DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 138, Subpart B

[Docket No. USCG–2013–1006]

RIN 1625–AC14

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to increase the limits of liability for vessels, deepwater ports, and onshore facilities, under the Oil Pollution Act of 1990, as amended (OPA 90), to reflect significant increases in the Consumer Price Index (CPI). We also propose a simplified regulatory procedure for the Coast Guard to make future required periodic CPI increases to the OPA 90 limits of liability for vessels, deepwater ports, and onshore facilities. These regulatory inflation increases to the limits of liability are required by OPA 90, and are necessary to preserve the deterrent effect and ''polluter pays'' principle embodied in OPA 90. Finally, we propose language to clarify applicability of the OPA 90 vessel limits of liability to two categories of tank vessels, edible oil cargo tank vessels and tank vessels designated as oil spill response vessels. This clarification to the existing regulatory text is needed for consistency with OPA 90.

DATES: Comments and related material must be submitted on or before October 20, 2014.

ADDRESSES: You may submit comments identified by Docket No. USCG–2013–1006 using any one of the following methods:

(1) *Online: 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.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Benjamin White, Coast Guard; telephone 703–872–6066, email *Benjamin.H.White@uscg.mil.* For information about viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826, toll free 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials using the instructions below. All comments received 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 a comment, please include the docket number for this rulemaking (USCG–2013–1006), 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 email 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,* and follow the instructions of that Web site. 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 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 proposed 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,* and follow the instructions on that Web site. 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 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 to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we decide to hold a public meeting, we will announce its time and place in a later notice in the **Federal Register**.

II. Abbreviations

Annual CPI–U The Annual ''Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84=100''
CPI–1 Rule The Coast Guard's first rulemaking amending 33 CFR part 138, subpart B, to adjust the OPA 90 limits of liability for vessels and deepwater ports for inflation as required by 33 U.S.C. 2704(d)(4) and establishing the Coast Guard's procedure for future required inflation adjustments to the limits of liability (Docket No. USCG–2008–0007). See 73 FR 54997 (Sep. 24, 2008) [CPI–1 NPRM]; 74 FR 31357 (July 1, 2009) [CPI–1 Interim Rule]; 75 FR 750 (January 6, 2010) [CPI–1 Final Rule].
BLS U.S. Department of Labor, Bureau of Labor Statistics
CFR Code of Federal Regulations
COFR Certificate of Financial Responsibility
COFR Rule The Coast Guard rule at 33 CFR part 138, subpart A, implementing the OPA 90 requirement under 33 U.S.C. 2716 for vessel responsible parties to establish and maintain evidence of financial responsibility sufficient to meet their limits of liability as adjusted over time for inflation
CPI Consumer Price Index
DHS U.S. Department of Homeland Security
DOI U.S. Department of the Interior
DPA Deepwater Port Act of 1974, as amended (33 U.S.C. 1501–1524)
DRPA The Delaware River Protection Act of 2006, Title VI of the Coast Guard and Maritime Transportation Act of 2006, Public Law 109–241, July 11, 2006, 120 Stat. 516
E.O. Executive Order
FR Federal Register
Fund The Oil Spill Liability Trust Fund created by 26 U.S.C. 9509
IRFA Initial Regulatory Flexibility Analysis
LNG Liquefied natural gas
LOOP Louisiana Offshore Oil Port
NPFC National Pollution Funds Center
NPRM Notice of proposed rulemaking
OMB U.S. Office of Management and Budget
OPA 90 The Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*)
SBA U.S. Small Business Administration
§ Section symbol
U.S. United States
U.S.C. United States Code

III. Basis and Purpose

In general, under Title I of the Oil Pollution Act of 1990, as amended (OPA 90) (33 U.S.C. 2701, *et seq.*), the responsible parties for any vessel (other than a public vessel) [1] or facility (including any deepwater port or onshore facility) from which oil is discharged, or which poses a substantial threat of discharge of oil, into or upon the navigable waters or the adjoining shorelines or the exclusive economic zone of the United States, are strictly liable, jointly and severally, for the removal costs and damages that result from such incident (''OPA 90 removal costs and damages''), as provided in 33 U.S.C. 2702. Under 33 U.S.C. 2704, however, the responsible parties' OPA 90 liability with respect to any one incident is limited (with certain exceptions) to a specified dollar amount.

In instances when a limit of liability applies, the responsible parties may, but are not required to, incur direct removal costs or reimburse third-party claims for OPA 90 removal costs and damages in excess of the applicable limit of liability. The responsible parties may, moreover, seek reimbursement from the Oil Spill Liability Trust Fund (Fund) of the OPA 90 removal costs and damages they incur in excess of the applicable limit of liability.[2] This Fund is managed by the Coast Guard's National Pollution Funds Center (NPFC).

To prevent the real value of the OPA 90 limits of liability from depreciating over time as a result of inflation and preserve the ''polluter pays'' principle embodied in OPA 90, 33 U.S.C. 2704(d)(4) requires that the OPA 90 limits of liability be adjusted ''by regulations issued not later than 3 years after July 11, 2006, and not less than every 3 years thereafter,'' to reflect significant increases in the CPI. The President delegated this regulatory authority to the Secretary of the department in which the Coast Guard is operating in respect to the limits of liability for vessels, deepwater ports subject to the Deepwater Port Act of 1974 (DPA), as amended (33 U.S.C. 1501, et seq.) (''deepwater ports''), and the limit of liability for onshore facilities in 33 U.S.C. 2704(a)(4).[3] The Secretary of Homeland Security further delegated this authority to the Coast Guard in Department of Homeland Security (DHS) Delegation 5110, Revision 01.

In this notice of proposed rulemaking (NPRM) the Coast Guard proposes to carry out the statutorily-required inflation adjustments to the OPA 90 limits of liability. This NPRM also proposes to clarify applicability of the OPA 90 vessel limits of liability to edible oil cargo tank vessels and to tank vessels designated in their certificates of inspection as oil spill response vessels. This clarification to the existing regulatory text is needed for consistency with OPA 90 (33 U.S.C. 2704(c)(4)).

IV. Background and Regulatory History

A. Creation of 33 CFR Part 138, Subpart B

In 2008, the Coast Guard promulgated 33 CFR part 138, subpart B, setting forth the OPA 90 limits of liability for vessels and deepwater ports. (See Docket No. USCG–2005–21780.) This was done in anticipation of the Coast Guard implementing the periodic inflation adjustments to the limits of liability required by 33 U.S.C. 2704(d)(4), and to ensure that the applicable amounts of financial responsibility that must be demonstrated by vessel and deepwater port responsible parties as required by OPA 90 (33 U.S.C. 2716) and 33 CFR part 138, subpart A (COFR Rule), would always equal the applicable OPA 90 limit of liability as adjusted over time.

B. Prior Regulatory Inflation Adjustments to the OPA 90 Limits of Liability in 33 CFR Part 138, Subpart B

The Coast Guard published an NPRM on September 24, 2008 (73 FR 54997) (CPI–1 NPRM), and an interim rule with request for comments on July 1, 2009 (74 FR 31357) (CPI–1 Interim Rule), timely adjusting the vessel and deepwater port limits of liability at 33 CFR part 138, subpart B, to reflect significant increases in the CPI as required by OPA 90 (33 U.S.C. 2704(d)(4)). The CPI–1 Interim Rule also established the Coast Guard's procedures and methodology for adjusting the OPA 90 limits of liability for inflation over time. There were no adverse public comments on the CPI–1 Interim Rule. On January 6, 2010, the Coast Guard therefore published a final rule (CPI–1 Final Rule), adopting the CPI–1 Interim Rule amendments to 33 CFR part 138, subpart B, without change (75 FR 750).[4]

The CPI–1 Rule was the first set of inflation adjustments to the OPA 90 limits of liability for vessels and deepwater ports. The CPI–1 Rule, however, deferred adjusting the statutory limit of liability in 33 U.S.C. 2704(a)(4) for onshore facilities.

[1] See 33 U.S.C. 2701(29) and (37) (definitions of public vessel and vessel) and 33 U.S.C. 2702(c)(2) (public vessel exclusion).

[2] See 33 U.S.C. 2708. A more comprehensive description of the Fund can be found in the Coast Guard's May 12, 2005, ''Report on Implementation of the Oil Pollution Act of 1990'', which is available in the docket.

[3] Executive Order (E.O.) 12777, Sec. 4, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13638 of March 15, 2013, Sec. 1 (78 FR 17589, Thursday, March 21, 2013). See further discussion of the delegations below, under Background and Regulatory History.

[4] All **Federal Register** notices, comments and other materials related to the CPI–1 Rule are available in the public docket for that rulemaking (Docket No. USCG–2008–0007).

As explained in the **Federal Register** notices for the CPI–1 Rule, the decision to defer adjusting the onshore facility limit of liability was made because E.O. 12777, Sec. 4, and its implementing re-delegations vested the President's responsibility to adjust the OPA 90 limits of liability (including the limit of liability for onshore facilities) in multiple agencies based on the agencies' traditional regulatory jurisdiction. Specifically, the delegations vested the President's limit of liability adjustment authorities in the Commandant of the Coast Guard for vessels, deepwater ports and marine transportation-related onshore facilities, in the Secretary of the Department of Transportation for non-marine transportation-related onshore facilities, in the Administrator of the Environmental Protection Agency for non-transportation-related onshore facilities, and in the Secretary of the Department of the Interior (DOI) for offshore facilities.[5]

This division of responsibilities complicated the CPI adjustment rulemaking requirement, particularly in respect to the three sub-categories of onshore facilities. Interagency coordination was, therefore, needed to avoid inconsistent regulatory treatment.

