DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 138

[Docket No. USCG–2008–0007]

RIN 1625–AB25

Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is increasing the limits of liability under the Oil Pollution Act of 1990 (OPA 90), for vessels and deepwater ports subject to the Deepwater Port Act of 1974, to reflect significant increases in the Consumer Price Index (CPI). This interim rule also establishes the methodology the Coast Guard uses to adjust OPA 90 limits of liability for inflation, including the frequency with which such adjustments may be made. The inflation adjustments to the limits of liability are required by OPA 90 to preserve the deterrent effect and polluter-pays principle embodied in the OPA 90 liability provisions. Lastly, this interim rule makes minor amendments to clarify the applicability of the OPA 90 single-hull tank vessel limits of liability. Because the single-hull tank vessel amendments were not previously discussed in the notice of proposed rulemaking (hereafter the CPI NPRM), the Coast Guard is inviting additional public comment on this issue.

DATES: *Effective date:* This interim rule is effective July 31, 2009. To the extent this interim rule affects the collection of information in 33 CFR 138.85, the Coast Guard will not enforce the information collection request triggered by this rulemaking until it is approved by the Office of Management and Budget.

Comment date: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before August 31, 2009 or reach the Docket Management Facility by that date. Comments on collection of information must be sent to the docket for this rulemaking and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), as described below, on or before August 31, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2008–0007 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Collection of Information Comments: The adjustments to the limits of liability implemented by this rulemaking amend the evidence of financial responsibility applicable amounts in Title 33 of the Code of Federal Regulations (CFR), at section 138.80(f), by reference, and therefore revise the collection of information required by 33 CFR 138.85. A revised collection of information request will be submitted to OIRA for approval. If you have comments on the collection of information required by section 33 CFR 138.85, you must submit your collection of information comments to the docket and to OIRA. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to *oira_submission@omb.eop.gov* (include the docket number and ''*Attention:* Desk Officer for Coast Guard, DHS'' in the subject line of the e-mail) 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, DHS.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, e-mail or call Benjamin White, National Pollution Funds Center, Coast Guard, e-mail *Benjamin.H.White@uscg.mil,* 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:

Table of Contents for Preamble

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials on the amendments to 33 CFR 138.220(b) and 138.230(a) that were not discussed in the CPI NPRM. These amendments clarify applicability of the OPA 90 single-hull tank vessel limits of liability. All comments received on this interim rule will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit comments, please include the docket number for this rulemaking (Docket No. USCG–2008–0007), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. 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.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–0007'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit your comments 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 and may change this rule based on your comments.

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,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–0007 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the U.S. Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting 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. Abbreviations

APA Administrative Procedure Act, 5 U.S.C. 551, *et seq.*
BLS U.S. Department of Labor, Bureau of Labor Statistics
CFR Code of Federal Regulations
COFR Certificate of Financial Responsibility
COFR Rule The final rule published on September 17, 2008, titled ''Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels and Deepwater Ports)'', 73 FR 53691 (Docket No. USCG–2005–21780)
CPI Consumer Price Index
CPI NPRM The notice of proposed rulemaking published on September 24, 2008, titled ''Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports'', 73 FR 54997 (Docket No. USCG–2008–0007)
CPI–U Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84=100
Deepwater Port A deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524)
DHS U.S. Department of Homeland Security
DOI U.S. Department of Interior
DOT U.S. Department of Transportation
DRPA Delaware River Protection Act of 2006, Title VI of the Coast Guard and Maritime Transportation Act of 2006, Public Law 109–241, July 11, 2006, 120 Stat. 516
E.O. Executive Order
EPA U.S. Environmental Protection Agency
FR Federal Register
Fund Oil Spill Liability Trust Fund
LNG Liquefied natural gas (methane)
LPG Liquefied petroleum gas
LOOP Louisiana Offshore Oil Port
MODU Mobile Offshore Drilling Unit
MTR Marine transportation-related
NAICS North American Industry Classification System
NMTR Non-marine transportation-related
NPFC National Pollution Funds Center
NPRM Notice of proposed rulemaking
NTR Non-transportation-related
OIRA Office of Information and Regulatory Affairs
OIL Oil Insurance Limited of Bermuda
OMB Office of Management and Budget
OPA 90 The Oil Pollution Act of 1990, as amended (Title I of which is codified at 33 U.S.C. 2701, *et seq.*; Title IV of which is codified in relevant part at 46 U.S.C. 3703a)
§ Section symbol
SBA U.S. Small Business Administration
U.S.C. U.S. Code
U.S.C.C.A.N. U.S. Code Congressional and Administrative News

III. Regulatory History

On September 24, 2008, we published the CPI NPRM, entitled ''Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports'' in the **Federal Register,** at 73 FR 54997. The CPI NPRM proposed to adjust the OPA 90 limits of liability, set forth at 33 CFR part 138, subpart B, for vessels and for deepwater ports licensed under the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501, *et seq.*) (hereinafter ''Deepwater Ports''), for inflation under 33 U.S.C. 2704(d). We received four letters with seven comments on the CPI NPRM. No public meeting was requested for this rulemaking and none was held.

Previously, on September 17, 2008, the Coast Guard published a related final rule for the OPA 90 Certificate of Financial Responsibility (COFR) Program entitled ''Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels and Deepwater Ports) (Docket No. USCG–2005–21780), at 73 FR 53691 (hereafter the COFR Rule). (*See* also, the COFR Rule NPRM at 73 FR 6642 and 73 FR 8250.) That rulemaking divided 33 CFR part 138 into two subparts, setting forth the COFR program requirements as amended by the rulemaking in new subpart A, and (of relevance to this rulemaking) setting forth the OPA 90 limits of liability for oil spill source categories regulated by the Coast Guard in new subpart B. The COFR Rule thereby provided the framework for ensuring regulatory consistency when the OPA 90 limits of liability for oil spill source categories regulated by the Coast Guard are established or adjusted by regulation under 33 U.S.C. 2704(d). Three letters with five comments concerning CPI adjustments to the OPA 90 limits of liability were submitted to the docket for the related COFR Rule.

Finally, we received a question on implementation of the related final COFR Rule during the public comment period for the CPI NPRM (Docket No. USCG–2008–0007–0013). The question, which originally was not submitted to the docket for this rulemaking, raised a substantive and persuasive issue concerning the applicability of the single-hull tank vessel limits of liability that are amended by this rulemaking. A similar comment letter was submitted to the COFR Rule docket (Docket No. USCG–2005–21780–0013). To address the hull category issue raised in the public comment, without delaying the required adjustments to the limits of liability for inflation, we are publishing this interim rule, with minor amendments to §§ 138.220(b) and 138.230(a), and we are inviting comment on these amendments.

Although the public will have an opportunity to comment on the hull category amendments to §§ 138.220(b) and 138.230(a), we note that the Coast Guard is issuing the amendments without prior notice and opportunity to comment, pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). That provision of the APA authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing another NPRM with respect to the hull category amendments to 33 CFR 138.220(b) and 138.230(a) of this rule so as to conform the rule's treatment of the vessel hull categories, which were previously adopted in the final COFR Rule and proposed in the CPI NPRM, to the OPA 90 statutory scheme, including the Delaware River Protection Act of 2006 (DRPA) amendments. Failing to amend the hull category provisions would be contrary to the public interest. Moreover, it is in the best interest of the public to ensure that vessel owners, operators and demise charters are subject to the correct limits of liability.

All comments and other materials related to this rulemaking have been placed in the public docket (Docket No. USCG–2008–0007). This includes U.S. Department of Labor, Bureau of Labor Statistics (BLS) documentation pertinent to this rulemaking.

IV. Background

In general, under Title I of OPA 90, ''each responsible party [*i.e.,* the owners and operators, including demise charterers] for a vessel or a facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in [OPA 90, at 33 U.S.C. 2702(b)], that result from such incident.'' (33 U.S.C. 2702(a)).

