \* except—(i) A vessel that is 300 gross tons or less; and (ii) A non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.” We would revise this section to state “A vessel \* \* \* except —(i) A vessel that is 300 gross tons or less; or (ii) A non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.” Correction of this typographical error is necessary to eliminate confusion concerning which vessels are subject to the regulation. Other proposed changes to the wording of current § 138.12 (proposed § 138.15) are editorial clarifications.

*Section 138.20.* The current references in § 138.20(a)(1) to § 138.10(b)(1), and in § 138.20(a)(2) to § 138(b)(2) are incorrect due to a typographical error. They should read §§ 138.10(a) and (b) respectively. The proposed rule would correct this error.

Additionally, the following changes would be made to the definitions in this section:

The proposed revisions to § 138.20 would clarify that modifications to terms defined in OPA 90 and CERCLA apply only for purposes of the subpart A evidence of financial responsibility requirements and do not modify responsible party liability under statute.

Several terms used in this regulation are defined terms in OPA 90 and CERCLA, but are not currently listed in 33 CFR 138.20(a). We therefore propose adding the terms “claim”, “liable”, “liability”, “offshore facility”, “owner or operator”, and “security interest”.

The definition of Certificate would be modified to reflect that all COFRs would be issued by NPFC, and that the COFR will be issued in electronic format. A responsible party may print copies of the COFR for recordkeeping purposes.

The definition of “Owner” would be modified to reflect a recent amendment to OPA 90 which states, similar to CERCLA, that an owner does not include a person who, without

<sup>5</sup> This rulemaking would not change the applicable amounts for vessels under CERCLA at 42 U.S.C. 9607(c) and § 138.80(f)(2).

participating in the management of a vessel, holds indicia of ownership primarily to protect the owner's security interest in the vessel.

We also propose adding new definitions for "applicable amount", "day or days", "E-COFR", "financial guarantor" and "responsible party" to clarify terms used in the current and proposed rule, as follows:

The term "Applicable amount" refers to an amount calculated pursuant to either § 138.80(f)(1) (OPA 90) or § 138.80(f)(2) (CERCLA), and would be defined to distinguish the term from the defined term "Total Applicable Amount". Technical corrections have been proposed throughout the rule to ensure the two terms are used as intended.

The terms "day" or "days" would be added to clarify how deadlines are calculated under the rule.

The term "E-COFR" would be defined to refer the reader to the web-based process on NPFC's Web site for operators to apply for and renew Certificates.

The term "financial guarantor" would be defined to clarify that a financial guarantor is a particular type of guarantor, and is distinct from an insurer, a self-insurer or a surety.

In the definition of "insurer", we propose changing "Coast Guard" to "Director, NPFC" because NPFC has been delegated responsibility for vessel certification.

We also propose to revise the definition of "Master Certificate", to make it consistent with § 138.110(a) of the current and proposed rule, by including the word "lessor" in the list of eligible persons.

The term "responsible party" would be defined by reference to OPA 90 and CERCLA to clarify its meaning when used in the rule. We would also, when appropriate and helpful to improve readability, replace references to owners, operators and demise charterers by the term responsible party.

We propose to amend the definition of "guarantor" to clarify, consistent with OPA 90 and CERCLA, that a responsible party is not a guarantor, and to incorporate the newly defined term "responsible party."

The Hazardous Material definition of the current rule has a typographical error in its citation of the Federal Water Pollution Control Act. The current regulation references "33 U.S.C. 1221". It should read "33 U.S.C. 1321". The proposed rule would correct this error.

*Section 138.30.* We propose moving the last sentence of § 138.30(b), which provides that a "time or voyage charter that does not assume responsibility for

the operation of a vessel is not considered an operator," to the definition of the term "Operator". All other changes to § 138.30 are editorial.

*Section 138.40.* This section of the proposed rule would inform the public where to obtain the forms that now appear in the appendices of part 138.

*Section 138.45.* This section, currently § 138.40 of the rule, would be amended by adding a statement that COFR applications may be submitted electronically using E-COFR found on NPFC's Web site.

*Section 138.50.* The proposed rule would add the words "for good cause shown", to clarify the standard the Coast Guard now applies to grant extensions.

*Section 138.60.* The proposed rule would add language referring applicants to the instructions for obtaining COFR application forms at §§ 138.40 and 138.45.

*Section 138.65.* Due to recent technological improvements, the Coast Guard is now able to efficiently enforce these regulations using electronic means. Therefore, this proposed rule would remove the requirement in § 138.65 that hard-copy COFRs be carried aboard vessels. The proposed rule would also provide in this section that COFRs will be issued by NPFC in electronic form. The rule would also provide that a copy of the Certificate may be downloaded from NPFC's website. Elsewhere in § 138.140(e) the rule would provide that copies may not be altered, and may not be used following expiration or revocation for anything other than recordkeeping purposes.