The decision to defer adjusting the onshore facility statutory limit of liability for inflation also permitted the Coast Guard to complete the required first set of inflation increases to the vessel and deepwater port limits of liability by the statutory deadline, and to establish the Coast Guard's CPI increase adjustment procedure at § 138.240. There were no adverse public comments on the decision to defer adjusting the onshore facility limit of liability for inflation.

On March 15, 2013, the President signed E.O. 13638, restating and simplifying the delegations in E.O. 12777, Sec. 4, and vesting the authority to make CPI adjustments to the onshore facility statutory limit of liability (33 U.S.C. 2704(a)(4)) in "the Secretary of the Department in which the Coast Guard is operating". (See E.O. 13638 of March 15, 2013, Sec. 1, amending E.O. 12777, Sec. 4, at 78 FR 17589, Thursday, March 21, 2013.) The restated delegations also require interagency coordination, but otherwise preserve the earlier delegations, including the delegated authorities to promulgate CPI adjustments to the limits of liability for vessels and deepwater ports.[6]

On July 10, 2013, the Secretary of Homeland Security re-delegated these authorities to the Commandant of the Coast Guard. (See DHS Delegation Number 5110, Revision 01.) This NPRM, therefore, proposes to adjust the vessel, deepwater port and onshore facility limits of liability to reflect significant increases in the CPI.

C. Statutory and Regulatory History Respecting the OPA 90 Edible Oil Cargo Tank Vessel and Oil Spill Response Vessel Exceptions

Section 2(d) of the 1995 Edible Oil Regulatory Reform Act, Public Law 104–55, Nov. 20, 1995, 109 Stat. 546, amended OPA 90 (33 U.S.C. 2704(a)(1) and 33 U.S.C. 2716(a)), excepting tank vessels on which the only oil carried as cargo is an animal fat or vegetable oil ("edible oil tank vessels") from the OPA 90 tank vessel limits of liability in 33 U.S.C. 2704(a)(1). The effect of the exception was to classify edible oil tank vessels as a matter of law to the "any other vessel" limit of liability category in OPA 90 (33 U.S.C. 2704(a)(2)). In addition, edible oil tank vessels were, as of that date, subject to the lower OPA 90 (33 U.S.C. 2716) evidence of financial responsibility requirements applicable to the "any other vessel" category.

The Coast Guard Authorization Act of 1998, Public Law 105–383, title IV, section 406, Nov. 13, 1998, 112 Stat. 3429, further amended OPA 90 (33 U.S.C. 2704), moving the edible oil tank vessel exception from 33 U.S.C. 2704(a)(1) to new 33 U.S.C. 2704(c)(4)(A), and adding an additional exception at 33 U.S.C. 2704(c)(4)(B) for tank vessels designated in their certificates of inspection as oil spill response vessels that are used solely for removal ("oil spill response vessels").

Oil spill response vessels are, therefore, also classified as a matter of law to the "any other vessel" category in 33 U.S.C. 2704(a)(2), and subject to the resulting lower OPA 90 limit of liability and evidence of financial responsibility requirements.

The special treatment accorded by OPA 90 to edible oil tank vessels and oil spill response vessels is not reflected in the current regulatory text of 33 CFR part 138. The Coast Guard, therefore, believes that a clarification to the regulatory text would reduce regulatory uncertainty.

V. Discussion of Proposed Rule

A. Regulatory Inflation Adjustments and Statutory Updates to the Limits of Liability for Vessels, Deepwater Ports and Onshore Facilities

In accordance with 33 U.S.C. 2704(d)(4) and 33 CFR part 138, subpart B, we propose to increase the OPA 90 limits of liability for vessels and deepwater ports, set forth in § 138.230(a) and (b), respectively, to reflect significant increases in the CPI since we last adjusted them for inflation. This would be the second set of inflation adjustments to the vessel and deepwater port limits of liability.

We also propose increasing the OPA 90 limit of liability for onshore facilities in 33 U.S.C. 2704(a)(4) for inflation. This would be the first inflation increase to the onshore facility limit of liability. The inflation-adjusted onshore facility limit of liability would be set forth in § 138.230(c), which was expressly reserved by the CPI–1 Rule for that purpose.

1. What formula will be used to adjust the vessel, deepwater port and onshore facility limits of liability for inflation?

The proposed limit of liability adjustments have been calculated using the inflation adjustment methodology established by the CPI–1 Rule, set forth in § 138.240.[7] Specifically, 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 formula in § 138.240(b). The Director, NPFC, then calculates inflation adjustments to the limits of liability based on that cumulative percent change in the Annual CPI–U, as provided in § 138.240(d). Both the cumulative percent change formula and the limit of liability adjustment formula are based on the U.S. Department of Labor, Bureau of Labor Statistics (BLS) escalation formula, which can be viewed at *http://www.bls.gov/cpi/cpi1998d.htm*.[8]

[5] E.O. 12777, Sec. 4, also delegated various other liability limit adjustment and reporting authorities in 33 U.S.C. 2704.

[6] Similarly, the authority to make CPI adjustments to the limit of liability for offshore facilities in 33 U.S.C. 2704(a)(3) remains with the Secretary of the Interior (see, e.g., 79 FR 10056, Monday, February 24, 2014; 79 FR 15275, Wednesday, March 19, 2014).

[7] A detailed discussion of the Coast Guard's inflation adjustment methodology, and how it was developed, can be found in the preambles for the CPI–1 NPRM, 73 FR 54997, and the CPI–1 Interim Rule, 74 FR 31357.

[8] See also 33 CFR 138.240(a) (proposed 33 CFR 138.240(b)).

2. What current period values would be used for this set of inflation adjustments to the vessel, deepwater port and onshore facility limits of liability?

To keep the limits of liability current, the inflation adjustment methodology established by the CPI–1 Rule, at § 138.240, requires that we use the Annual CPI–U that has been most recently published by the BLS as the *current period* value. For purposes of this NPRM, the Coast Guard is therefore estimating the inflation adjusted limits of liability using the 2013 Annual CPI–U, published by BLS on January 16, 2014, as the *current period* value.[9] This is the Annual CPI–U that has been most recently published by the BLS.

In the final rule stage of this rulemaking we will calculate the adjustments using the most recently published Annual CPI–U available at that time. Therefore, if the 2014 Annual CPI–U or another more recent Annual CPI–U is available for calculating the *current period* value when we are at the final rule stage of this rulemaking, the limit of liability values would change marginally from those proposed today.

3. What previous period values would be used for this set of inflation adjustments to the vessel, deepwater port and onshore facility limits of liability?

Applying the inflation adjustment methodology at § 138.240, we propose adjusting the vessel and deepwater port limits of liability to reflect significant increases in the Annual CPI–U since those limits were last adjusted for inflation by the CPI–1 Rule. We, therefore, propose using the 2008 Annual CPI–U, or 215.3, as the *previous period* value for this cycle of adjustments to the vessel and deepwater port limits of liability. This was the *current period* value we used for the CPI–1 Rule inflation adjustments to the vessel and deepwater port limits of liability.[10]

For onshore facilities, we propose adjusting the OPA 90 statutory limit of liability in 33 U.S.C. 2704(a)(4) to reflect significant increases in the Annual CPI–U since 2006. This is the baseline year, or *previous period,* established by the CPI–1 Rule for calculating the first inflation adjustments to the statutory limits of liability in 33 U.S.C. 2704(a), including the statutory limit of liability for onshore facilities.[11]

As explained during the CPI–1 Rule development,[12] we proposed using 2006 as the *previous period* date for the first set of adjustments to the OPA 90 statutory limits of liability for all source categories. There were no adverse comments on that approach. We, therefore, established the 2006 Annual CPI–U value of 201.6 as the *previous period* value for adjusting the statutory limits of liability for all source categories delegated to the Coast Guard (i.e., vessels, deepwater ports and onshore facilities). We are, therefore, using that baseline for the adjustments we are proposing today to the statutory limit of liability for onshore facilities.

We are, however, considering whether to use the 1990 Annual CPI–U *previous period* value to adjust the onshore facility limit of liability, and whether to also recalculate the CPI–1 Rule adjustment to the deepwater port general limit of liability using a 1990 *previous period* value.[13] This issue is discussed further in subsection 5, below.