Embodying the polluter-pays principle, this liability is strict, joint and several.[1] The responsible parties' total liability for OPA 90 removal costs and damages (including for removal costs incurred by, or on behalf of, the responsible parties) is, however, limited as provided in 33 U.S.C. 2704 except under certain circumstances as provided in 33 U.S.C. 2704(c). In instances when the OPA 90 limits of liability apply, the Oil Spill Liability Trust Fund (the Fund) is available to compensate the responsible parties and other claimants for OPA 90 removal costs and damages in excess of the applicable OPA 90 liability limits. (See 33 U.S.C. 2708, 2712(a)(4) and 2713; and 33 CFR part 136.)

OPA 90, at 33 U.S.C. 2704(a), sets forth the base dollar amounts of the limits of liability for four specified oil spill source categories: vessels (*i.e.,* single-hull tank vessels, other-hull tank vessels, and non-tank vessels), onshore facilities, Deepwater Ports, and offshore facilities (other than Deepwater Ports). In addition, to prevent the real value of the limits of liability from depreciating over time as a result of inflation, and to thereby preserve the polluter-pays principle, OPA 90 requires the President to periodically increase the limits of liability by regulation to reflect significant increases in the CPI. (*See* 33 U.S.C. 2704(d)(4).)

In Executive Order (E.O.) 12777, the President delegated implementation of the OPA 90 limit of liability inflation adjustment authorities, dividing the responsibility among several Federal agencies. Through a series of further delegations, the Coast Guard has been delegated the President's authority to adjust the OPA 90 limits of liability for vessels, Deepwater Ports (including associated pipelines), and transportation-related onshore facilities, but not including pipelines, motor carriers and railroads (hereinafter ''marine transportation-related'' or ''MTR'' onshore facilities). The Department of Transportation (DOT) has been delegated the President's authority to adjust the limit of liability for onshore pipelines, motor carriers, and railways (hereinafter ''non-marine transportation-related'' or ''NMTR'' onshore facilities). The U.S. Environmental Protection Agency (EPA) has been delegated the President's authority to adjust the limits of liability for non-transportation-related onshore facilities (hereinafter ''non-transportation-related'' or ''NTR'' onshore facilities). Finally, the Department of Interior (DOI) has been delegated the President's authority to adjust the limits of liability for offshore facilities and associated pipelines, other than Deepwater Ports (hereinafter ''offshore facilities'').

In addition, on August 4, 1995, DOT, which then included the Coast Guard, promulgated a facility-specific limit of liability for the Louisiana Offshore Oil Port (LOOP) under the OPA 90 Deepwater Port limit of liability adjustment authority at 33 U.S.C. 2704(d)(2). (60 FR 39849). The preamble for that final rule specifically contemplated that the LOOP regulatory limit of liability would be adjusted for inflation to prevent the real value of the LOOP limit from depreciating over time.

V. Discussion of the Interim Rule, Comments and Changes

This interim rule implements the first mandated adjustments, under 33 U.S.C. 2704(d), to the OPA 90 limits of liability for vessels and Deepwater Ports, including LOOP, to reflect significant increases in the CPI. This rulemaking also establishes the methodology for making inflation adjustments to the OPA 90 limits of liability for all oil spill source categories for which the Coast Guard has jurisdiction. The inflation-adjusted limits of liability are discussed in subsection V.A. of this preamble, below. The inflation adjustment methodology is discussed in subsection V.B. of this preamble, below. Public comments and changes to the CPI NPRM, including the hull category amendments, are discussed in subsection V.C. of this preamble, below.

As explained in the CPI NPRM, to ensure future consistency in inflation adjustments to the limits of liability for all OPA 90 oil spill source categories, the Coast Guard has coordinated the CPI adjustment methodology with DOT, EPA, and DOI. In addition, the Coast Guard, DOT, EPA, and DOI have agreed to coordinate the CPI inflation adjustments to the limits of liability for facilities (*i.e.,* for MTR onshore facilities regulated by Coast Guard, NMTR onshore facilities regulated by DOT, NTR onshore facilities regulated by EPA, and offshore facilities regulated by DOI), as part of the next cycle of inflation adjustments to the limits of

[1] *See Oil Pollution Desk Book,* Environmental Law Institute 1991, hereinafter OPA 90 Desk Book, p. 88, H.R. Conf. Report 101–653, at p. 102, reprinted in 1990 U.S.C.C.A.N. 779, 780 (''The term 'liable' or 'liability' * * * is to be construed to be the standard of liability * * * under section 311 of the [Federal Water Pollution Control Act, 33 U.S.C. 1321] . * * * That standard of liability has been determined repeatedly to be strict, joint and several liability.''); OPA 90 Desk Book p. 93, H.R. Conf. Report 101–653, at 118, 1990 U.S.C.C.A.N., at 797 (August 3, 1990) (''[T]he primary responsibility to compensate victims of oil pollution rests with the person responsible for the source of the pollution[.]'').

liability. This phased approach will allow adequate time for the additional interagency coordination necessary to ensure consistency in implementing the CPI adjustments to the OPA 90 limits of liability for all onshore and offshore facilities.

A. What Are the Inflation-adjusted OPA 90 Limits of Liability for Vessels and Deepwater Ports?

The new OPA 90 limits of liability for vessels and Deepwater Ports (rounded to the closest $100), adjusted for inflation using the adjustment methodology established by this rulemaking, are:

Source category	Previous limit of liability	New limit of liability
(a) Vessels:		
(1) For an oil cargo tank vessel greater than 3,000 gross tons with a single hull, including a single-hull tank vessel fitted with double sides only or a double bottom only.	The greater of $3,000 per gross ton or $22,000,000.	The greater of $3,200 per gross ton or $23,496,000.
(2) For a tank vessel greater than 3,000 gross tons, other than a vessel referred to in (a)(1).	The greater of $1,900 per gross ton or $16,000,000.	The greater of $2,000 per gross ton or $17,088,000.
(3) For an oil cargo tank vessel less than or equal to 3,000 gross tons with a single hull, including a single-hull tank vessel fitted with double sides only or a double bottom only.	The greater of $3,000 per gross ton or $6,000,000.	The greater of $3,200 per gross ton or $6,408,000.
(4) For a tank vessel less than or equal to 3,000 gross tons, other than a vessel referred to in (3).	The greater of $1,900 per gross ton or $4,000,000.	The greater of $2,000 per gross ton or $4,272,000.
(5) For any other vessel	The greater of $950 per gross ton or $800,000.	The greater of $1,000 per gross ton or $854,400.
(b) Deepwater Ports:		
(1) For a Deepwater Port, other than a Deepwater Port with a limit of liability established by regulation under 33 U.S.C. 2704(d)(2).	$350,000,000	$373,800,000.
(2) For the Louisiana Offshore Oil Port (LOOP)[2].	$62,000,000	$87,606,000.

The new inflation-adjusted limits of liability for vessels and Deepwater Ports are set forth in § 138.230(a) and (b).[3]

We note that the single-hull tank vessel limits of liability were described in 33 CFR part 138, subpart B, and in the CPI NPRM as applying to all tank vessels. Following the public comment period for the CPI NPRM, however, the Coast Guard determined that the single-hull limits of liability only apply under the OPA 90 statutory scheme to a single-hull tank vessel that is ''constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue'' (referred to in this preamble as a single-hull ''oil cargo tank vessel''). The Coast Guard is, therefore, amending §§ 138.220 (Definitions) and 138.230 (Limits of liability) to clarify this point, and invites public comment on this issue.

[2] Currently LOOP is the only Deepwater Port with a limit of liability established by regulation under 33 U.S.C. 2704(d)(2).

[3] Section 138.230(b)(2)(i) contains the limit of liability for LOOP. Section 138.230(b)(2)(ii) has been reserved for future use to set forth any other Deepwater Port limits of liability that may be established by regulation under 33 U.S.C. 2704(d)(2). Section 138.230(c) has been reserved for future use to set forth the limit of liability for MTR onshore facilities.