*Section 138.70.* The proposed rule would add language to paragraph (a) of this section permitting operators to use the E-COFR Web site for COFR renewal requests. The proposal would also clarify in paragraph (a) that the requirements in § 138.60 requiring that applications be in English and that all monetary terms be expressed in U.S. dollars also apply to requests for renewal.

Additionally, paragraph (c) of this section of the current rule would be removed. The phase-in of the prior financial responsibility regulations was completed on December 27, 1997. Therefore, this paragraph is no longer applicable. For further information concerning the previous phase-in, see the discussion in this preamble of § 138.15.

*Section 138.80(f)(1).* Section 603(b) of DRPA amended 33 U.S.C. 2704(d) by adding a requirement that the President update the limits of liability specified in 33 U.S.C. 2704(a) by regulation within three years following enactment of the

2006 amendments, and preserved the requirement for such updates not less often than every 3 years to reflect significant increases in the Consumer Price Index. This authority to update the limits of liability for vessels and deepwater ports was subsequently delegated to the Coast Guard. To facilitate future updates to the CFR, this paragraph would be amended to inform readers that the OPA 90 evidence of financial responsibility applicable amounts are equal to the limits of liability for vessels referenced in new subpart B.

This approach is proposed to simplify the process of updating vessel OPA 90 financial responsibility applicable amounts and limits of liability. For example, when an adjustment in the OPA 90 limits of liability is required to reflect a change in the Consumer Price Index, only subpart B of the proposed regulations would require revision. In contrast, continuing to state financial responsibility amounts in this section would necessitate amending this section as well as the limits of liability in new subpart B.

The Coast Guard considered the possibility of adding the adjusted OPA 90 limits of liability to § 138.80(f), or removing that paragraph entirely and stating limits of liability and financial responsibility applicable amounts in a new section. The former alternative was not preferred because the current § 138.80(f) also contains provisions concerning the CERCLA evidence of financial responsibility requirements, and a paragraph containing all of these provisions would be unnecessarily confusing. Removal of this paragraph was also not preferred because doing so would unnecessarily entail a reorganization of part 138 to relocate the CERCLA provisions.

The limitations contained in current § 138.80(f)(1) concerning gross tonnage, cargo, jurisdiction and vessel use would be removed from that paragraph, but would continue in force through § 138.15 of the proposed rule.

*Section 138.85.* This new section of the proposed rule would establish an implementation schedule that would apply to the increased applicable amounts in Subpart B of this proposed rule, and whenever the financial responsibility applicable amounts under Subpart B are amended by regulation. This would occur in instances including, but not limited to, future regulatory changes mandated by statute, and when the limits of liability in proposed subpart B of this Part are amended to reflect significant increases in the Consumer Price Index pursuant to 33 U.S.C. 2704(d)(4).

*Sections 138.90, 138.110 and 138.120.* As discussed in this preamble in relation to § 138.65, the proposed rule would remove the requirement to carry the COFR in hard-copy onboard the vessel. Provisions requiring such carriage, as well as requirements for copies of COFRs to be notarized, and for operators to return COFRs to NPFC under certain circumstances are no longer applicable and we propose that they be deleted from these sections. Operators may download copies of COFRs. Elsewhere, however, § 138.140(e) of the rule would continue to provide that the use of altered copies is prohibited, and although copies would no longer need to be returned to NPFC, the rule would add that copies may not be used following expiration or revocation for anything other than recordkeeping purposes.

*Section 138.130.* The proposed rule would add a provision to § 138.130(b) requiring payment with a credit card by those seeking to make fee payments using E-COFR.

In addition § 138.130(c) has been rewritten to clarify when an application fee is required to be paid to the NPFC.

As discussed in this preamble in relation to §§ 138.15 and 138.70, we propose to remove § 138.70(c) of the current rule, and references to it, because it is no longer applicable. References to § 138.70(c) would, therefore, also be deleted from § 138.130.

This proposed rule would also amend § 138.130 to increase the COFR application fees from \$150 to \$200 and the COFR certification fees from \$80 to \$100. These proposed fee increases approximate the fluctuations to the Consumer Price Index occurring as a result of inflation since 1994, the year the current fees were established, and are not anticipated to result in significant economic cost to those affected. See the Preliminary Regulatory Evaluation at <http://www.regulations.gov>

under docket number USCG 2005–21780 for an analysis of economic impacts associated with these proposed increases.

We also propose amending § 138.130(c) for clarity and to conform the rule to NPFC's policy of waiving application fees when new applications are submitted within 90 days following a revocation or other invalidation of a Certificate.

*Section 138.140.* The proposed rule would revise § 138.140 to clarify its provisions, explain the repercussions of non-compliance and facilitate enforcement of the evidence of financial responsibility requirements of this regulation through electronic methods

in order to improve efficiency. Additionally, the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178) revised 46 U.S.C. App. 91 by substituting the Secretary of Homeland Security for the Customs Service and the Secretary of the Treasury, and that section was recodified at 46 U.S.C. 60105. Accordingly, we propose to update the reference to 46 U.S.C. App. 91 in § 138.140(b).