4. What would the adjusted limits of liability be?

Inserting the estimated percent changes in the Annual CPI–U into the adjustment formula would result in the following proposed new limits of liability for vessels and deepwater ports (using the 2008 Annual CPI–U *previous period*), and onshore facilities (using the 2006 Annual CPI–U *previous period*), and rounding all limits of liability to the closest $100:

Source category	Previous limit of liability	Proposed new limit of liability
§ 138.230 (a) Vessels		
(1) For a single-hull tank vessel greater than 3,000 gross tons, other than a vessel excluded under 33 U.S.C. 2704(c)(4) (i.e., an edible oil tank vessel or oil spill response vessel).	the greater of $3,200 per gross ton or $23,496,000.	the greater of $3,500 per gross ton or $25,422,700.
(2) For a tank vessel greater than 3,000 gross tons, other than a vessel referred to in (a)(1) or a vessel excluded under 33 U.S.C. 2704(c)(4) (i.e., an edible oil tank vessel or oil spill response vessel).	the greater of $2,000 per gross ton or $17,088,000.	the greater of $2,200 per gross ton or $18,489,200.
(3) For a single-hull tank vessel less than or equal to 3,000 gross tons, other than a vessel excluded under 33 U.S.C. 2704(c)(4) (i.e., an edible oil tank vessel or oil spill response vessel).	the greater of $3,200 per gross ton or $6,408,000.	the greater of $3,500 per gross ton or $6,933,500.
(4) For a tank vessel less than or equal to 3,000 gross tons, other than a vessel referred to in (3) or a vessel excluded under 33 U.S.C. 2704(c)(4) (i.e., an edible oil tank vessel or oil spill response vessel).	the greater of $2,000 per gross ton or $4,272,000.	the greater of $2,200 per gross ton or $4,622,300.
(5) For any other vessel, including any edible oil tank vessel and any oil spill response vessel.	the greater of $1,000 per gross ton or $854,400.	the greater of $1,100 per gross ton or $924,500.
§ 138.230 (b) Deepwater ports that are subject to the DPA		
(1) For a deepwater port that is subject to the DPA, other than the Louisiana Offshore Oil Port (LOOP).	$373,800,000	$404,451,600.
(2) For LOOP	$87,606,000	$94,789,700.
§ 138.230 (c) Onshore facilities	$350,000,000	$404,600,000.

[9] See Table 24 on page 68 of the BLS document ''CPI Detailed Report—Data for March 2014'', which is available at the following link: *http://www.bls.gov/cpi/cpid1403.pdf.*

[10] The 2008 Annual CPI–U was used as the *current period* value for the CPI–1 inflation adjustments because of the time lag for BLS publication of the Annual CPI–U and the time it takes to promulgate regulations.

[11] See 74 FR at 31361.

[12] See 73 FR at 55000–55001; 74 FR at 31361.

[13] We are not revisiting the CPI–1 Rule adjustments to the vessel and LOOP limits of liability. This is because the 2006 and 1995 ''Previous Periods'' used, respectively, for those adjustments were based on the date the vessel statutory limits of liability were amended by DRPA and the date LOOP's facility-specific limit of liability was established by regulation under OPA 90 (33 U.S.C. 2704(d)(2)(C)).

These values would change marginally if the 2014 Annual CPI–U or another more recent Annual CPI–U is used as the *current period* value when we are at the final rule stage of this rulemaking.

5. What would the estimated adjusted limit of liability for onshore facilities and deepwater ports generally be using a 1990 previous period?

As mentioned in subsection 3, above, we are considering whether to use a 1990 *previous period* to adjust the onshore facility limit of liability, and whether to recalculate the CPI–1 Rule adjustment to the deepwater port general limit of liability using a 1990 *previous period* value. There are several reasons why we are considering doing this:

• First, in respect to the onshore facility limit of liability, Coast Guard data indicate that one onshore facility incident occurred following publication of the CPI–1 Rule—the 2010 Enbridge Pipeline spill to the Kalamazoo River—that may result in OPA 90 removal costs and damages in excess of the onshore facility limit of liability.[14] This recent experience warrants revisiting whether to use the 2006 *previous period* established by the CPI–1 Rule for the first inflation adjustment to the onshore facility statutory limit of liability.

• In addition, DOI is proposing a rule that would adjust the offshore facility limit of liability for inflation since OPA 90 was enacted, because there have not been intervening adjustments to that limit of liability (as compared to the vessel limits of liability, which have been adjusted both by statute and regulation), and because the damages in the 2010 Deepwater Horizon spill of national significance have far exceeded the offshore facility limit of liability.[15]

• Moreover, DRPA did not change or expressly address the onshore facility and deepwater port statutory limit of liability at 33 U.S.C. 2704(a)(4).[16]

Therefore, although onshore facility spills have not historically (with the one exception previously mentioned) exceeded the statutory limit of liability in 33 U.S.C. 2704(a)(4) and there currently are no deepwater ports in operation that are subject to the generally-applicable limit of liability for deepwater ports, we believe that the Nation's recent experience with costly oil spills—although exceptional—warrants revisiting whether to use the 1990 Annual CPI–U as the *previous period* (instead of the 2006 *previous period* established by the CPI–1 Rule) for the first inflation adjustment to the statutory limit of liability in 33 U.S.C. 2704(a)(4), which applies to both onshore facilities and deepwater ports.

Considering whether to use a different *previous period* for adjusting the onshore facility limit of liability is appropriate because the CPI–1 Rule did not adjust the onshore facility limit of liability for inflation. In addition, although deepwater ports may pose a very low risk of discharge as compared to other modes of oil transportation,[17] reconsidering our use of the 2006 *previous period* for the CPI–1 Rule's deepwater port limit of liability adjustment is appropriate given our better understanding of the potential costs arising from oil spill incidents in offshore areas. We, therefore, invite the public to comment on this issue.

If we were to adopt a 1990 *previous period,* we would adjust the onshore facility and deepwater port statutory limit of liability in 33 U.S.C. 2704(a)(4) using the 1990 Annual CPI–U value of 130.7 as the *previous period.* This would be instead of the 2006 Annual CPI–U *previous period* value of 201.6 and the 2008 Annual CPI–U *previous period* value of 215.3, used to calculate, respectively, the adjusted limit of liability values for onshore facilities and deepwater ports reflected in the regulatory text of this proposal.

If, after considering any public comment on this NPRM, we decide to adjust the onshore facility and deepwater port generally-applicable limit of liability using the 1990 Annual CPI–U of 130.7 as the *previous period* value (i.e., instead of the 2006 Annual CPI–U value of 201.6 for onshore facilities, and the 2008 Annual CPI–U value of 215.3 for deepwater ports), the estimated percent change in the Annual CPI–U would be 78.2 percent. Inserting this estimated percent change in the Annual CPI–U into the adjustment formula would result in the following new limits of liability for onshore facilities and deepwater ports generally, after rounding the limits of liability to the closest $100:

Source category	Statutory previous limit of liability	Alternative new limit of liability (1990 previous period)
§ 138.230(b)(1) For a deepwater port that is subject to the DPA, other than LOOP	$350,000,000	$623,700,000
§ 138.230(c) For onshore facilities	350,000,000	623,700,000

These values would also change marginally if the 2014 Annual CPI–U or another more recent Annual CPI–U is used as the *current period* value when we are at the final rule stage of this rulemaking.

6. How does the Coast Guard propose to notify the public when the limits of liability for vessels, deepwater ports and onshore facilities are adjusted in the future for inflation or if the rule is amended to reflect amendments to the statute?

We are proposing a simplified regulatory procedure at proposed new paragraph § 138.240(a) for making future inflation updates to the OPA 90 limits of liability for vessels, deepwater ports and onshore facilities, in § 138.230(a), (b), and (c) respectively. This simplified regulatory approach is based on a similar procedure used by the Federal Energy Regulatory Commission to make routine cost adjustments to its fees (see 18 CFR 381.104(a) and (d)), and would help ensure regular, timely inflation

[14] On July 26, 2010, Enbridge Energy Partners LLP (Enbridge) reported a 30-inch pipeline rupture, near Marshall, Michigan. The resulting oil discharge, with volume estimates ranging from 843,000 gallons to over a million gallons, entered Talmadge Creek and flowed into the Kalamazoo River, a Lake Michigan tributary. Heavy rains caused the river to overtop existing dams and carried oil 35 miles downstream on the Kalamazoo River. On July 28, 2010, the spill was contained approximately 80 river miles from Lake Michigan. This incident involved tar sand oil, which is particularly difficult and costly to clean up, and is the most expensive onshore facility spill in U.S. history.

[15] 79 FR at 10059. The DOI otherwise plans to adopt a methodology for future adjustments similar to § 138.240.

[16] OPA 90 (33 U.S.C. 2704(a)(4)) sets forth a common statutory limit of liability for onshore facilities and deepwater ports of $350,000,000.

[17] See 1993 Deepwater Ports Study and Report to Congress under OPA 90 Section 1004(d)(2), analyzing the relative operational risks of the principal modes of crude oil transportation to the United States.

adjustments to the limits of liability as required by statute. The approach is also an appropriate and helpful efficiency measure given the mandatory and routine nature of the CPI adjustments.

Under this proposed procedure, the Director, NPFC, would continue to determine future inflation adjustments to the limits of liability using the significance threshold and adjustment methodology in § 138.240, and the most current CPI values published by the BLS. The Director, NPFC, would, however, publish the inflation-adjusted limits of liability in the **Federal Register** as final rule amendments to § 138.230.[18] The new inflation-adjusted limits of liability would appear in the next publication of the CFR.

Because the adjustment methodology was established by the CPI–1 Rule, and the simplified procedure will be established by this rulemaking, publication of an NPRM would not be necessary for these future mandated inflation adjustments. The public would, however, be able to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of the **Federal Register** notice amending the limits of liability. Therefore, in the event a member of the public identifies a mathematical or other technical error in the Coast Guard's application of the adjustment methodology and contacted the Coast Guard, the Coast Guard would publish a correction notice in the **Federal Register**.