B. Explanation of the CPI Adjustment Methodology

1. How does the Coast Guard calculate the CPI adjustment to the limits of liability?

We calculate the CPI adjustments to the limits of liability for Coast Guard source categories using the following formula:

New limit of liability = Previous limit of liability + (Previous limit of liability x percent change in the CPI from the year the Previous limit of liability was established, or last adjusted by statute or regulation, whichever is later, to the present year), then rounded to the closest $100.

2. Which CPI does the Coast Guard use?

The BLS publishes a variety of inflation indices. We use the ''Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982 – 84 = 100'', also known as ''CPI–U''. This is the most current and is the broadest index published by BLS. It also is commonly relied on in insurance policies and other commercial transactions with automatic inflation protection, by the media, and by economic analysts.

3. What time interval CPI–U does the Coast Guard use for the adjustments?

BLS publishes the CPI–U in both monthly and annual periods. For consistency and simplicity, we use the annual period CPI–U (hereinafter the ''Annual CPI–U'') rather than the monthly period CPI–U. In this way, as explained further in the CPI NPRM, we can avoid having to publish distinct percent change values for the different sources and source categories in future adjustment cycles, based on the month when each source or source category's limit of liability was established or last adjusted.

4. How does the Coast Guard calculate the percent change in the Annual CPI–U?

We calculate the percent change in the Annual CPI–U using the BLS escalation formula described in Fact Sheet 00–1, U.S. Department of Labor Program Highlights, ''How to Use the Consumer Price Index for Escalation'', September 2000.

This formula provides that:

Percent change in the Annual CPI–U = [(Annual CPI–U for Current Period – Annual CPI–U for Previous Period) ÷ Annual CPI–U for Previous Period] X 100.

Fact Sheet 00–1 is available from the BLS online at *http://www.bls.gov.* The Fact Sheet may also be viewed on the docket for this rulemaking, at Docket No. USCG–2008–0007–0011.

The following example illustrates how we applied the BLS escalation formula to calculate the percent change in the Annual CPI–U used in this rulemaking to adjust the limits of liability for vessels and Deepwater Ports generally:

Annual CPI–U for Current Period (2008): 215.3

Minus Annual CPI–U for Previous Period (2006): 201.6

Equals index point change: 13.7

Divided by Annual CPI–U for Previous Period: 201.6

Equals: 0.068

Result multiplied by 100: 0.068 X 100

Equals percent change in the Annual CPI–U: 6.8 percent

The ''Current Period'' and ''Previous Period'' Annual CPI–U values may be viewed on the docket, at Docket No. USCG–2008–0007–0012, and online at *http://data.bls.gov.* Note that the ''Current Period'' value for this methodology will always be the Annual CPI–U for the previous calendar year. This is due to the schedule for BLS publication each year of the Annual CPI–U. Note also that the percent change is rounded to one decimal place.

5. What ''Previous Period'' dates is the Coast Guard using for the first inflation adjustments to the limits of liability?

As explained in the CPI NPRM, the ''Previous Period'' date for the first inflation adjustments to the limits of liability in 33 U.S.C. 2704(a) (*i.e.,* the limits of liability for all Coast Guard delegated source categories other than LOOP), is 2006. This is based on the date of enactment of the DRPA, which was July 11, 2006, and is the last date the limits of liability in 33 U.S.C. 2704(a) were adjusted.[4] In addition, the ''Previous Period'' date for the first inflation adjustment to the LOOP limit of liability is 1995. This is based on the date the LOOP limit of liability was established by regulation, which was August 4, 1995. (See 60 FR 39849.) There have been no adjustments made to the LOOP limit of liability since 1995.

[4] As proposed in the CPI NPRM, we will also use the 2006 Annual CPI–U as the ''Previous Period'' date for the first set of adjustments to the limit of liability for MTR onshore facilities.

6. What Annual CPI–U ''Previous Period'' and ''Current Period'' values has the Coast Guard used for this first set of inflation adjustments to the limits of liability for vessels and Deepwater Ports?

The ''Previous Period'' and ''Current Period'' values used for this rulemaking are as follows:

(a) For LOOP, the ''Previous Period'' value, using the 1995 Annual CPI–U, is 152.4; the ''Current Period'' value, using the 2008 Annual CPI–U, is 215.3.

(b) For vessels and Deepwater Ports generally (*i.e.,* all Deepwater Ports other than LOOP), the ''Previous Period'' value, using the 2006 Annual CPI–U, is 201.6; the ''Current Period'' value, using the 2008 Annual CPI–U, is 215.3.

Inserting these values into the BLS escalation formula yields the following percent change values in the Annual CPI–U (rounded to one decimal place):

For LOOP: 41.3 percent

For vessels and other Deepwater Ports: 6.8 percent

7. How will the Coast Guard calculate the percent change for subsequent inflation adjustments to the OPA 90 limits of liability?

This rulemaking also establishes the adjustment methodology the Coast Guard will use for subsequent CPI adjustments to the OPA 90 limits of liability for all Coast Guard source categories, including MTR onshore facilities. In this interim rule we adopt the methodology proposed in the CPI NPRM with one clarification. Specifically, as discussed further below, we have clarified in § 138.240 that the Coast Guard has discretion to adjust the limits more frequently than every three years.

(a) 2012 Adjustments

For the next set of inflation adjustments to the limits of liability, scheduled for 2012, we plan to publish the adjustments, in coordination with similar rulemakings by DOT, EPA and DOI, for all Coast Guard source categories, including MTR facilities. This will be done to simplify subsequent inflation adjustments to the limits of liability for all of the OPA 90 source categories.

Specifically, unless Congress amends the limits of liability again, we will calculate the Annual CPI–U change using: (1) the 2008 Annual CPI–U as the ''Previous Period'' value for vessels and Deepwater Ports including LOOP, and (2) the 2006 Annual CPI–U as the ''Previous Period'' value for MTR facilities since that will be the first time those limits will be adjusted. In addition, assuming the coordinated set of rulemakings is completed in 2012, we will use the 2011 Annual CPI–U as the ''Current Period'' value.

(b) How are ''significant increases'' and ''not less than every 3 years'' defined?

As explained in the CPI NPRM, OPA 90, at 33 U.S.C. 2704(d)(4), as amended by Section 603 of the DRPA, requires that the OPA 90 limits of liability be adjusted ''not less than every 3 years * * * to reflect significant increases in the Consumer Price Index.''

The word ''increases'' indicates clearly that Congress intended that the limits be adjusted only for inflation, and that there would be no decreases to the limits of liability due to decreases in the CPI. It, however, is equally apparent that, if Congress had wanted the adjustments to occur routinely every 3 years, the mandate would not have included the qualifier ''significant.'' The word ''significant'' is not defined in OPA 90. As discussed in greater detail in the CPI NPRM, we therefore looked to the legislative history and to the dictionary meaning of ''significant'' to help interpret what Congress meant.

The Conference Report Joint Explanatory Statement, at p. 106, describes the CPI adjustment mandate as requiring adjustments ''at least once every three years'', to reflect significant increases in the CPI. (*See* OPA 90 Desk Book, p. 89, H.R. CONF. REP. 101–653, Joint Explanatory Statement, August 1, 1990.) This explanation indicates that the statutory wording ''not less than'' means that adjustments are permitted, but not required, more frequently than every three years. The Conference Report and other legislative history provide general indications of the overall intent of the OPA 90 liability provisions. (*See* CPI NPRM.) The legislative history does not, however, explain what Congress meant by the word ''significant''. Nor have we found any other Federal statute that uses the same wording. Congress, therefore, left it to the President to give meaning to the term ''significant''.

The plain meaning of ''significant'' is ''meaningful'' (see Webster's II New Riverside University Dictionary (1988)), but meaningful in respect to what? Consistent with the Congressional focus on preserving OPA 90's deterrent effect and avoiding risk shifting to the Fund, the Coast Guard analyzed historical data on incident costs. We found that even small increases in the CPI can have significant risk shifting impacts. (*See* Report On Oil Pollution Act Liability Limits, U.S. Department Of Homeland Security, U.S. Coast Guard, transmitted to the Senate Committee on Commerce, Science, and Transportation on January 5, 2007.)