*Subpart B.* Section 603(b) of the DRPA amended 33 U.S.C. 2704(d)(4) adding a requirement that the President update the limits of liability specified in 33 U.S.C. 2704(a) by regulation within three years following enactment of DRPA, and preserved the requirement for such updates not less often than every 3 years thereafter to reflect significant increases in the Consumer Price Index. This authority to update the limits of liability for vessels and deepwater ports was subsequently delegated to the Coast Guard. To facilitate such updates, § 138.80(f)(1) would be amended to inform readers that the OPA 90 vessel financial responsibility applicable amounts are equal to the limits of liability for vessels referenced in new subpart B. This approach will enable regulatory revision of both the limits of liability and the financial responsibility amounts through amendment of subpart B.

The limits of liability contained in 33 U.S.C. 2704 would be set forth in new subpart B, consisting of new §§ 138.200, 138.210, and 138.220, to facilitate future Consumer Price Index adjustments. As explained in the "Background and Purpose" section above, the OPA 90 vessel limits of liability would be set forth in subpart B at the increased amounts pursuant to the DRPA. The limit of liability for the Louisiana Offshore Oil Port would be set forth at the existing amount, \$62,000,000, which was established pursuant to 33 U.S.C. 2704(d)(2)(C) by a final rule published in the **Federal Register** on August 4, 1995 (60 FR 39849). The limit of liability for all other deepwater ports would also be set forth at subpart B at the existing amount, \$350,000,000, pursuant to 33 U.S.C. 2704(a)(4).

*Appendices A–F.* We propose to delete the appendices of forms from the regulations. Instead, as explained in the preamble discussion of § 138.40, the proposed rule would, where appropriate, refer readers to the forms by form number and would provide street and internet addresses where forms could be obtained.

#### IV. Regulatory Evaluation

We developed this proposed rule after considering numerous statutes and

executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes and executive orders.

##### A. Executive Order 12866

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

A draft Regulatory Evaluation is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. A summary of the Evaluation follows:

There are two regulatory costs that are expected to result from this proposed rule:

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

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

There are approximately 16,982 vessels using commercial insurance and 823 vessels using self insurance methods of guaranty. The 10-year present value of this regulatory cost at a 3% discount rate would be between \$73.8 Million and \$83.4 Million. The 10-year present value of this regulatory cost at a 7% discount rate would be between \$63.3 Million and \$71.9 Million. The ranges reflect two vessel profiles that were developed and analyzed separately to account for the uncertainty, due to data gaps, of when existing single hulled tank vessels would be phased out.

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

This proposed rule would result in two benefits: First, the rule would align the financial responsibility amounts for vessels in 33 CFR with the amended statutory limits of liability under OPA 90. This will ensure the ability of responsible parties to meet their maximum liability limit under OPA 90, as specified in 33 U.S.C. 2704, in the event of an incident. Second, the rule would eliminate the burden on owners and operators of maintaining COFRs onboard vessels.

#### *B. Small Entities*

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

An Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble.

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

There are an estimated 600 small entities that would be affected by this proposed rule. It was found that 82 distinct NAICS codes were represented in the population of small entities (of which 32 contained more than 5 entities). Increases in insurance premiums would result in an average annual cost of \$523 per vessel. Increases in self-insurer costs would result in an average annual cost of \$7,200 per vessel. Increases in COFR application fees would result in an average annual cost of \$12 per vessel.

Of the small entities impacted, 92 percent would experience an annual economic impact that is less than 1 percent of their annual sales. Furthermore, 98 percent of the small entities would experience an economic impact less than 3 percent of their total sales. Two percent would experience an annual economic impact that is equal to or greater than 3 percent of their annual sales and none would experience an annual economic annual impact greater than 10 percent of their annual sales. Based on this analysis, we believe that implementation of this proposed rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. 605(b).

At the final rule stage, we may certify this rule as not having a significant economic impact on a substantial number of small entities; consequently, we specifically request comments that inform our decision regarding the economic impact of this rule on small entities.

#### *C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Benjamin White, National Pollution Funds Center, Coast Guard, telephone 202–493–6863. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

#### *D. Collection of Information*

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

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

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

*Summary of the Collection of Information:* Within 120 days of the effective date of this regulation, operators and guarantors would be required to establish evidence of financial responsibility to the amended applicable amounts in 33 CFR 138.80(f).

This proposed rule would eliminate the existing recordkeeping burden associated with 33 CFR part 138, and revise the current information collection entitled, Financial Responsibility for Water Pollution (Vessels) (Office of Management and Budget Control Number 1625–0046, Approved December 7, 2006).

*Need for Information:* This information collection is necessary to enforce this proposed rule. Without this collection, it would not be possible for the Coast Guard to know which operators were in compliance with the amended financial responsibility amounts of 33 CFR 138.80(f), and which were not. Vessels not in compliance would be subject to the penalties provided under 33 CFR 138.140.

*Proposed Use of Information:* The Coast Guard would use this information to verify that vessel operators have established evidence of financial responsibility to reflect the amended financial responsibility applicable amounts in 33 CFR 138.80(f).