Under this simplified procedure, unless otherwise specified in the **Federal Register**, the new CPI-adjusted limits of liability would become effective on the 90th day after their publication in the **Federal Register**, including (as provided in the COFR Rule at § 138.85) for purposes of the requirement for responsible parties to establish and maintain the applicable amounts of OPA 90 financial responsibility required for vessels and deepwater ports under 33 U.S.C. 2716 and § 138.80(f)(1). This will ensure efficient and timely implementation of this recurring, though routine, regulatory mandate.

The Director would use this simplified regulatory procedure to update § 138.230 to reflect statutory changes to the OPA 90 limits of liability. This will ensure that the limits of liability set forth in subpart B remain consistent with the statutory limits of liability if they are amended. Thereafter, as discussed in the CPI–1 Interim Rule, the new statutory limit of liability would be adjusted by regulation for inflation on the same inflation-adjustment cycle used for the other source categories. We note that, as a result, a limit of liability could change more frequently than once every three years, if it was changed by statute and then adjusted by regulation for inflation on the regular inflation-adjustment cycle.

Because any new statutory limits of liability normally would supersede the prior regulatory limits of liability, any such new limits of liability would take effect for purposes of determining a responsible party's liability in the event of an incident on the date of enactment unless another effective date is specified in the amending law. As provided in § 138.85 of the COFR Rule, however, the deadline for vessel and deepwater port responsible parties to establish evidence of financial responsibility in the new amounts would be the 90th day after the effective date of the Coast Guard's final rule amending the CFR to reflect the new statutory limits of liability, unless another date is required by statute or specified in the **Federal Register** notice amending the regulation. (See, 33 U.S.C. 2716 and § 138.80(f)(1).)

The simplified regulatory procedure described in proposed § 138.240(a) would not be used for other adjustments to the limits of liability, such as those authorized for classes and categories of onshore facilities under 33 U.S.C. 2704(d)(1) and for deepwater ports under 33 U.S.C. 2704(d)(2).

B. Clarifying Amendments Respecting Edible Oil Cargo Tank Vessels and Oil Spill Response Vessels

The Coast Guard is also proposing amendments to the vessel limits of liability in § 138.230(a) for consistency with 33 U.S.C. 2704(c)(4). (See Regulatory History discussion, above at IV.C.) Specifically, the proposed amendments to § 138.230(a) would clarify that edible oil cargo tank vessels and oil spill response vessels (defined as proposed in § 138.220(b)) are subject to the lower limits of liability set forth in current § 138.230(a)(5) (proposed new § 138.230(a)(2)) applicable to the ''any other vessel'' category under 33 U.S.C. 2704(a)(2). The Coast Guard believes that adding clarifying language in the regulatory text will be helpful to the public.

C. Section-by-Section Discussion[19]

Heading. The heading for 33 CFR part 138 would be amended by adding the words ''ONSHORE FACILITY''.

Authorities. We propose to update the authorities citations for part 138 to reflect the amendments to the delegations in E.O. 12777, Sec. 4, by E.O. 13638 of March 15, 2013, the resulting agency-level re-delegations, and for editorial purposes.

§ 138.200 Scope. We propose to amend § 138.200 to add that subpart B sets forth the OPA 90 limit of liability for onshore facilities, in addition to the OPA 90 limits of liability for vessels and deepwater ports. We also propose to amend the scope section to specify that subpart B includes the procedure for making future inflation adjustments, by regulation, to the limits of liability for vessels, deepwater ports and onshore facilities, and for updating the limits when they are amended by statute. Finally, we propose to amend the scope section to specify that subpart B also cross-references DOI's proposed regulation at 30 CFR 553.702, setting forth the OPA 90 limit of liability applicable to offshore facilities, including offshore pipelines, as adjusted by DOI for inflation under OPA 90 (33 U.S.C. 2704(d)(4)). This cross-reference is being added for the convenience of the public.

§ 138.210 Applicability. We propose amending § 138.210 to add that subpart B applies to you if you are a responsible party for an onshore facility, except (as is the case under the current rule for vessel and deepwater port responsible parties) to the extent your liability is unlimited under OPA 90 (33 U.S.C. 2704(c)).

§ 138.220 Definitions. We are proposing to amend § 138.220(a) of the definitions to cross-reference the OPA 90 definitions of *facility, offshore facility* and *onshore facility.* In addition, we propose to amend § 138.220(b) by revising the definition of *Director, NPFC,* in § 138.220(b), to conform to how that term is defined in other rules implemented by NPFC, and by adding definitions for *current period* and *previous period* as DOI has done in its proposal to amend the offshore facility limit of liability (79 FR at 10063). These definitions clarify the CPI escalation formula. Finally, we propose to add definitions for *edible oil tank vessel* and *oil spill response vessel* to mean,

[18] As provided in § 138.240(b) (§ 138.240(c) of the proposed rule), if the significance threshold were not met, the Director, NPFC, would publish a notice of no inflation adjustment.

[19] The Coast Guard has included the complete regulatory text of 33 CFR part 138, subpart B in this NPRM to facilitate the public's understanding of the changes proposed to the current text of subpart B. The changes proposed to the existing regulatory text are, however, limited to those specifically mentioned in this section-by-section discussion.

respectively, a tank vessel referred to in OPA 90 (33 U.S.C. 2704(c)(4)(A) or (B)). These definitions are needed to clarify applicability of the limits of liability proposed in § 138.230.

§ 138.230 Limits of liability. We propose to increase the limits of liability for vessels and deepwater ports, including LOOP, from those set forth in current § 138.230, to reflect significant increases in the CPI. We also propose to amend § 138.230(a) to expressly provide and clarify that the ''other vessel'' limits of liability in § 138.230(a)(2) apply to edible oil tank vessels and oil spill response vessels. Additionally, we propose adding an inflation-adjusted limit of liability for onshore facilities in § 138.230(c).

As discussed in section V.A.2, the limits of liability proposed in § 138.230 of this NPRM are estimates, calculated using the 2013 Annual CPI–U as the current value. The updated limit of liability values that will appear in the final rule of this rulemaking will be calculated using the most recent Annual CPI–U available at the time of publication of the final rule, and may therefore be marginally different than the estimates in this NPRM.

In addition, as discussed above in section V.A.3 and 5, the new limit of liability for deepwater ports and onshore facilities generally may differ from the amounts shown in § 138.230(b)(1) and (c) of the proposed regulatory text if, after considering any public comments on this NPRM, we decide to calculate the CPI adjustments to the statutory limit of liability for these two source categories using the 1990 Annual CPI–U value of 130.7 as the *previous period.* This would be instead of using the 2006 Annual CPI–U value of 201.6 to adjust the onshore facility limit of liability and the 2008 Annual CPI–U value of 215.3 to adjust the deepwater port generally-applicable limit of liability, as we have done for purposes of this proposal.

Finally, we have added new subsection § 138.230(d). Paragraph (d) will cross-reference the offshore facility limit of liability, which DOI has proposed to adjust for inflation and set forth at 30 CFR 553.702 (see 79 FR at 10063). Our proposal reflects DOI's proposal. If the section numbering of that regulation changes in DOI's final rule, we will change our regulatory text accordingly.

§ 138.240 Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI–U) and statutory changes. We propose adding new § 138.240(a), and re-designating the subsections that follow accordingly. Proposed new subsection (a) would establish the simplified regulatory procedure the Coast Guard proposes to use to amend the limits of liability contained in proposed § 138.230 to reflect significant increases in the CPI and when the limits of liability are amended by statute. As discussed above in section V.A.6, the wording in proposed § 138.240(a) is based on a similar procedure used by the Federal Energy Regulatory Commission to adjust its fees for inflation (see 18 CFR 381.104(a) and (d)), and would help ensure regular, timely inflation adjustments to the OPA 90 limits of liability as intended by Congress. The approach is also an appropriate and helpful efficiency measure given the mandatory and routine nature of the CPI adjustments.

We also propose editorial revisions, such as dividing § 138.240(b) into subparagraphs, adding a cross reference to § 138.240(a) in § 138.240(c), and changing the title of § 138.240 to read ''Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI–U) and statutory changes.'' No other changes are being proposed to § 138.240.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. The Office of Management and Budget (OMB) has not reviewed it under E.O. 12866. Nonetheless, we developed an analysis of the costs and benefits of the proposed rule to ascertain its probable impacts on industry. We consider all estimates and analysis in this Regulatory Analysis to be subject to change in consideration of public comments. A draft Regulatory Assessment is available in the docket and a summary follows.

1. Regulatory Costs

There are two regulatory costs that are expected from this proposed rule. Regulatory Cost 1: Increased Cost of Liability. Regulatory Cost 2: Increased cost of establishing vessel evidence of financial responsibility.[20]

a. Discussion of Regulatory Cost

This proposed rule could increase the dollar amount of OPA 90 removal costs and damages a responsible party of a vessel (other than a public vessel),[21] deepwater port, or onshore facility must pay in the event of a discharge, or substantial threat of discharge, of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone of the United States (''OPA 90 incident''). This regulatory cost, however, would only be incurred by a responsible party if an OPA 90 incident resulted in OPA 90 removal costs and damages that exceeded the applicable vessel, deepwater port, or onshore facility previous limit of liability. In any such case, assuming as we do in this analysis that the responsible party is entitled to a limit of liability (i.e., none of the exceptions in 33 U.S.C. 2704(c) apply), the difference between the previous limit of liability amount and the proposed new limit of liability amount is the maximum increased cost to the responsible party. Incident costs above this value would not be borne by the responsible parties, but rather by the Fund.

i. Affected Population—Vessels

Coast Guard data, as of May 2013, indicate that for the years 1991 through 2012, 62 OPA 90 vessel incidents (i.e., an average of approximately 3 OPA 90 vessel incidents per year) resulted in OPA 90 removal costs and damages in

[20] It should be noted that from an economic perspective, CPI adjustments are actually neutral in that they maintain the cost and benefit impacts of the limits of liability constant in real dollar terms. Not adjusting the limits of liability would, by comparison, allow inflation to erode the value of the limits of liability in real terms.