For example, based on our further analysis of the historical cost averages in that report, a 1 percent per year increase in the CPI will shift incident cost risk from the responsible parties to the Fund by an estimated $900,000 over three years. When adjustments to limits of liability are delayed, the Fund will, with inflation, inevitably be at risk for a higher share of incident costs than intended by OPA 90. Consequently, responsible party risk and the intended deterrent effect of the limits of liability are reduced.

In consideration of the historical data, the Coast Guard believes it is reasonable and consistent with Congressional intent to treat any cumulative increase in the CPI of 3 percent or greater over a three year period as significant and as the appropriate threshold for triggering an adjustment to the limits of liability.

A triennial 3-percent threshold results in a predictable, regular schedule of smaller-increment adjustments to the limits of liability for inflation. It thereby maintains a balance between responsible party risk and Fund risk.

We considered whether to adjust the limits more frequently than every three years. A triennial adjustment period affords adequate time for rulemaking, including time required for necessary interagency coordination on future adjustments to the facility limits of liability. The Coast Guard will, therefore as a general rule, use the three year adjustment period in the future. We have, however, clarified in § 138.240 that the Coast Guard has discretion to adjust the limits of liability before three years. For example, if a new limit of liability is established by Congress for a particular source category, the new statutory limit of liability might be adjusted for inflation sooner than three years after the date the new limit of liability was enacted in order to put the new limit of liability on the same inflation-adjustment cycle used for all other source categories.

Thus, once all of the OPA 90 source categories are on the same adjustment schedule, and except in instances when increases in the Annual CPI–U over any three-year period are not significant (*i.e.,* are less than 3 percent increase in the Annual CPI–U) or if the Coast Guard determines in its discretion that an adjustment is needed before three years, we will generally calculate future adjustments to the limits of liability using the cumulative percent change in the Annual CPI–U for the previous three available years. For example, in 2015 (assuming a significant increase in the Annual CPI–U after the 2012 adjustments), we will calculate the Annual CPI–U change using the 2011 Annual CPI–U as the ''Previous Period'' value and the 2014 Annual CPI–U as the ''Current Period'' value.

(c) *What if the ''significant increases'' threshold is not met?*

The next set of CPI adjustments to the limits of liability, currently scheduled for 2012, will put all Coast Guard source categories regulated under OPA 90, including the MTR onshore facilities, on the same adjustment schedule regardless of whether the significant increase threshold is met. Thereafter, for any three-year period in which the percent change in the Annual CPI–U is not significant in that the cumulative change is less than 3 percent over three years, we will publish a notice of no adjustment in the **Federal Register.** In such event, we will re-evaluate the percent increase in the Annual CPI–U in each subsequent year until the cumulative percent change in the Annual CPI–U from the last adjustment is 3 percent or greater. We will then base the adjustment on the Annual CPI–U change since the last adjustment.

For instance, if in 2015 the cumulative percent change in the Annual CPI–U from 2011 to 2014 is 2 percent, we will publish a notice of no adjustment in the **Federal Register** in 2015. The following year in 2016, if the 3 percent change threshold is met, we will publish adjustments to all of the limits of liability for Coast Guard source categories based on the Annual CPI–U percent change from 2011, as the ''Previous Period'', to 2015, as the ''Current Period''. The next adjustment will, in that case, be no more than three years later in 2019, again assuming that the cumulative percentage increase between the 2015 Annual CPI–U and the 2018 Annual CPI–U is significant.

8. What procedures does the Coast Guard plan to use to promulgate subsequent inflation adjustments to the OPA 90 limits of liability?

This rulemaking has provided the public the opportunity to comment on the inflation index (Annual CPI–U), the significance threshold, and the calculation methodology for the first, and subsequent, CPI adjustments to the limits of liability for Coast Guard source categories. The Coast Guard intends to coordinate future inflation increases to the OPA 90 limits of liability with the other delegated agencies (DOT, EPA and DOI) to ensure consistency, and will consider approaches for streamlining the process at that time.

C. Discussion of Comments and Changes

This section discusses the comments we received on the CPI NPRM. This includes a discussion of one clarification we have made, in response to a comment, concerning the frequency of limit of liability adjustments. We also discuss CPI-related comments we received in letters submitted to the related COFR Rule docket. Finally, we discuss a comment we received that was submitted to the docket after the public comment period on the CPI NPRM and the resulting amendments to clarify applicability of the OPA 90 single-hull tank vessel limits of liability. (*See* Docket No. USCG–2008–0007–0013; *see* also, Docket No. USCG–2008–0007–0014.)

1. Public Comments on the CPI NPRM

We received four letters with seven comments on the CPI NPRM. One letter was submitted anonymously. The other letters were from a state environmental agency and two liquefied natural gas (LNG) Deepwater Port developers. Three of the four letters raised issues beyond the scope of this rulemaking.

The anonymous commenter suggested that the Coast Guard increase oil spill fines by 5,000 percent and hold oil company executives personally liable for oil spills. This comment is beyond the scope of this rulemaking. The primary purpose of this rulemaking is to implement the statutorily-mandated inflation increases to the OPA 90 limits of liability. Any other increase to the limits of liability would have to be authorized by Congress. Moreover, the OPA 90 limits of liability only concern the liability of responsible parties for OPA 90 removal costs and damages. The OPA 90 limits of liability and this regulation do not limit, or otherwise affect or concern, the amount of fines and penalties or other liability of responsible parties under other provisions of law.

The two LNG Deepwater Port developers commented that they intend to seek facility-specific regulatory adjustments to the OPA 90 limits of liability for their planned LNG Deepwater Ports under 33 U.S.C. 2704(d)(2). The comment asked that those new regulatory limits be set forth in the reserved paragraph at 33 CFR 138.230(B)(2)(ii). The Coast Guard agrees that 33 CFR 138.230(B)(2)(ii) has been reserved for facility-specific regulatory limits that may be established in the future under 33 U.S.C. 2704(d)(2). This comment, however, raises issues that go beyond the scope of this rulemaking. This rulemaking does not concern requests for facility-specific regulatory limits of liability under 33 U.S.C. 2704(d)(2). This rulemaking is instead concerned with implementing the statutorily-mandated inflation adjustments to the existing OPA 90 limits of liability and ensuring that they are correctly applied.

The LNG Deepwater Port developers also commented that the OPA 90 limit of liability applicable to Deepwater Ports generally should not be adjusted for inflation in respect to LNG Deepwater Ports. The commenters made several points in this respect. First, they argued that the threat of an oil spill from an LNG Deepwater Port is much less than from an oil Deepwater Port and that the regulatory limit of liability established under 33 U.S.C. 2704(d)(2) for LOOP, the only oil Deepwater Port currently in operation, is lower. They also pointed out that the Coast Guard had previously determined that two LNG Deepwater Ports currently in operation did not trigger OPA 90 for the purpose of establishing new liability limits under 33 U.S.C. 2704(d)(2), and asked that this determination be expanded to all LNG Deepwater Ports. Finally, they argued that the limits of liability should not be adjusted in respect to LNG Deepwater Ports until LNG Deepwater Ports subject to OPA 90 are placed in operation.

We disagree with this comment. OPA 90, at 33 U.S.C. 2704(a)(4), sets forth a single limit of liability that applies to all Deepwater Ports regardless of type, whether oil or LNG. OPA 90 further requires that the Deepwater Port limit of liability be adjusted for significant increases in the CPI.

The Coast Guard acknowledges that the United States has previously determined that LNG, other than natural gas distillates and condensate, is not ''oil'' as that term is defined under OPA 90. (*See, e.g.,* 63 FR 42699, Aug. 11, 1998; 67 FR 47041, Jul. 17, 2002.) In addition, the Coast Guard has determined, in the context of three applications for liability limit adjustments under 33 U.S.C. 2704(d)(2), that those particular Deepwater Ports were not OPA 90 ''facilities'' as defined at 33 U.S.C. 2701(9).[5] This was because the subject Deepwater Ports were not designed, constructed or operated to use structures, equipment, or devices for ''exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil.''[6]

Those case-specific determinations were expressly based on the design and operation plans presented by the applicants, and the determinations will change if any oil is stored on the ports or if their design or operations otherwise change such that the OPA 90 ''facility'' definition applies. Moreover, other LNG Deepwater Port designs may well involve more extensive manned operations involving the storage, handling, transferring or transporting of various oils (*e.g.,* natural gas distillates, fuel oil and oil for service equipment or devices used to operate the ports). Whether any LNG Deepwater Port, as designed, constructed, or subsequently operated, is an OPA ''facility'' will therefore continue to be determined on a case-by-case basis.