*Description of the Respondents:* Operators and guarantors of vessels that require COFRs under 33 CFR part 138.

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

*Frequency of Response:* This is a one-time submission that would occur within 120 days of this regulatory change to the financial responsibility applicable amounts. Subsequent submissions that may be required as a result of changes to the Consumer Price Index are not included here because they will be addressed in a future rulemaking to establish procedures for periodic changes to the limits of liability to reflect changes in the Consumer Price Index pursuant to 33 U.S.C. 2704(d)(4).

Also not included here are submissions required under any existing collection of information requirement in part 138.

*Burden of Response:*

Increased burden associated with reporting requirements:

10,000 operators × 1.0 hours per response = 10,000 hours

Reduced burden associated with recordkeeping requirements: 137 hours for recordkeeping

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

$\$18.21 \text{ per hour} + (\$18.21 \text{ per hour} \times 43\%) = \$26 \text{ per hour.}$

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

Increased burden associated with reporting requirements:

10,000 hours × \$26 per hour = \$260,000

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

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

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

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

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this

collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

*E. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

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

*F. Unfunded Mandates Reform Act*

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

*G. Taking of Private Property*

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

*H. Civil Justice Reform*

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

*I. Protection of Children*

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

*J. Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or

more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*K. Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*L. Technical Standards*

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

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*M. Environment*

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary "Environmental Analysis Check List" supporting this preliminary determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 138**

Hazardous materials transportation, Insurance, Oil pollution, Reporting and

recordkeeping requirements, Water pollution control.

## VI. Words of Issuance and Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to revise 33 CFR part 138 to read as follows:

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

#### Subpart A—Financial Responsibility for Water Pollution (Vessels)

- Sec.
- 138.10 Scope.
  - 138.15 Applicability.
  - 138.20 Definitions.
  - 138.30 General.
  - 138.40 Forms.
  - 138.45 Where to apply for Certificates.
  - 138.50 Time to apply.
  - 138.60 Applications, general instructions.
  - 138.65 Issuance of Certificates.
  - 138.70 Renewal of Certificates.
  - 138.80 Financial responsibility, how established.
  - 138.85 Implementation schedule.
  - 138.90 Individual and Fleet Certificates.
  - 138.100 Non-owning operator's responsibility for identification.
  - 138.110 Master Certificates.
  - 138.120 Certificates, denial or revocation.
  - 138.130 Fees.
  - 138.140 Enforcement.
  - 138.150 Service of process.

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

- Sec.
- 138.200 Scope.
  - 138.210 Applicability.
  - 138.220 Limits of liability.

**Authority:** 33 U.S.C. 2716, 2716a; 42 U.S.C. 9608, 9609; sec. 7(b), E.O. 12580, 3 CFR, 1987 Comp., p. 198; E.O. 12777, 3 CFR, 1991 Comp., p. 351; E.O. 13286, Sec. 89 (68 FR 10619, Feb. 28, 2003); Section 1512 of the Homeland Security Act of 2002 (Pub. L. 107–296); Department of Homeland Security Delegation Nos. 0170.1 and 5110. Section 138.30 also issued under the authority of 46 U.S.C. 2103, 46 U.S.C. 14302.

#### Subpart A—Financial Responsibility for Water Pollution (Vessels)

##### § 138.10 Scope.

This subpart sets forth the procedures by which an operator of a vessel must establish and maintain, for itself and for the owners and demise charterers of the vessel, evidence of financial responsibility required by § 1016(a) of the Oil Pollution Act of 1990, as amended (OPA 90) (33 U.S.C. 2716), and Section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act, as

amended (CERCLA) (42 U.S.C. 9608), equal to the total applicable amount established under this part and sufficient to cover their liability arising under—

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

##### § 138.15 Applicability.

(a) This subpart applies to the operator as defined herein of—

(1) A tank vessel of any size, and a foreign-flag vessel of any size, using the waters of the exclusive economic zone to transship or lighter oil (whether delivering or receiving) destined for a place subject to the jurisdiction of the United States; and

(2) Any vessel using the navigable waters of the United States or any port or other place subject to the jurisdiction of the United States, including a vessel using an offshore facility subject to the jurisdiction of the United States, except—

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

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

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

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

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

##### § 138.20 Definitions.

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

(1) Section 1001 of the Oil Pollution Act of 1990 (Pub. L. 101–380, Title I, § 1001, Aug. 18, 1990, 104 Stat. 486; Pub. L. 105–383, Title III, § 307(a), Nov. 13, 1998, 112 Stat. 3421; Pub. L. 108–293, Title VII, § 703(a), (b), Aug. 9, 2004, 118 Stat. 1069, 1071), respecting the financial responsibility referred to in § 138.10(a); *claim, claimant, damages, discharge, exclusive economic zone,*

*liable, liability, navigable waters, mobile offshore drilling unit, natural resources, offshore facility, oil, owner or operator, person, remove, removal, removal costs, security interest, and United States;* and