[21] See footnote 1. According to Coast Guard's MISLE database, there are over 200,000 vessels of various types in the vessel population that are not public vessels or used exclusively for recreational use. Examples of vessel types include, but are not limited to: fish processing vessel, freight barge, freight ship, industrial vessel, mobile offshore drilling unit, offshore supply vessel, oil recovery vessel, passenger vessel, commercial fishing vessel, passenger barge, research vessel, school ship, tank barge, tank ship, and towing vessel.

excess of the previous limits of liability. For the purpose of this analysis, we have therefore assumed that three OPA 90 vessel incidents with costs exceeding the previous limits of liability would continue to occur each year throughout the 10-year analysis period (2014–2023).

ii. Affected Population—Deepwater Ports

This proposed rule could affect the responsible parties of any port licensed under the DPA that is subject to OPA 90 (i.e., any such port, including its associated pipelines, that meets the OPA 90 definition of ''facility'').[22] Currently there are two ports in operation that are licensed under the DPA—LOOP and Northeast Gateway. Northeast Gateway, however, is a liquefied natural gas (LNG) port and, as currently designed and operated, it does not meet the OPA 90 definition of ''facility''. Therefore—although a vessel visiting or servicing Northeast Gateway could become the source of a discharge, or substantial threat of discharge, of oil for which the vessel responsible parties would be liable under OPA 90—it is highly unlikely that Northeast Gateway or any similarly-designed and operated LNG port would be the source of an oil discharge, or substantial threat of discharge.[23] We therefore, do not include LNG ports in this analysis.

To date, LOOP (the only port licensed under the DPA that is in operation and meets the OPA 90 definitions of ''deepwater port'' and ''facility'') has not had an OPA 90 incident that resulted in removal costs and damages in excess of LOOP's previous limit of liability of $87,606,000. However, for the purposes of this analysis, we show the cost of one OPA 90 incident occurring at LOOP over the 10-year analysis period (2014–2023), with OPA 90 removal costs and damages in excess of the previous limit of liability for LOOP, as the potential for such a spill exists.

iii. Affected Population—Onshore Facilities

This proposed rule could affect any responsible party for an onshore facility (including onshore pipelines). The impact would, however, only occur if the incident resulted in OPA 90 removal costs and damages in excess of the previous limit of liability.

Because of the large number and diversity of onshore facilities, it is not possible to predict which specific types or sizes of onshore facilities might be affected by this proposed rule. Coast Guard data, as of May 2013, however, indicate that since the enactment of OPA 90 through May 1, 2013, only one onshore facility incident—the 2010 Enbridge Pipeline spill in Michigan—may have resulted in OPA 90 removal costs and damages that exceeded the onshore facility previous limit of liability of $350,000,000.[24]

The Enbridge Pipeline incident indicates that the previous limit of liability for an onshore facility, although high, can still be exceeded by a low frequency, but high consequence oil spill. Therefore, for the purposes of this analysis, we assume one onshore facility incident would occur over the 10-year analysis time period that would result in OPA 90 removal costs and damages in excess of the onshore facility previous limit of liability.

iv. Cost Summary Regulatory Cost 1

(a) Vessels

We estimate the greatest cost to a vessel responsible party entitled to a limit of liability under OPA 90, for purposes of this analysis, by assuming that the average annual cost from the historical incidents analyzed would remain constant throughout the analysis period (2014–2023). The average annual increased cost of liability for the analysis time period (2013–2024) is estimated by calculating the difference between the previous limit of liability and the proposed new limit of liability for each of the 62 historical incidents. These values were totaled and then divided by the number of years of data (22 years). The average annual cost resulting from the three estimated vessel incidents per year is estimated to be $2,544,000 (non-discounted dollars). Dividing this value by the three hypothetical vessel incidents per year equals $848,000 for the average annual cost per vessel.

(b) Deepwater Ports

We estimate the greatest cost to a deepwater port responsible party entitled to a limit of liability under OPA 90, for purposes of this analysis, by assuming that the cost of the incident would be equal to the proposed new limit of liability. As mentioned above, LOOP has never had an incident with OPA 90 removal costs and damages in excess of its limit of liability. Therefore, given the lack of any deepwater port historical data, we rely on the historical data available for vessel incidents with costs in excess of LOOP's previous limit of liability of $87,606,000.

Specifically, we assume that the LOOP responsible parties would make OPA 90 removal cost and damage payments for the one hypothetical incident, over the course of 10 years after the incident date.[25] In addition, for the purposes of this analysis, we assume that the payments would be spread out in equal annual amounts over the 10-year analysis period (2014–2023). Applying these assumptions, the average annual cost resulting from the one hypothetical LOOP OPA 90 incident is estimated to be $718,400 (non-discounted dollars).[26]

There would be no increase to Regulatory Cost 1 resulting from the proposed adjustment to the generally-applicable deepwater port limit of liability adjustment, including if, after considering any public comment, we decide to re-calculate the CPI adjustment to the deepwater port statutory limit of liability in 33 U.S.C. 2704(a)(4), using the 1990 Annual CPI–U value of 130.7 as the *previous period,* instead of the 2008 Annual CPI–U value of 215.3 that we have used for purposes of this proposal. This is because, as previously mentioned, there are no deepwater ports in operation that are

[22] 33 U.S.C. 2701(6) defines ''deepwater port'' as ''a *facility* licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524)'' [emphasis added]. 33 U.S.C. 2701(9) defines ''facility'' to mean ''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[.]''

[23] Several other LNG ports were mentioned in the regulatory analysis for the CPI–1 Rule. But they have either not become operational, or are no longer in operation. For example, on July 17, 2013, the Maritime Administrator approved a request by Suez Neptune LNG, LLC, for a temporary five-year suspension of its deepwater port license. In addition, on June 28, 2013 the Maritime Administrator cleared decommissioning of the Gulf Gateway Energy Bridge, and approved termination of its license. These LNG ports, therefore, are not included in this analysis. A fifth LNG port licensed under the DPA, Port Dolphin Energy LLC Deepwater Port (Port Dolphin), is not yet operational. Port Dolphin, moreover, has the same design as Northeast Gateway and, therefore, also would not meet the OPA 90 definition of ''facility''. It, therefore, is not included in this analysis.

[24] See footnote 12.

[25] Based on Coast Guard subject matter expert experience, we have made the assumption that a LOOP incident with costs above its Previous Limit of Liability of $87,606,000 would be analogous to a vessel incident with respect to the duration of responsible party payments until the completion date. The per-incident duration of payments was determined by comparing the incident date and the completion date for each vessel incident occurring since enactment of OPA 90 with incident removal costs and damages (in 2013 dollars) above LOOP's ''Previous Limit of Liability'' of $87,606,000. There were 6 incidents fitting this criteria, 3 are ongoing incidents, 3 are completed. The average duration for the 3 completed incidents, was approximately 10 years.

[26] The only deepwater port affected by this rulemaking, LOOP, has a facility-specific limit of liability first established in 1995 under 33 U.S.C. 2704(d)(2)(C), and adjusted for inflation by the CPI–1 Rule.

subject to the generally-applicable OPA 90 limit of liability for deepwater ports.

(c) Onshore Facilities

We estimate the greatest cost to an onshore facility responsible party entitled to a limit of liability under OPA 90, for purposes of this analysis, by assuming that the cost of the incident would be equal to the proposed new limit of liability. Based on NPFC's experience with onshore facility incidents, we assume that the onshore facility responsible parties would be making OPA 90 removal cost and damage payments for the one estimated incident, over the course of 10 years after the incident date.[27] We further assume that the payments would be spread out in equal annual amounts over the 10-year analysis period (2014–2023).[28] Applying these assumptions, the average annual cost resulting from the one estimated onshore facility OPA 90 incident over 10 years is estimated to be $5,460,000 (non-discounted dollars).

If, after considering any public comment, we decide to calculate the CPI adjustments to the onshore facility limit of liability using the 1990 Annual CPI–U value of 130.7 as the *previous period* (i.e., instead of the 2006 Annual CPI–U value of 201.6, established by the CPI–1 rule that we have used for purposes of this proposal), the average annual cost resulting from the one estimated onshore facility OPA 90 incident over 10 years would be $27,370,000 (non-discounted dollars).

v. Present Value of Regulatory Cost 1

The 10-year present value of Regulatory Cost 1, at a 3 percent discount rate, is estimated to be $74.4 million.[29] The 10-year present value of Regulatory Cost 1, at a 7 percent discount rate, is estimated to be $61.3 million.[30] The annualized discounted cost of Regulatory Cost 1, at a 3 percent discount rate, is estimated to be $8.7 million. The annualized discounted cost of Regulatory Cost 1, at a 7 percent discount rate, is estimated to be $8.7 million.