The state environmental agency generally applauded the Coast Guard in implementing CPI increases to limits of liability, and expressed support for similar adjustments in the future for the MTR onshore facility limit of liability. The state also expressed support for use of the Annual CPI–U to calculate the percent changes in the CPI, agreeing that it is likely to provide better consistency and simplicity over time than a monthly period CPI–U.

The state recommended that the rule authorize adjustments to the limits of liability for vessels and Deepwater Ports for periods of less than 3 years where the CPI–U increases significantly over any one or two year period. Specifically, the state recommends amending section 138.240(b) to require the Director, National Pollution Funds Center (NPFC), to evaluate changes in the CPI–U annually, rather than every 3 years, and increase the limits of liability whenever the percent change in the CPI–U reaches or exceeds the significance threshold of 3 percent or greater.

We disagree that it is necessary, required by OPA 90, or appropriate for the Coast Guard to establish a system for more frequent routine adjustments to the limits of liability in this rulemaking. The triennial adjustment schedule provided for in this rulemaking is consistent with the discretion accorded by OPA 90. It also reflects several practical considerations, including the time necessary to develop regulations, and the time required for necessary interagency coordination. Moreover, the Coast Guard can consider the feasibility of more frequent periods for routine inflation adjustments in the future. Even so, in response to this comment, we have clarified in § 138.240(b) that the Coast Guard has discretion to adjust the limits of liability more frequently than every 3 years. This might be appropriate if, for example, new statutory limits of liability are enacted for a particular source category in order to adjust the limits of liability for that category on the same schedule with all other sources.

2. Public Comments on the Prior COFR Rule Relating to CPI Adjustments to Limits of Liability

In addition to the letters submitted to the docket for this rulemaking, three letters with five comments concerning CPI adjustments to the OPA 90 limits of liability were submitted to the rulemaking docket for the related COFR Rule NPRM. (*See* Docket Nos. USCG–2005–21780–0007, –0008 and –0019. For ease of reference, these comments have also been posted to the docket for this rulemaking. See Docket Nos. USCG–2008–0007–0009, –0010 and –0015.) Those comments were beyond the scope of the COFR Rule, which focused on the OPA 90 requirements, under 33 U.S.C. 2716, for vessel responsible parties to establish and maintain evidence of financial responsibility. The comments are, therefore, addressed here.

The comments were submitted by a private individual, an association of oil spill regulatory agencies from Alaska, British Columbia, Washington, Oregon, Hawaii and California, and a state environmental agency. All of the commenters sought increases to the OPA 90 limits of liability for inflation.

The private individual asked the Coast Guard to adjust the OPA 90 limits of liability for inflation, to ensure polluters bear the cost of oil spill cleanup and reimbursement of economic loss to communities caused by their actions. The association of oil spill regulatory agencies submitted a similar comment noting that the COFR

[5] The three Deepwater Ports in question are: (1) Excelerate Energy/Open Gulf Gateway (formerly the El Paso Energy Bridge)—submerged turret loading buoy and metering platform, only uses lubricating oil for emergency generator (December 15, 2003); (2) Excelerate Energy/Northeast Gateway Deepwater Port—two turret-loading buoys, fueled by natural gas, with a small amount of lubricating oil applied to lubricate umbilical lines used to operate valves (May 4, 2007); (3) Port Dolphin Energy LLC Deepwater Port—same design as Northeast Gateway, periodic application of hydraulic oil to lubricate umbilical lines used to operate valves (August 6, 2008).

OPA 90 defines ''facility'', at 33 U.S.C. 2701(9) as ''any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.''

[6] At this time, there are only three Deepwater Ports in operation: one oil Deepwater Port (LOOP) and two LNG Deepwater Ports (Gulf Gateway Energy Bridge and Northeast Gateway). Because of the determinations that the two LNG Deepwater Ports do not meet the OPA 90 definition of facility, and unless conditions change at the two operating LNG ports, LOOP is the only existing Deepwater Port affected by this rulemaking.

Rule NPRM did not ''increase (by the CPI since 1990) the limits of liability for facilities under Coast Guard's jurisdiction.''

These comments have been addressed in part by this rulemaking. Specifically, this rulemaking makes inflation adjustments to the limits of liability for all vessels and for one category of ''facility'', Deepwater Ports. The limit of liability for the other category of ''facility'' under the Coast Guard's jurisdiction, MTR onshore facilities, will be adjusted for inflation in the next cycle of inflation adjustments to the limits of liability as part of a coordinated set of rulemakings with EPA, DOT, and DOI that will cover all source categories subject to OPA 90.

Also, in response to the association's assumption that the adjustments would be from 1990, we note that this preamble, at paragraph V.B.5, above, and the CPI NPRM explain our decision to use a 2006 baseline year for the adjustments, instead of 1990. We received no comment on the CPI NPRM from the association or from any other commenter concerning this approach. This interim rule therefore establishes 2006 as the baseline for all Coast Guard source categories other than LOOP, including for MTR onshore facilities.

The association also noted that the COFR Rule NPRM did not propose increases to the limits of liability for vessels, including tank barges, by the CPI since 2006 as is required by DRPA. This comment is addressed by this rulemaking. Specifically, as required by DRPA, this rulemaking adjusts the limits of liability for all vessels, including tank barges, for inflation since 2006, the year the limits of liability were last amended by Congress.

One commenter, the state environmental agency that also commented on the NPRM for this rulemaking, noted that the limits of liability for non-tank vessels should be increased. This comment is addressed by this rulemaking to the extent authorized by OPA 90. Specifically, as mandated by 33 U.S.C. 2704(d), this rulemaking increases the limits of liability for all vessels with limits of liability under OPA 90, to reflect significant increases in the CPI. This includes inflation adjustments to the limits of liability applicable to non-tank vessels. Any other increase to the limits of liability for non-tank vessels would have to be authorized by Congress.

The same commenter stated that the COFR Rule NPRM failed to address the issue of limits of liability for oil-handling facilities. Reading the comment as expressing support for inflation adjustments to the limits of liability for facilities, the comment is addressed in part by this rulemaking. Specifically, this rulemaking adjusts the limits of liability for inflation for all vessels and for one category of facilities, Deepwater Ports. The limit of liability for the other category of facility under the Coast Guard's jurisdiction, MTR onshore facilities, including the above-mentioned oil-handling facilities, will be adjusted for inflation in the next cycle of inflation adjustments to the limits of liability, as part of a coordinated set of rulemakings with EPA, DOI and DOT, that will cover all facilities subject to OPA 90.

3. Single-Hull Tank Vessel Clarifying Changes and Request for Comment

In February 2009, after the CPI NPRM public comment period closed on November 24, 2008, the rulemaking team was made aware of an off-the-record comment from a COFR guarantor concerning applicability of the single-hull tank vessel limits of liability in 33 CFR part 138, subpart B, to LNG and liquefied petroleum gas (LPG) tank vessels (Docket No. USCG–2008–0007–0013). Initially the comment was thought to raise questions regarding compliance with the final COFR Rule. This is because a similar question, in respect to mobile offshore drilling units (MODUs), some of which may not have oil cargo tanks, was submitted as a comment to the COFR Rule NPRM (Docket No. USCG–2005–21780–0013). Further analysis, however, revealed that these comments raised a substantive and persuasive issue that was not adequately addressed in the COFR Rule.