(2) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (Pub. L. 96–510, Title I, § 101, Dec. 11, 1980, 94 Stat. 2767; Pub. L. 96–561, Title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 99–499, Title I, §§ 101, 114(b), 127(a), Title V, § 517(c)(2), Oct. 17, 1986, 100 Stat. 1615, 1652, 1692, 1774; Pub. L. 100–707, Title I, § 109(v), Nov. 23, 1988, 102 Stat. 4710; Pub. L. 103–429, § 7(e)(1), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104–208, Div. A, Title I, § 101(a) [Title II, § 211(b)], Title II, § 2502(b), Sept. 30, 1996, 110 Stat. 3009–41, 3009–464; Pub. L. 104–287, § 6(j)(1), Oct. 11, 1996, 110 Stat. 3400; Pub. L. 106–74, Title IV, § 427, Oct. 20, 1999, 113 Stat. 1095; Pub. L. 107–118, Title II, §§ 211(a), 222(a), 223, 231(a), Jan. 11, 2002, 115 Stat. 2360, 2370, 2372, 2375), respecting the financial responsibility referred to in § 138.10(b); *claim, claimant, damages, environment, hazardous substance, liable, liability, navigable waters, natural resources, offshore facility, owner or operator, person, release, remove, removal, security interest, and United States.*

(b) As used in this subpart—

*Acts* means OPA 90 and CERCLA.

*Applicable amount* means an amount of financial responsibility that must be demonstrated under this part, calculated pursuant to Sec. 138.80(f)(1) and subpart B for OPA 90 or 138.80(f)(2) for CERCLA.

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

*Application* means an “Application for Vessel Certificate of Financial Responsibility (Water Pollution)” (Form CG–5585), which can be obtained from the U.S. Coast Guard National Pollution Funds Center as provided in §§ 138.40 and 138.45.

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

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

*Certificant* means an operator who has a current Certificate issued by NPFC under this subpart.

*Certificate* means a “Vessel Certificate of Financial Responsibility (Water

Pollution)" issued by the NPFC electronically under this subpart, as provided in § 138.65.

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

*Director, NPFC*, means the head of the U.S. Coast Guard National Pollution Funds Center (NPFC).

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

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

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

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

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

*Guarantor* means any person, other than a responsible party, who provides evidence of financial responsibility under the Acts on behalf of a vessel's responsible parties. A responsible party who can qualify as a self-insurer under § 138.80(b)(3) may act as both a self-insurer of vessels owned, operated or demise chartered by the responsible party, and as a financial guarantor for the responsible parties of other vessels under § 138.80(b)(4).

*Hazardous material* means a liquid material or substance that is—

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

*Incident* means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial

threat of discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone.

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

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

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

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

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

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

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

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

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

*Tank vessel* means a vessel (other than an offshore supply vessel, a fishing

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

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

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

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

### § 138.30 General.

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

(1) OPA 90 is required to be made available by a vessel's responsible parties and guarantors for the costs and damages related to an incident where there is not also a release or threatened release; and,

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

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

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

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

(2) For all other United States vessels. The vessel's gross tonnage under 46 CFR part 69 is used for determining the vessel's 300 gross ton threshold, the required applicable amounts of financial responsibility, and limits of liability under section 1004(a) of OPA 90 and section 107 of CERCLA. If the vessel's gross tonnage is determined under the Dual Measurement System, the higher gross tonnage is used in all determinations.

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

(1) For a vessel assigned, or presently required to be assigned, gross tonnage under Annex I of the Convention. The vessel's gross tonnage as measured under Annex I of the Convention is used for determining the 300 gross ton threshold, if applicable, the required applicable amounts of financial responsibility, and limits of liability under section 1004(a) of OPA 90 and under section 107 of CERCLA.

(2) For a vessel not presently required to be assigned gross tonnage under Annex I of the Convention. The highest

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

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

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

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

(f) A person who agrees to act as a guarantor or a self-insurer is bound by the vessel's gross tonnage as determined under paragraphs (c), (d), or (e) of this section, regardless of what gross tonnage is specified in an application or guaranty form submitted under this subpart. Guarantors, however, may limit their liability under a guaranty of financial responsibility to the applicable

gross tonnage appearing on a vessel's International Tonnage Certificate or other official, applicable certificate of measurement and will not incur any greater liability with respect to that guaranty, except when the guarantors knew or should have known that the applicable tonnage certificate was incorrect.

#### **§ 138.40 Forms.**

All forms referred to in this subpart may be obtained from NPFC by requesting them in writing at the address given in § 138.145(a) or by clicking on the "Forms" link at the NPFC E-COFR Web site, <http://www.npfc.gov/cofr>.

#### **§ 138.45 Where to apply for and renew Certificates.**

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

(b) All requests you have for assistance in completing applications, requests for renewal and other submissions under this subpart, including telephone inquiries, should be directed to the U.S. Coast Guard NPFC at the addresses in paragraph (a) of this section.

