

is acceptable. If no percentage of participation is specified for an insurer, surety, or financial guarantor, the liability of that insurer, surety, or financial guarantor is joint and several for the total of the unspecified portions; and

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

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

(d) *Direct action*—(1) *Acknowledgment.* Any evidence of financial responsibility filed with the Director, NPPC, 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 meas-

urement, except when the guarantor knew or should have known that the applicable tonnage certificate was incorrect.

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

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

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

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

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

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

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

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

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

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)

EFFECTIVE DATE NOTE: By USCG-2008-0007, 74 FR 31368, July 1, 2009, subpart B was revised, effective July 31, 2009. For the convenience of the user, the revised text is set forth following the text currently in effect.

§ 138.200 Scope.

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

§ 138.210 Applicability.

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

§ 138.220 Limits of liability.

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

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

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

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

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

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

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

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

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

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

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

(ii) [Reserved]

(c) [Reserved]

EFFECTIVE DATE NOTE: By USCG-2008-0007, 74 FR 31368, July 1, 2009, subpart B was revised, effective July 31, 2009. For the convenience of the user, the revised text is set forth as follows:

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 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 = $\frac{(\text{Annual CPI-U for Current Period} - \text{Annual CPI-U for Previous Period})}{\text{Annual CPI-U for Previous Period}} \times 100$.

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 \times percent change in the Annual CPI-U calculated under paragraph (a) of this section), then rounded to the closest \$100.

(d) [Reserved]