Specifically, the regulatory text in 33 CFR part 138, subpart B, as adopted in the COFR Rule and the further amendments proposed in the CPI NPRM, inadvertently applied the single-hull tank vessel limits of liability to vessels that do not carry oil cargo.[7] We determined that this is inconsistent with the statutory scheme, including the single-hull phase-out requirements of Title IV of OPA 90 and 33 CFR part 157.[8] Those requirements only apply to a tank vessel that is ''constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue'' (referred to in this preamble as ''oil cargo tank vessels''). (*See* 46 U.S.C. 3703a(a)(1)).

Clarifying this issue requires minor amendments to the regulatory text in 33 CFR part 138, subpart B, that were not discussed in the CPI NPRM. Therefore, in order to adjust the limits of liability for inflation as required by 33 U.S.C 2704(d), while also addressing the hull category issue, the Coast Guard is publishing this rulemaking as an interim rule, and invites the public to comment on the proposed hull category clarifications. The following discussion outlines the legal basis for clarifying the hull category provisions.

OPA 90, as amended, at 33 U.S.C. 2704(a)(1)(A) and (B), divides the tank vessel limits of liability into two tank vessel hull categories: (A) single-hull tank vessels, including a single-hull vessel fitted with double sides only or a double bottom only, and (B) other tank vessels.[9]

OPA 90 defines ''tank vessel'' as ''a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue'' (33 U.S.C. 2701). Title I of OPA 90 could, therefore, be read to impose the single-hull limits of liability on both oil and hazardous material cargo tank vessels. The context of the DRPA amendments that increased the vessel limits of liability and created the distinction in OPA 90 Title I between single-hull and other tank vessels, however, is helpful in understanding that the single-hull limits of liability were intended to apply only to oil cargo tank vessels.

The catalyst for DRPA was the 2004 single-bottom, double-sided ATHOS I oil cargo tank vessel spill incident on the Delaware River, where the limit of liability amounted to about 20 percent of the estimated removal costs and

[7] The DOT's hazardous material transportation regulations (49 CFR 172.101) list LNG (methane) and LPG (petroleum gases) as hazardous materials. LNG/LPG vessels, therefore, are ''tank vessels'' by definition under OPA 90, 33 U.S.C. 2701(34) (*i.e.,* ''a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue''), and are subject to the OPA 90 limits of liability and COFR requirements in 33 CFR part 138 applicable to tank vessels. As noted above, however, Coast Guard, EPA and Minerals Management Service have determined that, with the exception of natural gas distillates and condensate, LNG and LPG are not ''oil''. (*See, e.g.,* 61 FR 9264, at 9266–68, March 7, 1996 (1996 COFR Rule preamble); 62 FR 13991, March 25, 1997, and 30 CFR 254.1 and 254.6 (Offshore Facility Spill Prevention Rule, ''Who must submit a spill-response plan?'' and definition of ''oil''); 62 FR 14052, March 25, 1997 (Offshore Facility Financial Responsibility Rule); 63 FR 42699, August 11, 1998, and 30 CFR 253.3 (Offshore Facility Financial Responsibility Rule definition of ''oil''); 67 FR 47042, July 17, 2002 (Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities); 73 FR 74236, December 5, 2008, and 40 CFR 112.2 (Onshore Facility Spill Prevention Rule).)

[8] Section 4115 of OPA 90 added a new section to the U.S. Code, 46 U.S.C. 3703a. That section requires a single-hull oil cargo tank vessel owner to remove the vessel from bulk oil service on a specific date, depending on the vessel's gross tonnage, build date, and hull configuration.

[9] These two categories are carried forward by reference in 33 U.S.C. 2704(a)(1)(C). (*See* 33 U.S.C. 2704(a)(1)(C)(i)(I) and (C)(ii)(I) (single-hull tank vessel limits); 33 U.S.C. 2704(a)(1)(C)(i)(II) and (C)(ii)(II) (other tank vessel limits).)

damages resulting from the spill. In 2006, Congress increased the limits of liability for vessels other than single-hull tank vessels by approximately 50 percent to reflect CPI increases since enactment of OPA 90. But, in recognition of the higher risk of oil spills from single-hull oil cargo tank vessels, Congress decided to increase the limits of liability for single-hull tank vessels (including a tank vessel fitted with double sides only or a double bottom only) by approximately 150 percent. Therefore, the single-hull category of OPA 90 is concerned with those vessels that were the focus of Congressional concern, *i.e.,* oil cargo tank vessels.

Moreover, as previously noted, single-hull vessels are the particular concern of OPA 90 Title IV and the Coast Guard's implementing regulations at 33 CFR part 157. Those provisions mandate a phase-out of single hulls for any tank vessel that is ''constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue'', *i.e.,* for any oil cargo tank vessel. Any such vessel must be taken out of service or comply by specified deadlines with the Title IV and part 157 technical requirements for double hulls.

It is, therefore, reasonable to view the single-hull vessel limits of liability in Title I of OPA 90, as applying only to tank vessels that are subject to the single-hull phase-out requirements of Title IV (*i.e.,* to any tank vessel that is ''constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue'', where the hull of the vessel is single, including a double bottom or double sides only). It is this category of tank vessel that Congress was concerned with as presenting a greater threat of oil pollution, and thereby deserving of phase-out regulation and higher limits of liability.

By the same token, a tank vessel that is not constructed or adapted to carry, and that does not in fact carry, oil in bulk as cargo or cargo residue, does not have to meet the single-hull phase-out requirements of OPA 90 Title IV and 33 CFR part 157. It is, therefore, reasonable to view the ''other'' category of tank vessel limits of liability under OPA 90 Title I as applying to such vessel (*i.e.,* to any tank vessel that is not an oil cargo tank vessel).

The Coast Guard is clarifying the regulatory text to reflect this statutory scheme. Specifically, we have deleted the definition of ''double hull'' in § 138.220 and all references to ''double hull'' in § 138.230. We have also amended the definition of ''single-hull'' to clarify that it is limited to a single-hull tank vessel that is ''constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue'', and that does not meet the double-hull technical standards applicable to oil cargo tank vessels contained in 33 CFR part 157.[10] The Coast Guard seeks comments on these regulatory text changes.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

This interim 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. It has not been reviewed by the Office of Management and Budget under that Order. A draft Regulatory Assessment is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. A summary of the Assessment follows:

On September 24, 2008, the CPI NPRM was published (73 FR 54997) and included a supplemental Preliminary Regulatory Assessment of the proposed rule. The comment period ended on November 24, 2008. No comments were received on the Preliminary Regulatory Assessment. Prior to developing the Interim Rule Regulatory Assessment, we confirmed that the methodology and data sources contained in the Preliminary Regulatory Assessment had not changed, and the only revision since the NPRM would be an update for the newly available 2008 Annual CPI–U.

There are two regulatory costs that are expected from this interim rule:

- Regulatory Cost 1: An increased cost of liability to responsible parties of vessels and Deepwater Ports.
- Regulatory Cost 2: An increased cost for establishing and maintaining evidence of financial responsibility to vessel responsible parties under 33 U.S.C. 2716 and 33 CFR part 138, subpart A.

Existing Deepwater Ports are not expected to have any increased evidence of financial responsibility costs as a result of this interim rule.

1. Discussion of Regulatory Cost 1

This rulemaking could increase the dollar amount of removal costs and damages a responsible party of a vessel or Deepwater Port would be responsible to pay in the event of a discharge, or substantial threat of discharge, of oil (hereafter an ''OPA 90 incident''). Regulatory Cost 1 will, however, only be incurred by a responsible party if an OPA 90 incident results in OPA 90 removal costs and damages that exceed the vessel or Deepwater Port's previous limit of liability. In any such case, the difference between the previous limit of liability amount and the new limit of liability amount established by this interim rule will be the increased cost to the responsible party.

(a) Affected Population—Vessels

Coast Guard data, as of May 2007, indicate that, for the years 1991 through 2006, 41 OPA 90 incidents involving vessels resulted in removal costs and damages in excess of the previous limits of liability (an average of approximately three OPA 90 incidents per year). For the purpose of this analysis, we assume that three OPA 90 incidents involving vessels would occur per year over a 10-year analysis period (2009–2018), with removal costs and damages reaching or exceeding the new limits of liability for vessels established by this interim rule.