#### **§ 138.50 Time to apply.**

(a) A vessel operator who wishes to obtain a Certificate must submit a completed application form or request for renewal and all required supporting evidence of financial responsibility, and must pay all applicable fees, at least 21 days prior to the date the Certificate is required. The Director, NPFC, may grant an extension of this 21-day requirement for good cause shown.

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

#### **§ 138.60 Applications, general instructions.**

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

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

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

(d) The application must be accompanied by a written statement providing the signer the authority to sign, where the signer is not identified as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director, chief executive officer, or any other duly authorized officer of a corporate applicant.

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

#### **§ 138.65 Issuance of Certificates.**

Upon the satisfactory demonstration of financial responsibility and payment of all fees due, the Director, NPFPC, will issue a "Vessel Certificate of Financial Responsibility (Water Pollution)" in electronic form. Copies of the Certificate may be downloaded from NPFPC's E-COFR Web site.

#### **§ 138.70 Renewal of Certificates.**

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

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

#### **§ 138.80 Financial responsibility, how established.**

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

(b) *Methods.* An applicant or certificant must establish and maintain

evidence of financial responsibility by one or more of the following methods:

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

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

(3) *Self-insurance.* By filing the financial statements specified in paragraph (b)(3)(i) of this section for the applicant's fiscal year preceding the date of application and by demonstrating that the applicant or certificant maintains, in the United States, working capital and net worth each in amounts equal to or greater than the total applicable amount calculated in accordance with § 138.80(f)(3), based on a vessel carrying hazardous substances as cargo. As used in this paragraph, working capital means the amount of current assets located in the United States, less all current liabilities anywhere in the world; and net worth means the amount of all assets located in the United States, less all liabilities anywhere in the world. For each fiscal year after the initial submission, the applicant or certificant must also submit statements as follows:

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

Accountant, verifying the amount by which the applicant's or certificant's—

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

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

(ii) *Semiannual submissions.* When the applicant's or certificant's demonstrated net worth is not at least ten times the total applicable amount of financial responsibility calculated in accordance with § 138.80(f)(3), the applicant's or certificant's Treasurer (or equivalent official) must file affidavits covering the first six months of the applicant's or certificant's current fiscal year. The affidavits must state that neither the working capital nor the net worth have, during the first six months of the current fiscal year, fallen below the applicant's or certificant's required total applicable amount of financial responsibility as determined in accordance with this subpart.

(iii) *Additional submissions.* An applicant or certificant—

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

(B) Who establishes financial responsibility under paragraph (b)(3) of this section must notify the Director, NPFPC, within 5 business days of the date the applicant or certificant knows, or has reason to believe, that the working capital or net worth has fallen below the amounts required by this subpart.

(iv) *Time for submissions.* All required annual financial statements must be received by the Director, NPFPC, within 90 days after the close of the applicant's or certificant's fiscal year, and all affidavits required by paragraph (b)(3)(ii) of this section within 30 days after the close of the applicable six-month period. The Director, NPFPC, may grant an extension of the time limits for filing the annual financial statements, semi-annual affidavits or additional financial information upon written request and for good cause shown. An applicant or certificant seeking an extension of any of these deadlines must set forth the reason for the extension and deliver the request at least 15 days before the annual financial statements, affidavits or additional information are

due. The Director, NPFC, will not consider a request for an extension of more than 60 days.

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

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

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

(B) Demonstrates in writing that working capital is not a significant factor in the applicant's or certificant's financial condition. An applicant's or certificant's net worth in relation to the amount of its required total applicable amount of financial responsibility and a history of stable operations are the major elements considered by the Director, NPFC.

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

(5) *Other evidence of financial responsibility.* The Director, NPFC, will not accept a self-insurance method other than the one described in paragraph (b)(3) of this section. An applicant may in writing request that the Director, NPFC, accept a method different from one described in paragraph (b)(1), (2), or (4) of this section to demonstrate evidence of financial responsibility. An applicant submitting a request under this paragraph must submit the request

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

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

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

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

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

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

(i) The incident, release, or threatened release was caused by the willful misconduct of the person for whom the guaranty is provided.

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

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

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

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

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

that guaranty is considered null and void with respect to that excess.

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

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

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

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

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

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

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

#### **§ 138.85 Implementation schedule.**

The effective date of the applicable amounts in Subpart B of this part will be [INSERT DATE 90 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**]. In the event an applicable amount in Subpart B is amended by regulation, the effective date of the amended applicable amount will be 90 days after publication of a final rule in the **Federal Register**, unless another date is required by statute and specified in the amending regulation. Each operator of a vessel described in § 138.15, must have established, on or before the effective date of the applicable amount, evidence of financial responsibility acceptable to the Director, NPFPC, in an amount equal to or greater than the total applicable amount.

#### **§ 138.90 Individual and Fleet Certificates.**

(a) The Director, NPFPC, issues an individual Certificate for each vessel listed on a completed application or request for renewal when the Director, NPFPC, determines that acceptable evidence of financial responsibility has been provided and appropriate fees have been paid, except where a Fleet Certificate is issued under this section or where a Master Certificate is issued under § 138.110. Each Certificate of any type issued under this subpart is issued only in the name of a vessel operator and is effective for not more than 3 years from the date of issue, as indicated

on each Certificate. An authorized official of the applicant may submit to the Director, NPFPC, a letter requesting that additional vessels be added to a previously submitted application for an individual Certificate. The letter must set forth all information required in item 5 of the application form. The authorized official must also submit, or cause to be submitted, acceptable evidence of financial responsibility, if required, and certification fees for these additional vessels.

(b) An operator of two or more barges that are not tank vessels and that from time to time may be subject to this subpart (e.g., a hopper barge over 300 gross tons when carrying oily metal shavings or similar cargo), so long as the operator of such a fleet is a self-insurer or arranges with an acceptable guarantor to cover, automatically, all such barges for which the operator may from time to time be responsible, may apply to the Director, NPFPC, for issuance of a Fleet Certificate.

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

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

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

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

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

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

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

(f) In the event of the temporary transfer of custody of an unmanned

barge certificated under this subpart, where the certificant transferring the barge continues to be liable under the Acts and continues to maintain on file with the Director, NPFPC, acceptable evidence of financial responsibility with respect to the barge, the existing individual Certificate remains in effect. A temporary new individual Certificate is not required. A transferee is encouraged to require the transferring certificant to acknowledge in writing that the transferring certificant agrees to remain responsible for pollution liabilities.

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

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

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

#### **§ 138.110 Master Certificates.**

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

(b) An applicant for a Master Certificate must submit an application form in the manner prescribed by §§ 138.40 through 138.60. An applicant must establish evidence of financial responsibility in accordance with § 138.80, by submission, for example, of an acceptable Master Insurance Guaranty Form, Surety Bond Guaranty Form, Master Financial Guaranty Form, or acceptable self-insurance

documentation. An application must be completed in full, except for Item 5. The applicant must make the following statement in Item 5: "This is an application for a Master Certificate. The largest tank vessel to be covered by this application is [insert applicable gross tons] gross tons. The largest vessel other than a tank vessel is [insert applicable gross tons] gross tons." The dollar amount of financial responsibility evidenced by the applicant must be sufficient to meet the amount required under this subpart.

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

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

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

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

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

(1) Evidence of increased financial responsibility.

(2) A new certification fee.

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

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

#### **§ 138.120 Certificates, denial or revocation.**

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

(1) Willfully or knowingly makes a false statement in connection with an application for an initial or renewal Certificate;

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

(3) Fails to pay the required application or certificate fees;

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

(5) Fails to timely file required statements, data, notifications, or affidavits.

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

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

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

(3) Fails to timely file required statements, data, notifications, or affidavits.

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

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

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

(3) Alters any copy of a Certificate.

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

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

(f) If the intended denial is based on paragraph (a)(1) or (a)(4) of this section, or the intended revocation is based on paragraph (b)(1) or (b)(2) of this section, the applicant or certificant may request, in writing, an opportunity to present

information for the purpose of showing that the applicant or certificant is in compliance with the subpart. The request must be received by the Director, NPFPC, within 10 days after the date of the notification of intention to deny or revoke. A Certificate subject to revocation under this paragraph remains valid until the Director, NPFPC, issues a written decision revoking the Certificate.

(g) An applicant or certificant whose Certificate has been denied under paragraph (a) of this section or revoked under paragraph (b) or (c) of this section may request the Director, NPFPC, to reconsider the denial or revocation. The certificant must file a request for reconsideration, in writing, to the Director, NPFPC, within 20 days of the date of the denial or revocation. The certificant must state the reasons for reconsideration. The Director, NPFPC, may issue a written decision on the request within 30 days of receipt, provided that failure by the Director, NPFPC, to issue a decision within 30 days will be deemed an affirmation of a denial or revocation. Unless the Director, NPFPC, issues a decision reversing the revocation, a revoked Certificate remains invalid. A decision by the Director, NPFPC, affirming a denial or revocation, is final agency action.

#### **§ 138.130 Fees.**

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

(b) For those using E-COFR, credit card payment is required. Otherwise, fees must be paid in United States currency by check, draft, or postal money order made payable to the "U.S. Coast Guard". Cash will not be accepted.

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

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

(2) An application to amend or renew an existing Certificate, or

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

(d) In addition to the application fee of \$200, an applicant must pay a certification fee of \$100 for each vessel for which a Certificate is requested. An applicant must pay the \$100 certification fee for each vessel listed in, or later added to, an application for an

individual Certificate(s). An applicant must pay the \$100 certification fee to renew or to reissue a Certificate for any reason, including, but not limited to, a vessel or operator name change.

(e) A certification fee is refunded, upon receipt of a written request, if the application is denied or withdrawn before issuance of the Certificate. Overpayments of application and certification fees are refunded, on request, only if the refund is for \$100 or more. However, any overpayments not refunded will be credited, for a period of 3 years from the date of receipt of the monies by the Coast Guard, for the applicant's possible future use or transfer to another applicant under this subpart.

#### § 138.140 Enforcement.

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

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

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

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

(e) Knowingly and willfully using an altered copy of a Certificate, or using a copy of a revoked, expired or voided

Certificate for anything other than recordkeeping purposes, is prohibited. If a Certificate is revoked, has expired or is rendered void for any reason, the certificant must cease using all copies of the Certificate for anything other than the operator's own historical recordkeeping purposes.

#### § 138.150 Service of process.

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

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

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

(1) Sends the applicant, certificant, or guarantor, as applicable (by registered mail, at the last known address on file

with the Director, NPFPC), a copy of each document served on the Director, NPFPC; and

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

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

##### § 138.200. Scope.

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

##### § 138.210. Applicability.

This subpart applies to responsible parties for—

(a) Vessels under Section 1001(37) of OPA 90 (33 U.S.C. 2701(37)); and

(b) Deepwater ports under Section 1001(6) of OPA 90 (33 U.S.C. 2701(6)).

##### § 138.220. Limits of liability.

(a) The limits of liability for responsible parties of vessels under OPA 90, as amended, are—

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

(2) For a tank vessel greater than 3,000 gross tons, other than a vessel referred to in § 138.220(a)(1), the greater of \$1,900 per gross ton or \$16,000,000.

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

(4) For a tank vessel less than or equal to 3,000 gross tons, other than a vessel referred to in § 138.220(a)(3), the greater of \$1,900 per gross ton or \$4,000,000.

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

(b) The limits of liability for deepwater ports under OPA 90, as amended, are—

(1) For a deepwater port other than the Louisiana Offshore Oil Port (LOOP), \$350,000,000; and

(2) For LOOP, \$62,000,000.

Dated: January 23, 2008.

**William Grawe,**

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

[FR Doc. E8-1516 Filed 2-4-08; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2007-1091; FRL-8525-5]

#### Approval and Promulgation of Implementation Plans Kentucky: Tennessee Valley Authority Paradise Facility State Implementation Plan Revision

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a source specific State Implementation Plan (SIP) revision submitted on October 19, 2007, by the Kentucky Division for Air Quality (KDAQ). The purpose of the SIP revision is to remove from the Kentucky State Implementation Plan a previous source-specific revision approved by EPA on August 25, 1989, and relating to the redistribution of sulfur dioxide (SO<sub>2</sub>) emissions from Tennessee Valley Authority's (TVA's) Paradise Steam Plant located in Muhlenberg County, Kentucky. This proposal includes SO<sub>2</sub> limits that are more stringent than the current SIP-approved statewide SO<sub>2</sub> limits for electric generating units (EGUs). Consistent with Kentucky Administrative Regulations (KAR) approved into the SIP, affected facilities located in Muhlenberg County are subject to an SO<sub>2</sub> emission limit of 3.1 pounds per million British Thermal Units (lbs/mmBTU). The 3.1 lbs/mmBTU limit was approved by EPA in June 24, 1983, as part of Kentucky's control strategy for attaining and maintaining the primary and secondary SO<sub>2</sub> national ambient air quality standard (NAAQS) in Muhlenberg County. This SIP revision proposes a limit of 1.2 lbs/mmBTU for all three units with limited bypass emissions of 3.1 lbs/mmBTU for scrubber maintenance on Unit 3.

**DATES:** Written comments must be received on or before March 6, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number, "EPA-R04-OAR-2007-1091," by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [lesane.heidi@epa.gov](mailto:lesane.heidi@epa.gov).

3. *Fax*: 404-562-9019.

4. *Mail*: "EPA-R04-OAR-2007-1091," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

*Instructions:* Direct your comments to Docket ID Number, "EPA-R04-OAR-2007-1091." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although

listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9074. Ms. LeSane can also be reached via electronic mail at [lesane.heidi@epa.gov](mailto:lesane.heidi@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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- I. What Action Is EPA Proposing?
- II. What is the Background for EPA's Proposed Action?
- III. Proposed Action
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#### **I. What Action Is EPA Proposing?**

EPA is proposing to approve a source-specific SIP revision submitted by KDAQ on October 19, 2007. The purpose of the SIP revision is to change and update the Kentucky SIP with regard to applicable SO<sub>2</sub> emissions limits for the TVA Paradise Plant located in Muhlenberg County, Kentucky. The new proposed limits are 1.2 lbs/mmBTU for all three units with limited bypass emissions of 3.1 lbs/mmBTU during scrubber maintenance on Unit 3. A previous source-specific SIP revision was approved by EPA on August 25, 1989 (54 FR 35326). The proposed change is consistent with Kentucky Revised Statutes Chapter 224.10-100, and associated KAR including 401 KAR 61:015, Appendix B. These KAR, which are SIP-approved, allow for an SO<sub>2</sub> emission limit of 3.1 lbs/mmBTU at the TVA Paradise facility. The 3.1 lbs/mmBTU limit described in 401 KAR 61:015 was approved by EPA on June 24, 1983 (48