If, after considering any public comment, we decide to calculate the CPI adjustments to the onshore facility limit of liability and the generally-applicable limit of liability for deepwater ports using the 1990 Annual CPI–U value of 130.7 as the *previous period,* the present value estimates would be as follows. The estimated 10-year present value of Regulatory Cost 1, at a 3 percent discount rate, would be $261.3 million.[31] The estimated 10-year present value of Regulatory Cost 1, at a 7 percent discount rate, would be $215.1 million.[32] The estimated annualized discounted cost of Regulatory Cost 1, at a 3 percent discount rate, would be $30.6 million. The estimated annualized discounted cost of Regulatory Cost 1, at a 7 percent discount rate, would be $30.6 million.[33]

b. Discussion of Regulatory Cost 2

OPA 90 (33 U.S.C. 2716) requires that the responsible parties for deepwater ports and certain types and sizes of vessels establish and maintain evidence of financial responsibility to ensure that they have the ability to pay for OPA 90 removal costs and damages, up to the applicable limits of liability, in the event of an OPA 90 incident.[34] Therefore, because the regulatory changes contemplated by this proposed rule would increase those limits of liability, vessel and deepwater port responsible parties may incur additional costs establishing and maintaining evidence of financial responsibility as a result of this rulemaking.

Specifically, the proposed rule could increase the cost to vessel and deepwater port responsible parties associated with establishing OPA 90 evidence of financial responsibility in two ways:

- Responsible parties using Insurance as their method of demonstrating financial responsibility could incur higher Insurance premiums.
- Some responsible parties currently using the Self-Insurance or Financial Guaranty methods of demonstrating financial responsibility might need to acquire Insurance, and would thereby incur new Insurance premium costs. This would only be the case if the financial conditions (working capital and net worth) of Self-Insuring responsible parties or Financial Guarantors no longer qualified them to provide OPA 90 evidence of financial responsibility.

i. Affected Population—Vessels

Vessel responsible parties may establish evidence of financial responsibility using any of the following methods: Insurance, Self-Insurance, Financial Guaranty, Surety Bonds, or any other method approved by the Director, NPFC.[35] This proposed rule could affect the cost to vessel responsible parties of establishing and maintaining evidence of financial responsibility using the Insurance, Self-Insurance or Financial Guaranty methods of financial responsibility. As of 18 October 2011, the NPFC's certificate of financial responsibility (COFR) database contained 21,077 vessels using Insurance, 957 vessels using Self-Insurance and 2,530 vessels using Financial Guaranties.

ii. Affected Population—Deepwater Ports

As previously discussed (see Affected Population—Deepwater Ports, above under Regulatory Cost 1), LOOP is the only operating deepwater port that would be affected by this proposed rule. Currently LOOP uses a Director-approved method of establishing

[27] The per-incident duration of payments was determined by comparing the incident date and the completion date of each onshore facility incident occurring since enactment of OPA 90 with incident removal costs and damages (in 2013 dollars) greater than or equal to $5 million. There were 21 incidents fitting this criteria, 9 are ongoing incidents, 12 are completed. The average duration for the 12 completed incidents, was approximately 10 years.

[28] Based on Coast Guard subject matter expert experience, we have assumed that the payments would be spread out equally over the 10 year analysis period. This realistically models the long duration of OPA 90 removal actions (particularly in the case of an onshore facility incident resulting in OPA 90 removal costs and damages exceeding the limit of liability), the time lag in billings and payments and, if applicable, associated claim submissions, claims payments and litigation.

[29] The sum of the annual costs for the three source categories over the ten-year analysis period (i.e., $2.5 million per year for vessels, $0.7 million per year for deepwater ports, and $5.5 million per year for onshore facilities), discounted annually at a 7% discount rate equals $71.4 million.

[30] The sum of the annual costs for the three source categories over the ten-year analysis period (i.e., $2.5 million per year for vessels, $0.7 million per year for deepwater ports, and $5.5 million per year for onshore facilities), discounted annually at a 7% discount rate equals $61.3 million.

[31] The sum of the annual costs for the three source categories over the ten-year analysis period ($2.5 million per year for vessels, $0.7 million per year for deepwater ports, and $27.4 million per year for onshore facilities), discounted annually at a 3% discount rate equals $261.3 million.

[32] The sum of the annual costs for the three source categories over the ten-year analysis period ($2.5 million per year for vessels, $0.7 million per year for deepwater ports, and $27.4 million per year for onshore facilities), discounted annually at a 7% discount rate equals $215.1 million.

[33] As previously mentioned, there are no deepwater ports in operation that are subject to the generally-applicable limit of liability for deepwater ports. Therefore, re-calculating the CPI adjustment to the deepwater port statutory limit of liability in 33 U.S.C. 2704(a)(4), using the 1990 Annual CPI–U value of 130.7 as the *previous period,* instead of the 2008 Annual CPI–U value of 215.3 used for purposes of this proposal, would not result in any Regulatory Cost 1 impacts.

[34] OPA 90 does not impose evidence of financial responsibility requirements on onshore facilities.

[35] See 33 CFR 138.80(b). Currently, however, there are no vessel responsible parties using the Surety Bond method of financial responsibility, and, based on historical experience, NPFC does not expect any responsible parties will use this method during the analysis period (2014–2023). In addition, there currently are no vessel responsible parties using other methods of demonstrating financial responsibility approved by Director, NPFC, and, based on historical experience, NPFC does not expect any responsible parties will use any other method during the analysis period (2014–2023).

financial responsibility. Specifically, the Director, NPFC, accepts the following documentation as evidence of financial responsibility for LOOP:

- LOOP's insurance policy issued by Oil Insurance Limited (OIL) of Bermuda with coverage up to $150 million per OPA 90 incident and a $225 million annual aggregate,
- Documentation that LOOP operates with a net worth of at least $50 million, and
- Documentation that the total value of the OIL policy aggregate plus LOOP's working capital does not fall below $100 million.

iii. Affected Population—Onshore Facilities

None. Onshore facilities are not required to establish and maintain evidence of financial responsibility under 33 U.S.C. 2716.

iv. Cost Summary Regulatory Cost 2

(a) Vessels

Increases to Vessel Insurance Premiums. The calculation of Insurance premium rates are dependent on many constantly changing factors, including: market forces, interest rates and investment opportunities for the premium income, the terms and conditions of the policy, and underwriting criteria such as vessel age, loss history, construction, classification details, and management history. As calculated above, the proposed percent change in the limits of liability for vessels is 8.2%. Based on estimates received from Insurance companies,[36] it is assumed that an 8.2% increase in the limits of liability would cause, on average, a 6.0% increase in Insurance premiums charged across all vessel types.

Estimated costs were calculated by multiplying the number of vessels by vessel category for each year of the analysis period (2014–2023) by the Expected Average Increase in Premium for that particular vessel type. The annual cost associated with increased Insurance premiums is estimated to be between $6.6 million and $6.7 million (non-discounted dollars).

Migration of vessel responsible parties currently using the Self-Insurance and Financial Guaranty Methods of Financial Responsibility to the Insurance Market.

Based on the financial documentation received from vessel responsible parties using the Self-Insurance or Financial Guaranty methods, the Coast Guard estimates that the responsible parties for 2% of the vessels that have COFRs based on those methods might need to migrate to the Insurance method of financial responsibility. The cost estimates for vessel responsible parties migrating to the Insurance method of financial responsibility were calculated by first multiplying the number of vessels using Self Insurance or Financial Guaranty by vessel category for each year of the analysis period (2014–2023) by the presumed percent of impacted vessels (2%) and then multiplying the product by the estimated Expected Average Annual Premium for that particular vessel type. The annual cost associated with vessel responsible parties migrating to Insurance is estimated to be between $326,000 and $334,000 (non-discounted dollars).

(b) LOOP

An increase in the LOOP limit of liability of the magnitude proposed by this rulemaking is not expected to increase the cost to the LOOP responsible parties associated with establishing and maintaining LOOP's evidence of financial responsibility. This is because the LOOP responsible parties provide evidence of financial responsibility to the Coast Guard at a level that exceeds both LOOP's previous limit of liability and the proposed new limit of liability of $93,388,000.

The Coast Guard, therefore, does not expect this action to change the terms of the OIL policy, to result in an increased premium for the OIL policy, or to require LOOP to have higher minimum net worth or working capital requirements.

v. Present Value of Regulatory Cost 2

The 10-year present value, at a 3 percent discount rate, is estimated to be $59.1 million. The 10-year present value, at a 7 percent discount rate, is estimated to be $48.7 million.[37] The annualized discounted cost, at a 3 percent discount rate, is estimated to be $6.9 million.[38] The annualized discounted cost, at a 7 percent discount rate, is estimated to be $6.9 million.

Present Value of Total Cost = Regulatory Cost 1 + Regulatory Cost 2

The 10-year present value, at a 3 percent discount rate, is estimated to be $133.5 million.[39] The 10-year present value, at a 7 percent discount rate, is estimated to be $110.0 million.[40] The annualized discounted cost, at a 3 percent discount rate, is estimated to be $14.3 million. The annualized discounted cost, at a 7 percent discount rate, is estimated to be $14.3 million.

If, after considering any public comment, we decide to calculate the CPI adjustments to the onshore facility limit of liability and the generally-applicable limit of liability for deepwater ports using the 1990 Annual CPI–U value of 130.7 as the *previous period,* the present value estimates would be as follows. The estimated 10-year present value, at a 3 percent discount rate, would be $320.4 million.[41] The estimated 10-year present value, at a 7 percent discount rate, would be $263.8 million.[42] The estimated annualized discounted cost, at a 3 percent discount rate, would be $37.6 million. The estimated annualized discounted cost, at a 7 percent discount rate, would be $37.6 million.

2. Regulatory Benefits

a. *Regulatory Benefit 1: Ensure that the OPA 90 limits of liability keep pace with inflation.*

OPA 90 (33 U.S.C. 2704(d)(4)) mandates that limits of liability be updated periodically to reflect significant increases in the CPI to account for inflation. The intent of this requirement is to ensure that the real values of the limits of liability do not decline over time. Absent CPI adjustments, the responsible parties ultimately benefit because they pay a reduced percentage of the total incident costs they would be required to pay with inflation incorporated into the determination of their limit of liability. Requiring responsible parties to internalize costs by adjusting their limits of liability for inflation ensures that the appropriate amount of cleanup,

[36] Data was requested from 9 of a possible 14 Insurance companies. Four responded with their current premium rates and their best estimates of the increase in premium rates resulting from the proposed regulatory change. These four Insurance companies represent approximately 93% of vessels that use the Insurance method of financial responsibility.

[37] The sum of the annual costs for the two subcategories of Regulatory Cost 2 over the ten-year analysis period (ranging from $6.6 million per year to $6.7 million per year for increased vessel insurance premiums, and from $0.326 million to $0.334 million per year for migration of some vessels to the Insurance method of financial responsibility), discounted annually at a 3% discount rate equals $59.1 million.

[38] The sum of the annual costs for the two subcategories of Regulatory Cost 2 over the ten-year analysis period (ranging from $6.6 million per year to $6.7 million per year for increased vessel insurance premiums, and from $0.326 million to $0.334 million per year for migration of some vessels to the Insurance method of financial responsibility), discounted annually at a 7% discount rate equals $48.7 million.

[39] This is the sum of Regulatory Cost 1 ($74.4 million) and Regulatory Cost 2 ($59.1 million).

[40] This is the sum of Regulatory Cost 1 ($61.3 million) and Regulatory Cost 2 ($48.7 million).

[41] This is the sum of Regulatory Cost 1 ($261 million) and Regulatory Cost 2 ($59.1 million).

[42] This is the sum of Regulatory Cost 1 ($215.1 million) and Regulatory Cost 2 ($48.7 million). The amounts do not add up due to rounding.

response and damage costs are borne by the responsible party.

b. *Regulatory Benefit 2: Ensure that the responsible party is held accountable.*

Increasing the limits of liability to account for inflation ensures that the appropriate amount of removal costs and damages are borne by the responsible party and that liability risk is not shifted away from the responsible party to the Fund. This helps preserve the ''polluter pays'' principle as intended by Congress and preserves the Fund for its other authorized uses. Failing to adjust the limits of liability for inflation, by comparison, shifts those costs to the public and the Fund.

c. *Regulatory Benefit 3: Reduce and deter substandard shipping and oil handling practices.*

Increasing the limits of liability serves to reduce the number of substandard ships in U.S. waters and ports because insurers are less likely to provide Insurance to, and Financial Guarantors are less likely to guaranty, substandard vessels at the new levels of OPA 90 liability. Maintaining the limits of liability also helps preserve the deterrent effect of the OPA 90 liability provisions for Self Insurers.

With respect to oil handling practices, the higher the responsible parties' limits of liability are, the greater the incentive for them to operate in the safest and most risk-averse manner possible. Conversely, the lower the limits of liability, the lower the incentive is for responsible parties to spend money on capital improvements and operation and maintenance systems that will protect against oil spills.

B. Small Entities

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

An Initial Regulatory Flexibility Analysis (IRFA) discussing the impact of this proposed rule on small entities is included in the Regulatory Analysis that is available in the docket. A summary of the IRFA follows.

There are two potential economic impacts to small entities that would result from this proposed rule:

Regulatory Cost 1. Increased Cost of Liability

Regulatory Cost 2. Increased Cost of Establishing Evidence of Financial Responsibility.

1. Regulatory Cost 1: Increased Cost of Liability

As explained in Part IV.A. of this preamble and in the Regulatory Analysis for this proposed rule, Regulatory Cost 1 would only occur if there was an OPA 90 incident that had removal costs and damages in excess of the existing limits of liability.

a. Vessels

This proposed rule could affect the responsible parties of any vessel, other than a public vessel,[43] from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone of the United States. Coast Guard data indicate that, since the enactment of OPA 90 through May 1, 2013, there were 62 OPA 90 vessel incidents (i.e., an average of approximately three OPA 90 vessel incidents per year) that resulted in OPA 90 removal costs and damages in excess of the previous limits of liability. For the purpose of this analysis, we have therefore assumed that three OPA 90 vessel incidents would continue to occur each year throughout the 10-year analysis period (2014–2023).

The vessel population encompasses dozens of North American Industry Classification System (NAICS) codes. It, therefore, would not be practical to predict which specific type or size of vessel might be involved in the three hypothetical incidents assumed to occur per year, or whether they would involve small entities.

Incident cost data show that the average cost of an incident that exceeds the current limit of liability is approximately $848,000. Therefore, in the event that a small entity had a vessel incident with OPA 90 removal costs and damages of this magnitude, it would likely have a significant economic impact.

[43] See 33 U.S.C. 2701(29) and (37) (definitions of public vessel and vessel) and 33 U.S.C. 2702(c)(2) (public vessel exclusion). According to Coast Guard's MISLE database, there are over 200,000 vessels of various types in the vessel population that are not public vessels or used exclusively for recreational use. Examples of vessel types include, but are not limited to: fish processing vessel, freight barge, freight ship, industrial vessel, mobile offshore drilling unit, offshore supply vessel, oil recovery vessel, passenger vessel, commercial fishing vessel, passenger barge, research vessel, school ship, tank barge, tank ship, and towing vessel.

b. Deepwater Ports

As discussed in Part IV.A. of this preamble, and in the Regulatory Analysis for this rulemaking, the only deepwater port affected by this proposed rule is LOOP. LOOP, however, does not meet the Small Business Administration (SBA) criteria to be categorized as a small entity.[44]

c. Onshore Facilities

As discussed in Part IV.A., of this preamble, and in the Regulatory Analysis for this rulemaking, this proposed rule could affect any responsible party for an onshore facility.[45] Since the enactment of OPA 90, however, the 2010 Enbridge Pipeline spill in Michigan may well be the only onshore facility incident resulting in removal costs and damages that exceed the $350 million onshore facility limit of liability;[46] and this onshore facility is not a small entity. Nevertheless, in the Regulatory Analysis for this proposed rule, we assume that there would be one onshore facility incident occurring over the 10 year analysis period with OPA 90 removal costs and damages exceeding the existing limit of liability.

The onshore facility population encompasses dozens of NAICS codes representing diverse industries.[47] It, therefore, would not be practical to predict which specific type or size of onshore facility might be involved in the one hypothetical incident assumed to occur over the 10-year analysis period, or whether it would involve a small entity. However, in the event a small entity onshore facility was to have an incident with OPA 90 removal costs and damages of this magnitude, it

[44] LOOP is a limited liability corporation (NAICS Code: 48691001) owned by three major oil companies: Marathon Oil Company, Murphy Oil Corporation, and Shell Oil Company. None of these companies are small entities.

[45] OPA 90 (33 U.S.C. 2701(9)) defines ''facility'' 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''. OPA 90 (33 U.S.C. 2701(24)) defines an ''onshore facility'' as ''any facility (including but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.''

[46] Reliable supporting estimates of the OPA 90 removal costs and damages resulting from incident are not currently available.

[47] Examples of onshore facilities include, but are not limited to: onshore pipelines; rail; motor carriers; petroleum bulk stations and terminals; petroleum refineries; government installations; oil production facilities; electrical utility plants; mobile facilities; marinas, marine fuel stations and related facilities; farms; fuel oil dealers; and gasoline stations.

would likely have a significant economic impact.

2. Regulatory Cost 2—Increased Cost of Establishing Evidence of Financial Responsibility

i. Vessels

Regulatory Cost 2 would only apply to vessel responsible parties required to provide evidence of financial responsibility under OPA 90 (33 U.S.C. 2716) and 33 CFR part 138, subpart A. As of July 3, 2013, there were 1,744 unique entities in the Coast Guard's COFR database that could be affected by this proposed rulemaking. Because of the large number of entities, we determined the statistically significant sample size necessary to represent the population. The appropriate statistical sample size for the population, at a 95% confidence level and a 5% confidence interval, is 315 entities. This means we are 95% certain that the characteristics of the sample reflect the characteristics of the entire population within a margin of error of + or − 5%.

Using a random number generator, we then randomly selected the 315 entities from the population for analysis. Of the sample, 309 were businesses, 0 were not-for-profit organizations, and 6 were governmental jurisdictions.

For each business entity, we next determined the number of employees, annual revenue, and NAICS Code to the extent possible using public and proprietary business databases. The SBA's publication ''U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System codes effective January 22, 2014'' [48] was then used to determine whether an entity is a small entity. For governmental jurisdictions, we determined whether they had populations of less than 50,000 as per the criteria in the Regulatory Flexibility Act.

Of the sampled population, 220 would be considered small entities using the SBA criteria, 72 would not be small entities, and no data was found for the remaining 23 entities.[49] If we assume that the entities where no revenue or employee data was found are small entities, then small entities make up 77 percent of the sample.[50] We can then extrapolate the entire population of entities from the sample using the following formula, where ''X'' is the number of small entities within the total population.

(X small entities in the total population divided by 1,744 total entities in the population) = (243 small entities in the sample/315 total entities in the sample)

Solving for X, X equals 1,345 small entities within the total population.

As discussed in the Regulatory Analysis, the proposed rule could increase the cost to vessel responsible parties associated with establishing OPA 90 evidence of financial responsibility in two ways:

(1) Responsible parties using the Insurance method of financial responsibility could incur higher Insurance premiums.

(2) Some responsible parties currently using the Self-Insurance or Financial Guaranty method of establishing evidence financial responsibility might need to acquire Insurance for their vessels. This would only be the case if the Self-Insuring responsible parties or financial guarantors' financial condition (working capital and net worth) no longer qualified them to provide OPA 90 evidence of financial responsibility.

As calculated in the Regulatory Analysis, the average annual per vessel increase in Insurance premium for responsible parties using the Insurance method of establishing evidence of financial responsibility is $480. The average annual cost per vessel migrating from the Self-insurance/Financial Guaranty methods to the Insurance method is $8,240 per vessel.

Based on review of financial data of entities using the Self-Insurance or Financial Guaranty method for establishing evidence of financial responsibility, Coast Guard subject matter experts estimate that responsible parties for 2% of vessels using those two methods would not have the requisite working capital and net worth necessary to qualify for these methods as a result of this proposed rule. In those cases, they would have to use the Insurance method to establish and maintain evidence of financial responsibility.

The increased cost of establishing evidence of financial responsibility for each small entity is calculated by:

1. Multiplying the number of vessels using the Insurance Method by the Average Increase in Premium ($480), and

2. Adding the product of the number of vessels using the Self-Insurance and Financial Guaranty methods multiplied by the Average Annual Premium ($8,240), multiplied by 2%.

For example, for a hypothetical small entity using the Insurance Method for three vessels and having to change from the Self-Insurance or Financial Guaranty Method to the insurance method for two vessels (i.e., both vessels falling within the 2%), the calculation would be as follows:

(3 vessels using Insurance Method × $480/year) + (100 vessels using Self-Insurance or Financial Guaranty Method × 2% of vessels expected to migrate from Self-Insurance or Financial Guaranty Method to the Insurance Method × $8,240/year) = $17,950/year

This calculation was conducted for each small entity and the value was then divided by the annual revenue for the small entity and then multiplied by 100 to determine the percent impact of this proposed rule on the small entities' annual revenue. The figure below shows the economic impact to vessel small entities of Regulatory Cost 2.

ECONOMIC IMPACT TO VESSEL SMALL ENTITIES—REGULATORY COST 2

Percent of annual revenue	Extrapolated number of small entities	Percent of small entities
1 to 2	54	4
<1	1,291	96

ii. Deepwater Ports

Because there are no small entity deepwater ports, there would be no Regulatory Cost 2 small entity impacts to Deepwater Ports.

iii. Onshore Facilities

As stated in the Regulatory Analysis for this rulemaking, onshore facilities are not required to establish and maintain evidence of financial responsibility under 33 U.S.C. 2716. There would therefore be no Regulatory Cost 2 small entity impacts to Onshore Facilities.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would 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 rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking.

[48] *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[49] The 6 governmental jurisdictions were a subset of the 23 entities where no data was found.

[50] The data show that small entities are often responsible parties for multiple vessels.

If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Benjamin White, National Pollution Funds Center, Coast Guard, telephone 703–872–6066. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under E.O. 13132 (''Federalism'') if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132. This proposed rule makes necessary adjustments to the OPA 90 limits of liability to reflect significant increases in the CPI, establishes a framework for such future CPI increases, and clarifies the OPA 90 limits of liability for certain vessels. Nothing in this proposed rule would affect the preservation of State authorities under 33 U.S.C. 2718, including the authority of any State to impose additional liability or financial responsibility requirements with respect to discharges of oil within such State. Therefore, it has no implications for federalism.

The Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, E.O. 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under E.O. 13132, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

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

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

M. Environment

We have analyzed this proposed rule under 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This proposed rule would increase the OPA 90 limits of liability for vessels, deepwater ports, and onshore facilities to reflect significant increases in the CPI using the methodology established in the CPI–1 Rule. This proposed rule is expected to be categorically excluded under paragraph 34(a), of the current instruction, from further environmental documentation, in accordance with Section 2.B.2. and Figure 2–1 of the national Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 138

Hazardous materials transportation, Financial responsibility, Guarantors, Insurance, Limits of liability, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Water pollution control.

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

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

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

Authority: 33 U.S.C. 2704, 2716, 2716a; 42 U.S.C. 9608, 9609; 6 U.S.C. 552; E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 193; E.O. 12777, Sec. 4, as amended by E.O. 13638 of March 15, 2013, Sec. 1 (78 FR 17589, Thursday, March 21, 2013); E.O. 12777, Sec. 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, Sec. 89, 3 CFR, 2004 Comp., p. 166; Department of Homeland Security Delegation Nos. 0170.1 and 5110, Revision 01. Section 138.30 also issued under the authority of 46 U.S.C. 2103 and 14302.

■ 2. Revise the heading to part 138 to read as set forth above.

■ 3. Revise Subpart B to read as follows:

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

Sec.

§ 138.200 Scope.

This subpart sets forth the limits of liability under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*) (OPA 90) for vessels, deepwater ports, and onshore facilities, as adjusted under OPA 90 (33 U.S.C. 2704(d)). This subpart also sets forth the method and procedure the Coast Guard uses to periodically adjust the OPA 90 limits of liability by regulation under OPA 90 (33 U.S.C. 2704(d)(4)), to reflect significant increases in the Consumer Price Index (CPI), and to update the limits of liability when they are amended by statute. In addition, this subpart cross-references the U.S. Department of the Interior regulation setting forth the OPA 90 limit of liability applicable to offshore facilities, including offshore pipelines, as adjusted under OPA 90 (33 U.S.C. 2704(d)(4)) to reflect significant increases in the CPI.

§ 138.210 Applicability.

This subpart applies to you if you are a responsible party for a vessel, a deepwater port, or an onshore facility, unless your liability is unlimited under OPA 90 (33 U.S.C. 2704(c)).

§ 138.220 Definitions.

(a) As used in this subpart, the following terms have the meanings set forth in OPA 90 (33 U.S.C. 2701): *deepwater port, facility, gross ton, liability, oil, offshore facility, onshore facility, 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.

Current period means the year in which the Annual CPI–U was most recently published by the U.S. Department of Labor, Bureau of Labor Statistics.

Director, NPFC means the person in charge of the U.S. Coast Guard, National Pollution Funds Center (NPFC), or that person's authorized representative.

Edible oil tank vessel means a tank vessel referred to in OPA 90 (33 U.S.C. 2704(c)(4)(A)).

Oil spill response vessel means a tank vessel referred to in OPA 90 (33 U.S.C. 2704(c)(4)(B)).

Previous period means the year in which the previous limit of liability was established, or last adjusted by statute or regulation, whichever is later.

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) Limits of liability for tank vessels, other than edible oil tank vessels and oil spill response vessels.

(i) For a single-hull tank vessel greater than 3,000 gross tons, the greater of $3,500 per gross ton or $25,422,700;

(ii) For a tank vessel greater than 3,000 gross tons, other than a single-hull tank vessel, the greater of $2,200 per gross ton or $18,489,200.

(iii) For a single-hull tank vessel less than or equal to 3,000 gross tons, the greater of $3,500 per gross ton or $6,933,500.

(iv) For a tank vessel less than or equal to 3,000 gross tons, other than a single-hull tank vessel, the greater of $2,200 per gross ton or $4,622,300.

(2) Limits of liability for any other vessels. For any other vessel, including an edible oil tank vessel or an oil spill response vessel, the greater of $1,100 per gross ton or $924,500.

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

(1) For deepwater ports generally, and except as set forth in paragraph (b)(2) of this section, $404,451,600;

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

(i) For the Louisiana Offshore Oil Port (LOOP), $94,789,700; and

(ii) [Reserved].

(c) *Onshore facilities.* The OPA 90 limit of liability for onshore facilities, $404,600,000;

(d) *Offshore facilities.* The OPA 90 limit of liability for offshore facilities, including any offshore pipeline, is set forth at 30 CFR 553.702.

§ 138.240 Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI–U) and statutory changes.

(a) *Update and publication.* The Director, NPFC, will periodically adjust the limits of liability set forth in § 138.230(a) through (c) to reflect significant increases in the Annual CPI–U, according to the procedure for calculating limit of liability inflation adjustments set forth in paragraphs (b)–(d) of this section, and will publish the inflation-adjusted limits of liability and any statutory amendments to those limits of liability in the **Federal Register** as amendments to § 138.230. Updates to the limits of liability under this section are effective on the 90th day after publication in the **Federal Register** of the amendments to § 138.230, unless otherwise specified by statute (in the event of a statutory amendment to the limits of liability) or in the **Federal Register** notice amending § 138.230.

(b) *Formula for calculating a cumulative percent change in the Annual CPI–U.* (1) 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.

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

(c) *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 using the procedure set forth in paragraph (a) of this section, 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.

(d) *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 (b) of this section), then rounded to the closest $100.

Dated: August 11, 2014.

William R. Grawe,

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

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