(b) Affected Population—Deepwater Ports

At this time, LOOP is the only Deepwater Port in operation that is subject to OPA 90.[11] As previously noted, to date, LOOP has not had an OPA 90 incident that resulted in removal costs and damages in excess of LOOP's previous limit of liability of $62 Million. However, for cost estimating purposes, we assume that one OPA 90 incident would occur at LOOP over the 10-year analysis period (2009–2018), with removal costs and damages

[10] Under this wording, the hull configuration of a hazardous material tank vessel will be relevant, for purposes of determining which limits of liability apply, only if the vessel is ''constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue'' (*e.g.,* a vessel carrying LNG distillate or condensate in bulk as cargo or cargo residue). It also would only be relevant for a MODU if the MODU is ''constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue''. If the vessel is not so constructed, adapted or used, it falls in the ''other'' tank vessel category of OPA 90 (33 U.S.C. 2704(a)(1)(B), (C)(i)(II) and (C)(ii)(II)), and qualifies for the lower limits of liability of § 138.230(a)(2) and (4). If it is constructed or adapted to carry, or does in fact carry, oil in bulk as cargo or cargo residue, the vessel hull will have to meet the double hull requirements of 33 CFR part 157 to qualify for the lower limits of liability of § 138.230(a)(2) and (4).

[11] As previously noted, there are only two LNG Deepwater Ports currently in operation (Gulf Gateway Energy Bridge and Northeast Gateway). The Coast Guard, however, determined that the design, construction, and operation of these LNG Deepwater Ports did not meet the definition of an OPA 90 facility under 33 U.S.C. 2701(9). (See discussion at V.C.1., above.) Therefore, unless the design, construction, and operations at the existing LNG Deepwater Ports are changed, the ports will not be affected by this interim rule.

reaching or exceeding the new limit of liability for LOOP. Assuming an OPA 90 incident at the LOOP during the next ten years is merely a conservative assumption for cost estimating purposes. If there is no OPA 90 incident at the LOOP during the next ten years, then we will have over-estimated the cost of the rulemaking.

(c) Cost Summary Regulatory Cost 1

The average annual cost of this rulemaking resulting from the three forecasted vessel OPA 90 incidents per year is estimated to be $2.0 Million (non-discounted Dollars). The average annual cost of this rulemaking resulting from the one forecasted LOOP OPA 90 incident over 10 years is estimated to be $2.6 Million (non-discounted Dollars). The 10-year (2009–2018) present value at a 3 percent discount rate of this regulatory cost (vessels and LOOP) is estimated to be $40.0 Million. The 10-year (2009–2018) present value at a 7 percent discount rate of this regulatory cost (vessels and LOOP) is estimated to be $34.2 Million.

2. Discussion of Regulatory Cost 2

Under OPA 90 (33 U.S.C. 2716) and 33 CFR part 138, subpart A, responsible parties of vessels and Deepwater Ports are required to establish and maintain evidence of financial responsibility to prove they have the ability to pay for removal costs and damages in the event of an OPA 90 incident up to their applicable limits of liability. Because this rulemaking increases the limits of liability for vessels and Deepwater Ports and, by reference, the applicable amounts of financial responsibility under 33 CFR 138.80(f), responsible parties may incur additional cost associated with the corresponding requirements for establishing and maintaining evidence of financial responsibility.

(a) Affected Population—Vessels

The rule potentially increases the cost associated with establishing financial responsibility under OPA 90 and 33 CFR part 138, subpart A, for responsible parties of vessels in two ways. Responsible parties using commercial insurance as their method of financial guaranty could incur higher insurance premiums. Responsible parties using self-insurance as their method of financial guaranty will need to seek out and acquire commercial insurance for vessels they operate if they are no longer eligible for self-insurance based on their working capital and net worth. There are approximately 17,064 vessels using commercial insurance and 741 vessels using self-insurance methods of guaranty.

(b) Affected Population—Deepwater Ports

As previously discussed (see VI.A.1.(b), above, Affected Population—Deepwater Ports, Regulatory Cost 1), LOOP is the only Deepwater Port that would be affected by this interim rule. An increase in the LOOP limit of liability of the magnitude of this rulemaking, however, is not expected to increase the cost associated with establishing and maintaining LOOP's evidence of financial responsibility. This is because LOOP uses a facility-specific method of providing evidence of financial responsibility to the Coast Guard. Specifically, LOOP is insured under a policy issued by Oil Insurance Limited (OIL) of Bermuda up to $150 Million per OPA 90 incident and a $225 Million annual aggregate. The Coast Guard has historically accepted the OIL policy, along with the policy's $50 Million minimum net worth and minimum working capital requirements, as evidence of financial responsibility. The Coast Guard does not expect that an increase in the LOOP limit of liability of the magnitude of this rulemaking would change the terms of the OIL policy, result in an increased premium for the OIL policy, or require LOOP to have higher minimum net worth or working capital requirements.

(c) Cost Summary—Regulatory Cost 2

For purposes of calculating Regulatory Cost 2, we assume that this rulemaking will cause the insurance premiums for vessels that are now commercially insured to increase by 5 percent from current levels. We also assume that 2 percent of the vessel responsible parties using self-insurance to provide evidence of financial responsibility will migrate to commercial insurance. Depending on the particular year and the discount rate used, annual costs of this interim rule range from $1.7 Million to $3.4 Million per year. The 10-year (2009–2018) present value, at a 3 percent discount rate, of this regulatory cost is estimated to be between $27.8 Million and $28.6 Million. The 10-year (2009–2018) present value, at a 7 percent discount rate, of this regulatory cost is estimated to be between $23.8 Million and $24.6 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.

3. Total Cost—Regulatory Cost 1 + Regulatory Cost 2

Depending on the particular year and the discount rate used, annual costs of this interim rule range from $4.2 Million to $7.9 Million per year. The 10-year present value of the total cost of this interim rule (Regulatory Cost 1 + Regulatory Cost 2) at a 3 percent discount rate is estimated to be between $67.8 Million and $68.6 Million. The 10-year present value of the total cost of this interim rule (Regulatory Cost 1 + Regulatory Cost 2) at a 7 percent discount rate is estimated to be between $58.0 Million and $58.8 Million.

4. Benefits

With respect to benefits, this interim rule is expected to:

- Ensure that the real value of the OPA 90 limits of liability keep pace with inflation over time;
- Preserve the polluter-pays principle embodied in OPA 90 and, thereby, ensure that limited Fund resources can be optimally utilized in responding to future incidents; and
- Result in a slight reduction in substandard shipping in United States waterways and ports because insurers would be less likely to insure substandard vessels to this new level of liability.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this interim 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.

Based on the threshold analysis conducted in the CPI NPRM, we determined that an Initial Regulatory Flexibility Analysis was not necessary for the proposed rule. The comment period ended on November 24, 2008. No comments were received with respect to any aspects of the CPI NPRM that might concern small entities. Prior to developing the interim rule, we confirmed that the methodology and data sources contained in the threshold analysis had not changed, and the only revision since the NPRM would be an update for the newly available 2008 Annual CPI–U.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this interim rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this interim rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this interim 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 Rachel Hopp, National Pollution Funds Center, Coast Guard, telephone 202–493–6753. The Coast Guard will not retaliate against small entities that question or complain about this interim 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 interim rule results in a revision of an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden 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: Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports.

OMB Control Number: 1625–0046.

Summary of the Collection of Information: Not later than 90 days after the effective date of the interim rule, responsible parties for vessels will be required under 33 CFR part 138, subpart A, § 138.85 to establish evidence of financial responsibility to the applicable amounts determined under 33 CFR part 138, subpart A, § 138.80(f), based on the limits of liability as adjusted by this rulemaking.

Need for Information: This information collection is necessary to enforce the evidence of financial responsibility requirements at 33 CFR part 138, subpart A. Without this collection, it would not be possible for the Coast Guard to know which responsible parties are in compliance with the financial responsibility applicable amounts determined under 33 CFR part 138, subpart A, and which are not. Vessels not in compliance are subject to the penalties provided in 33 CFR 138.140.

Proposed Use of Information: The Coast Guard uses this information to verify that vessel responsible parties have established evidence of financial responsibility to reflect the financial responsibility applicable amounts determined under 33 CFR part 138, subpart A, based on the limits of liability as adjusted by this rulemaking.

Description of the Respondents: Responsible parties and guarantors of vessels that require COFRs under 33 CFR part 138, Subpart A.

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

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

Burden of Response:

Increased burden associated with reporting requirements:

10,000 vessel responsible parties and guarantors × 1.0 hours per response = 10,000 hours

Estimate of Total Annual Burden: We calculated the burden using the ''All Occupations'' mean National average hourly wage of $19.21 per hour, published by BLS in the August 2007 ''National Compensation Survey: Occupational Earnings in the United States''. In addition, BLS data shows that total employee benefits are approximately 30 percent of total compensation (wages + benefits). Therefore, since wages account for 70 percent of total compensation, total compensation per hour is $27.44 ($19.21/0.7) and benefits are $8.23.

We then multiplied the number of net burden hours by the burdened labor rate calculated above (rounded to the nearest dollar, *i.e.* $27 per hour).

Increased burden associated with the reporting requirements:

10,000 hours × $27 per hour = $270,000

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)), we will submit a copy of this interim rule and an information collection request to the Office of Management and Budget (OMB) for its review of the collection of information under 33 CFR part 138, subpart A, § 138.85.

In the NPRM we requested public comment on the collection of information, and received none. We again ask for public comment on the 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 under 33 CFR part 138, subpart A, § 138.85, submit them both to OMB and to the docket for this rulemaking 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. The Coast Guard will not enforce the information collection request triggered by this rulemaking until it is approved by OMB. We will publish a document in the **Federal Register** informing the public 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 interim 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 interim rule will not result in such an expenditure, we do discuss the effects of this interim rule elsewhere in this preamble.

G. Taking of Private Property

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

H. Civil Justice Reform

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this interim 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 interim rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this interim rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This interim rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. This interim rule sets forth the methodology the Coast Guard uses to increase OPA 90 limits of liability to reflect significant increases in the CPI, and makes the first set of statutorily-mandated inflation increases to the OPA 90 limits of liability for vessels and Deepwater Ports. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 138

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

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

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

■ 1. The authority citation for part 138 is revised to read as follows:

Authority: 33 U.S.C. 2704; 33 U.S.C. 2716, 2716a; 42 U.S.C. 9608, 9609; Sec. 1512 of the Homeland Security Act of 2002, Public Law 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552(d)); E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 198; E.O. 12777, Sec. 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, 68 FR 10619, 3 CFR, 2004 Comp., p.166; Department of Homeland Security Delegation Nos. 0170.1 and 5110. Section 138.30 also issued under the authority of 46 U.S.C. 2103 and 14302.

■ 2. Revise Subpart B to read as follows:

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

Sec.

§ 138.200 Scope.

This subpart sets forth the limits of liability for vessels and deepwater ports under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*) (OPA 90), as adjusted under Section 1004(d) of OPA 90 (33 U.S.C. 2704(d)). This subpart also sets forth the method for adjusting the limits of liability by regulation for inflation under Section 1004(d) of OPA 90 (33 U.S.C. 2704(d)).

§ 138.210 Applicability.

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

§ 138.220 Definitions.

(a) As used in this subpart, the following terms have the meaning as set forth in Section 1001 of OPA 90 (33 U.S.C. 2701): *deepwater port*, *gross ton*, *liability*, *oil*, *responsible party*, *tank vessel*, and *vessel*.

(b) As used in this subpart—

Annual CPI–U means the annual ''Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All items, 1982–84=100'', published by the U.S.

Department of Labor, Bureau of Labor Statistics.

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

Single-hull means the hull of a tank vessel that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, that is not a double hull as defined in 33 CFR part 157. *Single-hull* includes the hull of any such tank vessel that is fitted with double sides only or a double bottom only.

§ 138.230 Limits of liability.

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

(1) For a single-hull tank vessel greater than 3,000 gross tons, the greater of $3,200 per gross ton or $23,496,000;

(2) For a tank vessel greater than 3,000 gross tons, other than a single-hull tank vessel, the greater of $2,000 per gross ton or $17,088,000.

(3) For a single-hull tank vessel less than or equal to 3,000 gross tons, the greater of $3,200 per gross ton or $6,408,000.

(4) For a tank vessel less than or equal to 3,000 gross tons, other than a single-hull tank vessel, the greater of $2,000 per gross ton or $4,272,000.

(5) For any other vessel, the greater of $1,000 per gross ton or $854,400.

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

(1) For any deepwater port other than a deepwater port with a limit of liability established by regulation under Section 1004(d)(2) of OPA 90 (33 U.S.C. 2704(d)(2)) and set forth in paragraph (b)(2) of this section, $373,800,000;

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

(i) For the Louisiana Offshore Oil Port (LOOP), $87,606,000; and

(ii) [Reserved].

(c) [Reserved].

§ 138.240 Procedure for calculating limit of liability adjustments for inflation.

(a) *Formula for calculating a cumulative percent change in the Annual CPI–U.* The Director, NPFC, calculates the cumulative percent change in the Annual CPI–U from the year the limit of liability was established, or last adjusted by statute or regulation, whichever is later (*i.e.,* the Previous Period), to the most recently published Annual CPI–U (*i.e.,* the Current Period), using the following escalation formula:

Percent change in the Annual CPI–U = [(Annual CPI–U for Current Period − Annual CPI–U for Previous Period) ÷ Annual CPI–U for Previous Period] × 100.

This cumulative percent change value is rounded to one decimal place.

(b) *Significance threshold.* Not later than every three years from the year the limits of liability were last adjusted for inflation, the Director, NPFC, will evaluate whether the cumulative percent change in the Annual CPI–U since that date has reached a significance threshold of 3 percent or greater. For any three-year period in which the cumulative percent change in the Annual CPI–U is less than 3 percent, the Director, NPFC, will publish a notice of no inflation adjustment to the limits of liability in the **Federal Register.** If this occurs, the Director, NPFC, will recalculate the cumulative percent change in the Annual CPI–U since the year in which the limits of liability were last adjusted for inflation each year thereafter until the cumulative percent change equals or exceeds the threshold amount of 3 percent. Once the 3-percent threshold is reached, the Director, NPFC, will increase the limits of liability, by regulation, for all source categories (including any new limit of liability established by statute or regulation since the last time the limits of liability were adjusted for inflation) by an amount equal to the cumulative percent change in the Annual CPI–U from the year each limit was established, or last adjusted by statute or regulation, whichever is later. Nothing in this paragraph shall prevent the Director, NPFC, in the Director's sole discretion, from adjusting the limits of liability for inflation by regulation issued more frequently than every three years.

(c) *Formula for calculating inflation adjustments.* The Director, NPFC, calculates adjustments to the limits of liability in § 138.230 of this part for inflation using the following formula:

New limit of liability = Previous limit of liability + (Previous limit of liability × percent change in the Annual CPI–U calculated under paragraph (a) of this section), then rounded to the closest $100.

(d) [Reserved].

Dated: June 25, 2009.

William R. Grawe,

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

[FR Doc. E9–15563 Filed 6–30–09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0489]

RIN 1625–AA11

Regulated Navigation Area; Herbert C. Bonner Bridge, Oregon Inlet, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) on the waters of Oregon Inlet, North Carolina (NC). The RNA is needed to protect maritime infrastructure and the maritime public during fender repair work on the Herbert C. Bonner Bridge.

DATES: This rule is effective from 8 p.m. on June 22, 2009, through 8 p.m. on July 31, 2009.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0489 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0489 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and at Coast Guard Sector North Carolina, 2301 E Fort Macon Rd, Atlantic Beach, NC, 28512, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail CWO4 Stephen Lyons, Waterways Management Division Chief, Coast Guard Sector North Carolina; telephone (252) 247–4525, e-mail *Stephen.W.Lyons2@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: