of this section, or some combination thereof; or

(*iii*) At least 50 percent of the entity is owned by the GO Zone Targeted Population, low-income persons as defined in paragraph (d)(9)(i) of this section, or some combination thereof.

(2) *Location*—(i) *In general.* In order to be a qualified active low-income community business under paragraph (d)(9)(ii)(C) of this section, the entity must be located in a population census tract within the GO Zone that contains one or more areas designated by FEMA as flooded, having sustained extensive damage, or having sustained catastrophic damage as a result of Hurricane Katrina (qualifying population census tract).

(*ii*) *Determination*—(*A*) For purposes of the preceding paragraph, an entity will be considered to be located in a qualifying population census tract if—

(*I*) At least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business (as defined in paragraph (d)(5) of this section) within one or more qualifying population census tracts (gross income requirement);

(*II*) At least 40 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more qualifying population census tracts (use of tangible property requirement); and

(*III*) At least 40 percent of the services performed for the entity by its employees are performed in one or more qualifying population census tracts (services performed requirement).

(*B*) The entity is deemed to satisfy the gross income requirement if the entity satisfies the use of tangible property requirement or the services performed requirement on the basis of at least 50 percent instead of 40 percent.

(*C*) If the entity has no employees, the entity is deemed to satisfy the services performed requirement as well as the gross income requirement if at least 85 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more qualifying population census tracts.

(D) *200-percent-income restriction*—(*1*) *In general*—(*i*) In no case will an entity be treated as a qualified active low-income community business under paragraph (d)(9)(ii) of this section if the entity is located in a population census tract for which the median family income exceeds 200 percent of—

(*A*) In the case of a tract not located within a metropolitan area, the statewide median family income, or

(*B*) In the case of a tract located within a metropolitan area, the greater of statewide median family income or metropolitan area median family income (200-percent-income restriction).

(*ii*) The 200-percent-income restriction shall not apply to an entity located within a population census tract with a population of less than 2,000 if such tract is not located in a metropolitan area.

(*iii*) The 200-percent-income restriction shall not apply to an entity located within a population census tract with a population of less than 2,000 if such tract is located in a metropolitan area and more than 75 percent of the tract is zoned for commercial or industrial use. For this purpose, the 75 percent calculation should be made using the area of the population census tract. For purposes of this paragraph (d)(9)(ii)(D)(*1*)(*iii*), property for which commercial or industrial use is a permissible zoning use will be treated as zoned for commercial or industrial use.

(*2*) *Population census tract location*—(*i*) For purposes of the 200-percent-income restriction, an entity will be considered to be located in a population census tract for which the median family income exceeds 200 percent of the applicable median family income under paragraph (d)(9)(ii)(D)(*1*)(*i*)(*A*) or (*B*) of this section (non-qualifying population census tract) if—

(*A*) At least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business (as defined in paragraph (d)(5) of this section) within one or more non-qualifying population census tracts (non-qualifying gross income amount);

(*B*) At least 40 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more non-qualifying population census tracts (non-qualifying tangible property usage); and

(*C*) At least 40 percent of the services performed for the entity by its employees are performed in one or more non-qualifying population census tracts (non-qualifying services performance).

(*ii*) The entity is considered to have the non-qualifying gross income amount if the entity has non-qualifying tangible property usage or non-qualifying services performance of at least 50 percent instead of 40 percent.

(*iii*) If the entity has no employees, the entity is considered to have the non-qualifying gross income amount as well as non-qualifying services performance if at least 85 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more non-qualifying population census tracts.

(E) *Rental of real property for the GO Zone Targeted Population.* The rental to others of real property for the GO Zone Targeted Population that otherwise satisfies the requirements to be a qualified business under paragraph (d)(5) of this section will be treated as located in a low-income community for purposes of paragraph (d)(5)(ii) of this section if at least 50 percent of the entity's total gross income is derived from rentals to the GO Zone Targeted Population, low-income persons as defined in paragraph (d)(9)(i) of this section and/or to a qualified active low-income community business that meets the requirements for the GO Zone Targeted Population under paragraphs (d)(9)(ii)(C)(1)(i) or (ii) of this section.

* * * * *

(h) Effective/applicability dates * * *

* * * * *

(3) *Targeted populations.* The rules in paragraph (d)(9) of this section apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–22481 Filed 9–23–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 138

[Docket No. USCG–2008–0007]

RIN 1625–AB25

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to increase the limits of liability for vessels and deepwater ports under the Oil Pollution Act of 1990 (OPA 90) to account for inflation. This notice also sets forth the methodology the Coast Guard proposes to use for this and future adjustments to the OPA 90 limits of liability to reflect significant increases in the Consumer Price Index (CPI). These adjustments are required by OPA 90 to preserve the deterrent effect and polluter pays principle embodied in the OPA 90 liability provisions.

DATES: Comments and related material must reach the Docket Management Facility on or before November 24, 2008. Comments sent to the Office of

Management and Budget (OMB) on collection of information must reach OMB on or before November 24, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0007 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

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

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

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

(4) *Fax:* 202–493–2251.

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

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

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

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

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. For example, we may ask you to resubmit your comment if we are not able to read your original submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2008–0007) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records 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 Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Acronyms

BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
COFR Certificate of Financial Responsibility
CPI Consumer Price Index
CPI–U Consumer Price Index All Urban Consumers, Not Seasonally Adjusted, U.S. city average, All items, 1982–84 = 100
DPA Deepwater Port Act of 1974, as amended (33 U.S.C. 1501, *et seq.*)
DOI United States Department of Interior
DOT United States Department of Transportation
DRPA Delaware River Protection Act of 2006, Title VI of the Coast Guard and Maritime Transportation Act of 2006, Public Law 109–241, July 11, 2006, 120 Stat. 516
E.O. Executive Order
EPA U.S. Environmental Protection Agency
FR Federal Register
Fund Oil Spill Liability Trust Fund
LNG Liquefied natural gas
LOOP Louisiana Offshore Oil Port
MTR Marine transportation-related
NAICS North American Industry Classification System
NEPA National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f)
NMTR Non-marine transportation-related
NPFC National Pollution Funds Center
NPRM Notice of proposed rulemaking
NTR Non-transportation-related
OMB Office of Management and Budget
OPA 90 The Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*)
SBA Small Business Administration
U.S.C. United States Code
U.S.C.C.A.N. United States Code Congressional and Administrative News

III. Background and Purpose

In general, under the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*) (OPA 90), responsible parties (*i.e.*, the owners and operators, including demise charterers) for a vessel or a facility from which oil is discharged, or which poses a substantial threat of discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone are liable for the removal costs and damages specified in OPA 90, under 33 U.S.C. 2702(b), that result from such an incident. (33 U.S.C. 2702(a)). Embodying the polluter pays principle, this liability is strict, joint and several.[1]

[1] See, *Oil Pollution Desk Book*, Environmental Law Institute 1991, hereinafter OPA 90 Desk Book, p. 88, H.R. Conf. Report 101–653, at p. 102, reprinted in 1990 U.S.C.C.A.N. 779, 780 [''The term 'liable' or 'liability' * * * is to be construed to be the standard of liability * * * under section 311 of the [Federal Water Pollution Control Act, 33 U.S.C.

The responsible parties' total liability (including any removal costs incurred by, or on behalf of, the responsible parties) may, however, be limited as provided in 33 U.S.C. 2704, except under certain circumstances as provided in 33 U.S.C. 2704(c). In instances when the limits of liability apply, the Oil Spill Liability Trust Fund (the Fund) is available to compensate the responsible parties and other claimants for removal costs and damages in excess of the applicable liability limits.

OPA 90, at 33 U.S.C. 2704(a), sets forth the base dollar amounts of the limits of liability for four specified source categories: Vessels, onshore facilities, deepwater ports subject to the Deepwater Port Act of 1974, as amended (33 U.S.C.1501, *et seq.*) (DPA), and offshore facilities other than deepwater ports subject to the DPA. In addition, to prevent the real value of the base limits of liability from depreciating over time as a result of inflation and to preserve the polluter pays principle embodied in OPA 90, 33 U.S.C. 2704(d) requires the President to periodically increase the limits of liability by regulation to reflect significant increases in the Consumer Price Index (CPI).

In Executive Order (E.O.) 12777, the President delegated implementation of the limit of liability inflation adjustment authorities under 33 U.S.C. 2704(d), dividing the responsibility among various Federal agencies. Through a series of further delegations, the Coast Guard was delegated the President's authority to adjust the limits of liability for the following source categories: vessels, deepwater ports subject to the DPA (including associated pipelines), and transportation-related onshore facilities, not including pipelines, motor carriers and railroads (hereinafter ''MTR onshore facilities''). The Department of Transportation (DOT) was delegated the President's authority to adjust the limits of liability for onshore pipelines, motor carriers, and railways (hereinafter ''NMTR onshore facilities''). The U.S. Environmental Protection Agency (EPA) was delegated the President's authority to adjust the limits of liability for non-transportation-related onshore facilities (hereinafter ''NTR onshore facilities''). Finally, the Department of Interior (DOI) was delegated the President's authority to adjust the limits of liability for offshore facilities and associated pipelines, other than deepwater ports subject to the DPA.

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

This proposed rule would be the first CPI adjustment, under 33 U.S.C. 2704(d), to the limits of liability applicable to responsible parties for vessels, and deepwater ports subject to the DPA, including LOOP. This rulemaking would also establish the methodology for making future inflation adjustments to the OPA 90 limits of liability for all source categories for which the Coast Guard has jurisdiction.

To ensure consistent inflation adjustments to the limits of liability for all OPA 90 source categories, the Coast Guard has coordinated the adjustment methodology proposed by this Notice of Proposed Rulemaking (NPRM) with DOT, EPA, and DOI. In addition, the Coast Guard, DOT, EPA, and DOI have agreed to make inflation adjustments to the limits of liability for MTR onshore facilities (regulated by Coast Guard), NMTR onshore facilities (regulated by DOT), NTR onshore facilities (regulated by EPA), and offshore facilities and associated pipelines, other than deepwater ports subject to the DPA (regulated by DOI), as part of the next inflation increase to the limits of liability. This phased approach would establish the adjustment methodology proposed by this NPRM for all source categories. It also would allow time for additional interagency coordination necessary to ensure consistency in implementing the CPI adjustments to the limits of liability for onshore and offshore facilities.

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

As noted above, to prevent the real value of the base limits of liability from depreciating over time as a result of inflation and to preserve the polluter pays principle embodied in OPA 90, OPA 90 provides for periodic increases to the limits of liability to reflect significant increases in the CPI. Specifically, 33 U.S.C. 2704(d)(4), as amended by Section 603 of 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 (DRPA), requires that the OPA 90 limits of liability be adjusted ''not less than every 3 years * * * to reflect significant increases in the Consumer Price Index.''

The word ''increases'' indicates clearly that Congress intended that the limits be adjusted under 33 U.S.C. 2704(d)(4) only for inflation, and that there would be no decreases to the limits of liability due to decreases in the CPI. It, however, is equally apparent that, if Congress had wanted the adjustments to occur routinely every 3 years, the mandate would not have included the qualifier ''significant''. We looked first to the legislative history to help interpret what Congress meant.

Under OPA 90, 33 U.S.C. 2712 and 2713, when a responsible party is entitled to a limit of liability under 33 U.S.C. 2704, the Fund is available to pay the removal costs and damages in excess of the limits. But Congress did not intend this authority to shift responsibility away from the responsible parties onto the victims of oil spills or the Fund.

OPA 90 instead, imposes a duty on the responsible party in the first instance to reimburse third-party claimants and the Fund for removal costs and damages whenever an oil spill occurs. See, footnote 1, above. See also, R.V. Randle, ''The Oil Pollution Act of 1990: Its Provisions, Intent, and Effects'', OPA 90 Desk Book, p. 3 [OPA's claims and financial responsibility ''procedures make very clear that the Oil Spill Liability Trust Fund is the fund of last resort to pay claims under the Act. Instead the responsible parties and their guarantors are the primary insurers against claims for removal costs and oil discharge damages''].

To that end, when enacting OPA 90, Congress increased the limits of liability from those contained in prior laws to levels Congress believed would preserve the deterrent effects necessary to promote caution and best practices by the shipping industry. In that respect, Congress intended that the Fund would only be available as a last resort for catastrophic events. (See, OPA 90 Desk Book, p. 196, House Report 101–242, Part 2, p. 36 (September 18, 1989) [''[The new] liability limits are designed to insure due care in transporting oil as historically all but the most catastrophic spills would be fully paid for by the spiller at these levels. The fund is designed to cover catastrophic spills.''])

The CPI adjustment provisions of OPA 90 originated in Section 102(c)(4)(B) of the Senate Bill, S. 686. (See, OPA 90 Desk Book, p. 504, and Statements On Introduced Bills And

1321]. * * * That standard of liability has been determined repeatedly to be strict, joint and several liability.'']; OPA 90 Desk Book p. 93, H.R. Conf. Report 101–653, at 118, 1990 U.S.C.C.A.N., at 797 (Aug. 3, 1990) [''[T]he primary responsibility to compensate victims of oil pollution rests with the person responsible for the source of the pollution[.]''].

Joint Resolutions, 132 Cong. Rec. S12185–01 (Tuesday, September 9, 1986). The Senate Report for S. 686 includes the following explanation for the provision:

"In several of the existing Federal laws on oil spills, the liability limits have not been increased in 10 years so that, in real dollars, the liability limits have been decreasing over time. In order to prevent further diminution of compensation, section 102(c)(4)(B) requires the President to adjust the limits on liability by regulation not less often than every three years to take into account significant increases in the Consumer Price Index."

The Senate Report clarifies that Congress was concerned that inflation would erode responsible party liability and shift the economic risk of oil spills onto the Fund. (See, Pub. L. 101–380, Oil Pollution Act of 1990, S. REP. 101–94, July 28, 1989). Congress also clearly believed waiting 10 years to adjust the limits was too long, and that adjustments in regular, more frequent, smaller increments would better support the polluter pays public policy objectives of OPA 90.

The Conference Report Joint Explanatory Statement, at p. 106, also describes the mandate as requiring adjustments "at least once every three years", to reflect significant increases in the CPI. (See, OPA 90 Desk Book, p. 89, H.R. CONF. REP. 101–653, Joint Explanatory Statement, August 1, 1990.) This explanation indicates that the words "not less than" mean that adjustments are permitted, but not required, more frequently than every three years. The Conference Report does not, however, explain what Congress meant by the word "significant".

There is no other discussion in the OPA 90 legislative history, and we found no other Federal statute that uses the same wording. Congress, therefore, plainly left it to the President to give meaning to the term "significant".

The plain meaning of "significant" is "meaningful" (see, Webster's II New Riverside University Dictionary (1988)), but meaningful in respect to what? Consistent with the Congressional focus on preserving OPA 90's deterrent effect and avoiding risk shifting to the Fund, the Coast Guard analyzed historical data on incident costs. We found that even small increases in the CPI can have significant risk shifting impacts. (See, Report On Oil Pollution Act Liability Limits, U.S. Department Of Homeland Security, United States Coast Guard, transmitted to the Senate Committee on Commerce, Science, and Transportation on January 5, 2007.) For example, based on our further analysis of the historical cost averages in that report, a 1 percent per year increase in the CPI will shift incident cost risk from the responsible party to the Fund by an estimated $900,000 over three years.

When adjustments to limits of liability are delayed, the Fund will, with inflation, inevitably be at risk for a higher share of incident costs than intended by OPA 90. Consequently, responsible party risk is reduced.

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

A triennial 3 percent threshold would result in a predictable, regular schedule of smaller-increment adjustments for inflation. It would thereby maintain the balance Congress sought to strike between responsible party risk and Fund risk.

How does the Coast Guard propose to calculate the CPI adjustment to the limits of liability for Coast Guard source categories?

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

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

Which CPI does the Coast Guard propose to use?

The U.S. Department of Labor, Bureau of Labor Statistics (BLS) publishes a variety of inflation indices. We propose using the "All Urban Consumers, Not Seasonally Adjusted, U.S. city average, All items, 1982–84=100" index, also known as "CPI–U". This is the most current and broadest index. It also is commonly relied on in insurance policies and other commercial transactions with automatic inflation protection, by the media, and by economic analysts.

How would a percent change in the CPI–U be calculated?

We propose using the escalation formula developed by BLS for calculating percent changes in the CPI–U that is described in Fact Sheet 00–1, U.S. Department of Labor Program Highlights, "How to Use the Consumer Price Index for Escalation", September 2000, available from the BLS online at *http://www.bls.gov*. The following example illustrates the BLS escalation formula, using a hypothetical three-year adjustment period:

CPI–U for Current Period (2006).	201.6.
Minus CPI–U for Previous Period (2003).	184.0.
Equals index point change	17.6.
Divided by CPI–U for previous period.	184.0.
Equals	0.096.
Result multiplied by 100	0.096 × 100.
Equals percent change in the CPI–U.	9.6 percent.

The "Current Period" and "Previous Period" values used in this hypothetical are available from the BLS online at *http://data.bls.gov*.

What "Previous Period" dates does the Coast Guard propose to use for this rulemaking?

The "Previous Period" we propose using for adjustments to the LOOP limit of liability is 1995. This is based on the date the LOOP limit of liability was established by regulation, which was August 4, 1995. (See, 60 FR 39849). The LOOP limit of liability has not been adjusted since it was established in 1995. The "Previous Period" we propose using for adjustments to the limits of liability in 33 U.S.C. 2704(a), which would apply to all Coast Guard delegated source categories other than LOOP, is 2006. This is based on the date of enactment of the DRPA, which was July 11, 2006, and is the last date the limits of liability in 33 U.S.C. 2704(a) were adjusted.

We note in respect to the limits of liability in 33 U.S.C. 2704(a) that DRPA only increased the limits for vessels. We, therefore, considered whether to use a 1990 "Previous Period" (based on the date of enactment of OPA 90) to adjust the limits of liability for the non-vessel source categories in 33 U.S.C. 2704(a). Using a 1990 "Previous Period" would result in an increase to the limits of liability for the non-vessel source categories of more than 60 percent.

The legislative history for DRPA, however, indicates that Congress only increased the base limits of liability for vessels in 2006 because the vessel limits were the only limits of liability in 33 U.S.C. 2704(a) that were not adequate. Specifically, Congress was advised in Congressional testimony and reports to Congress that the only oil spill incidents since enactment of OPA 90 that had resulted in claims against the Fund by responsible parties for removal costs and damages in excess of the limits of liability were vessel incidents.[2] By comparison, no incident involving the other source categories had exceeded the base limits of liability in 33 U.S.C. 2704(a). Thus, only the vessel base limits of liability needed to be increased at that time to preserve the deterrent effect and polluter pays principle embodied in the OPA 90 liability provisions. Id.

What time interval CPI–U does the Coast Guard propose to use for the adjustments?

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

For example, as noted, DRPA updated the limits of liability in 33 U.S.C. 2704(a) on July 11, 2006. But DRPA did not affect the currently applicable limit of liability for LOOP, which was established by regulation on August 4, 1995 (60 FR 39849). Thus, if we were to use the monthly CPI–U we would always have to calculate the adjustments for these two groups using the July and August monthly CPI–U values.

Under the approach proposed here, the formula for the first set of regulatory inflation increases to the limits of liability would yield two Annual CPI–U percent change values, one based on the 1995 LOOP ''Previous Period'' and one based on the 2006 ''Previous Period'' applicable to vessels and other deepwater ports. By using the same ''Current Period'' Annual CPI–U, as proposed by this rulemaking, we would be able to increase the limits of liability for all vessels and deepwater ports in the next adjustment cycle based on a single Annual CPI–U percent change value.

Which Annual CPI–U ''Previous Period'' and ''Current Period'' values does the Coast Guard propose to use for the first inflation adjustments to the limits of liability?

For the ''Previous Period'' values, as noted above, we propose using the 1995 Annual CPI–U for LOOP and the 2006 Annual CPI–U for the other Coast Guard source categories.

For the ''Current Period'' value, due to the time lag for BLS publication of the Annual CPI–U and the time it takes to promulgate regulations, we propose adjusting the limits of liability using the 2008 Annual CPI–U.

The ''Previous Period'' and estimated ''Current Period'' values we propose to use are as follows:

(a) For LOOP, the ''Previous Period'' using the 1995 Annual CPI–U would be 152.4; the ''Current Period'', using the 2008 Annual CPI–U, as estimated for purposes of this proposal, would be 213.6.

(b) For vessels and deepwater ports other than LOOP, the ''Previous Period'' using the 2006 Annual CPI–U would be 201.6; the ''Current Period'', using the 2008 Annual CPI–U, as estimated for purposes of this proposal, would be 213.6.

Because the 2008 Annual CPI–U will not be published until after the date of this proposal, the 2008 Annual CPI–U ''Current Period'' values shown here are a forecast using the average of the monthly CPI–U for the months of January 2008 through May 2008. We will use the 2008 Annual CPI–U published by the BLS in the final rule.

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

	Percent
For LOOP	40.2
For vessels and other deepwater ports	6.0

What would the adjusted limits be?

Inserting the estimated percent changes in the Annual CPI–U into the adjustment formula would result in the following estimated proposed limits of liability for vessels and deepwater ports (rounded to the closest $100):

Source category	Current limit of liability	Proposed limit of liability
(a) Vessels:		
(1) For a tank vessel greater than 3,000 gross tons with a single hull, including a single-hull vessel fitted with double sides only or a double bottom only.	The greater of $3,000 per gross ton or $22,000,000.	The greater of $3,200 per gross ton or $23,320,000.
(2) For a tank vessel greater than 3,000 gross tons, other than a vessel referred to in (a)(1).	The greater of $1,900 per gross ton or $16,000,000.	The greater of $2,000 per gross ton or $16,960,000.
(3) For a tank vessel less than or equal to 3,000 gross tons with a single hull, including a single-hull vessel fitted with double sides only or a double bottom only.	The greater of $3,000 per gross ton or $6,000,000.	The greater of $3,200 per gross ton or $6,360,000.
(4) For a tank vessel less than or equal to 3,000 gross tons, other than a vessel referred to in (3).	The greater of $1,900 per gross ton or $4,000,000.	The greater of $2,000 per gross ton or $4,240,000.
(5) For any other vessel	The greater of $950 per gross ton or $800,000.	The greater of $1,000 per gross ton or $848,000.
(b) Deepwater ports subject to the DPA:		
(1) For a deepwater port subject to the DPA, other than the Louisiana Offshore Oil Port (LOOP).	$350,000,000	$371,000,000.
(2) For LOOP	$62,000,000	$86,924,000.

[2] See, *e.g.*, Coast Guard and Maritime Transportation Act of 2006: Hearing Before the House Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation (April 27, 2006) (Statements of Rear Admiral Thomas Gilmour, Assistant Commandant For Prevention, and Jan Lane, Director, National Pollution Funds Center); ''Report on Implementation of the Oil Pollution Act of 1990'', U.S. Coast Guard (May 12, 2005) (report under Section 705 of the Coast Guard and Maritime Transportation Act of 2004, Public Law 108–293, to the Chairmen of the House Committee on Transportation and Infrastructure, the Senate Committee on Environmental and Public Works, and the Senate Committee, Commerce, Science and Transportation).

How will the percent change for subsequent periods be calculated?

Although this rulemaking has been initiated to implement the first CPI-related increases to the OPA 90 limits of liability under 33 U.S.C. 2704(d) for vessels and deepwater ports, the Coast Guard proposes to use the same methodology for subsequent CPI adjustments to the limits of liability for all Coast Guard source categories.

Except in instances when increases in the Annual CPI–U over any three-year period were not significant, we would calculate future adjustments using the cumulative percent change in the Annual CPI–U for the previous three available years. Thus, for the 2012 increase (assuming a significant increase in the Annual CPI–U), we would calculate the Annual CPI–U change using the 2008 Annual CPI–U as the ''Previous Period'' value for vessels and deepwater ports including LOOP, and the 2011 Annual CPI–U as the ''Current Period'' value. Note that we would not be able to use the 2012 Annual CPI–U, due to the time lag for BLS publication of the Annual CPI–U. We would use the 2006 Annual CPI–U as the ''Previous Period'' value for MTR facilities.

What if the ''significant'' threshold is not met?

After the first adjustment, we propose that, for any three-year period in which the percent change is not significant, in that the cumulative change is less than 3 percent over three years, we would publish a notice of no adjustment in the **Federal Register**, and revisit the issue each subsequent year until the cumulative percent change in the Annual CPI–U from the last adjustment equals 3 percent or greater. We would then base the adjustment on the Annual CPI–U change since the last adjustment.

Thus, if we determined in 2012 that the cumulative percent change in the Annual CPI–U from 2008 to 2011 was 2 percent, we would not adjust the limits that year. In the following year, 2013, if the 3 percent change threshold were met, we would adjust the limits of liability for all vessels and deepwater ports based on the Annual CPI–U percent change from 2008 as the ''Previous Period'' to 2012 as the ''Current Period''. Note that we would not be able to use the 2013 Annual CPI–U, due to the time lag for BLS publication of the Annual CPI–U. The next adjustment would be three years later, in 2016, assuming the cumulative percentage increase between the 2012 Annual CPI–U and the 2015 Annual CPI–U was significant.

How does the Coast Guard plan to promulgate subsequent periodic adjustments to the limits of liability in the regulations?

This notice and comment rulemaking provides the public the opportunity to comment on the inflation index (Annual CPI–U), significance threshold, and calculation methodology the Coast Guard proposes to use for the first and subsequent CPI adjustments to the limits of liability. Once these technical issues are resolved in the final rule for the first set of CPI adjustments proposed here, we do not anticipate future CPI adjustments to the limits of liability will be controversial.

In the next rulemaking to adjust the limits of liability, the Coast Guard will work with the other delegated agencies (DOT, EPA and DOI) on a coordinated rulemaking to adjust the OPA 90 limits of liability for all source categories. This would, include adjustments to the limits of liability for onshore and offshore facilities based on the Annual CPI–U percent change from 2006 as the ''Previous Period'' to 2012 as the ''Current Period''. The issues to be considered at that time will include whether to propose that routine CPI adjustments be implemented in the future using a different procedure whenever the level of inflation reaches or exceeds the threshold significance amount. Those issues will also include whether to propose using the adjustment procedure proposed by this rulemaking at § 138.240 in a direct final rule, or implementing future CPI increases through self-executing regulatory provisions without additional rulemaking procedures. For example, if increases to the OPA 90 limits of liability were implemented without additional rulemaking procedures, the amount of the increases would be calculated in the same manner as proposed here, and notice of the increased limits of liability would be given in the **Federal Register** and published in media such as the agencies' Internet pages, in advance of the effective date of the increased limits of liability.

If we propose a self-executing approach, we would also consider whether to propose provisions to ensure that abnormally large increases in inflation would not automatically be translated into abnormally large increases in the limits of liability. One possible such provision could be to require a notice and comment rulemaking whenever the level of inflation for a given period exceeds a set limit. Another could be to reserve the Coast Guard and other agencies' discretion to conduct a notice and comment rulemaking for any adjustment when the agencies conclude that it would be in the public's interest to do so.

Either of these approaches may be more practical and flexible, and would promote predictability and consistency. The specific procedures for future adjustments would be determined during the second rulemaking.

IV. Discussion of Proposed Rule

Subpart B. This proposed rule would increase the limits of liability for vessels and deepwater ports in 33 CFR part 138, subpart B, for inflation, in accordance with the Coast Guard's delegated authority for making CPI adjustments under 33 U.S.C. 2704(d). It also would establish the formula for making inflation adjustments to the OPA 90 limits of liability for all Coast Guard source categories, and will thereby facilitate future adjustments to the limits of liability to reflect significant increases in the CPI.

The Coast Guard first proposed the creation of subpart B in the Financial Responsibility for Water Pollution (Vessels and Deepwater Ports) NPRM (73 FR 6642, February 5, 2008; and 73 FR 8250, February 13, 2008) (hereinafter the ''COFR Rule'') for the purpose of stating the OPA 90 limits of liability for vessels and deepwater ports, including LOOP, in the regulations. The final COFR Rule was published in the **Federal Register** on September 17, 2008 (73 FR 53691).

Section 138.220. We are proposing to insert a new § 138.220 to add definitions to subpart B, and to renumber § 138.220 as set forth in the COFR Rule as § 138.230. New § 138.220 would add definitions for ''Annual CPI–U'' and ''Director, NPFC'', and would cross-reference certain terms that are used in subpart B and defined in OPA 90.

Section 138.230. We are proposing to increase the limits of liability for vessels and deepwater ports, including LOOP, from those set forth in § 138.220 of the COFR Rule (proposed § 138.230), to reflect significant increases in the CPI.

Additionally, we propose adding and reserving new subparagraphs § 138.230(b)(2)(ii) and (c). This will ensure these subparagraphs are available for use for any future rulemaking to establish new facility-specific limits of liability for deepwater ports under 33 U.S.C. 2704(d)(2), and to add the limits of liability for MTR onshore facilities, which we expect to adjust during the next adjustment cycle.

The limits of liability given in this section are estimates, which were calculated using an estimated Annual

CPI–U. The updated limits of liability in the final rule will be calculated using the most recent Annual CPI–U available at the time of publication of the rule, and may be different than the estimates in this NPRM.

Section 138.240. We propose adding new § 138.240 in 33 CFR part 138, subpart B to set out the procedure the Coast Guard proposes to use to calculate adjustments to the limits of liability contained in proposed § 138.230 for significant increases to the CPI.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

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

There are two regulatory costs that are expected from this proposed rule. *Regulatory Cost 1:* An increased cost of liability to responsible parties of vessels and deepwater ports. *Regulatory Cost 2:* An increased cost for establishing and maintaining evidence of financial responsibility to responsible parties of vessels. (Deepwater ports are not expected to have any increased evidence of financial responsibility costs as a result of this proposed rule.)

Discussion of Regulatory Cost 1

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

Affected Population—Vessels

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

Affected Population—Deepwater Ports

At this time, LOOP is the only deepwater port subject to OPA 90. To date, LOOP has not had an OPA 90 incident that resulted in removal costs and damages in excess of LOOP's current limit of liability of $62 Million. Accordingly, for the purpose of this analysis, we assume that only one OPA 90 incident would occur at LOOP over the 10-year analysis period (2009–2018), with removal costs and damages reaching or exceeding the proposed limit of liability for LOOP.

There are two liquefied natural gas (LNG) deepwater ports currently in operation (Gulf Gateway Energy Bridge and Northeast Gateway). In 2003 and 2007, respectively, however, the Coast Guard determined that the designs of the two LNG deepwater ports did not meet the definition of an OPA 90 facility under 33 U.S.C. 2701(9). This is because neither deepwater port was designed to use structures, equipment or devices for purposes of exploring, drilling, producing, storing, handling, transferring, processing, or transporting oil. Therefore, unless the design and operations at either LNG port is changed, the port will not be affected by this proposed rule. We, therefore, assume that LOOP would be the only existing deepwater port that could incur increased removal costs and damages as a result of this proposed rule.

Cost Summary Regulatory Cost 1

The average annual cost of this rulemaking resulting from the three forecasted vessel OPA 90 incidents per year is estimated to be between $1.5 Million and $2.9 Million (non-discounted Dollars). The average annual cost of this rulemaking resulting from the one forecasted LOOP OPA 90 incident over 10 years is estimated to be between $2.4 Million and $2.7 Million (non-discounted Dollars). The 10-year (2009–2018) present value at a 3 percent discount rate of this regulatory cost (vessels and LOOP) is estimated to be between $34.1 Million and $49.7 Million. The 10-year (2009–2018) present value at a 7 percent discount rate of this regulatory cost (vessels and LOOP) is estimated to be between $29.2 Million and $42.5 Million. The low end of the range assumes a 5 percent increase in the limits of liability for vessels and deepwater ports, except LOOP, and a 39 percent increase in the limit of liability for LOOP. The high end of the range assumes a 10 percent increase in the limits of liability for vessels and deepwater ports, except LOOP, and a 44 percent increase in the limit of liability for LOOP. These ranges were analyzed because the value of the 2008 Annual CPI–U would not be known until after the publication of this NPRM.

Discussion of Regulatory Cost 2

Under OPA 90 (33 U.S.C. 2716) responsible parties of vessels and deepwater ports are required to establish and maintain evidence of financial responsibility to prove that they have the ability to pay for removal costs and damages in the event of an OPA 90 incident up to their applicable limits of liability. Because this proposed rulemaking would increase the limits of liability for vessels and deepwater ports, responsible parties may incur additional cost associated with the corresponding requirements for establishing and maintaining evidence of financial responsibility.

Affected Population—Vessels

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

Affected Population—Deepwater Ports

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

Cost Summary—Regulatory Cost 2

For purposes of calculating Regulatory Cost 2, we assume that this rulemaking would cause the insurance premiums for vessels that are now commercially insured to increase by 5 percent from current levels. We also assume that 2 percent of the vessel responsible parties who use self-insurance to provide evidence of financial responsibility would migrate to commercial insurance. Depending on the particular year and the discount rate used, annual costs of this proposed rule range from $1.7 Million to $3.4 Million per year. The 10-year (2009–2018) present value at a 3 percent discount rate of this regulatory cost is estimated to be between $27.8 Million and $28.6 Million. The 10-year (2009–2018) present value at a 7 percent discount rate of this regulatory cost is estimated to be between $23.8 Million and $24.6 Million. The ranges reflect two vessel profiles that were developed and analyzed separately to account for the uncertainty, due to data gaps, of when existing single-hulled tank vessels would be phased out.

Total Cost—Regulatory Cost 1 + Regulatory Cost 2

Depending on the particular year and the discount rate used, annual costs of this proposed rule range from $3.8 Million to $9.0 Million per year. The 10-year present value of the total cost of this proposed rule (Regulatory Cost 1 + Regulatory Cost 2) at a 3 percent discount rate would be between $61.9 Million and $78.3 Million. The 10-year present value of the total cost of this proposed rule (Regulatory Cost 1 + Regulatory Cost 2) at a 7 percent discount rate would be between $53 Million and $67 Million.

Benefits

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

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

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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. Based on the threshold analysis conducted below, we determined that an Initial Regulatory Flexibility Analysis (IRFA) was not necessary for this proposed rule.

Regulatory Cost 1

Small entities from more than 80 North American Industry Classification System (NAICS) codes could be affected by Regulatory Cost 1 of this proposed rule. Regulatory Cost 1 would, however, only be incurred by a small entity if an OPA 90 incident resulted in removal costs and damages that exceeded the vessel or deepwater port's current limit of liability.

Because of the large number of small entities that own or operate vessels which carry oil as cargo or fuel, it is not possible to predict which specific NAICS Codes might be affected by this proposed rule in any given year. Therefore, to quantify the potential economic impact of Regulatory Cost 1 on small entities that own or operate vessels, we have estimated a high end range of this cost based on historical spill cost data for all vessels.

Coast Guard data, as of May 2007, indicate that for the years 1991 through 2006 only 41 vessel incidents exceeded the current limits of liability (average of approximately three per year). For the purpose of this analysis, we assume that three OPA 90 incidents involving vessels would occur per year throughout the 10-year analysis period (2009–2018), with removal costs and damages reaching or exceeding the proposed limits of liability for vessels.

Assuming a worst case scenario that all of the forecasted incidents would involve small entities, there would be only three small entities affected annually by Regulatory Cost 1. As discussed above in the Executive Order 12866 analysis, Coast Guard incident cost data indicate that the average annual cost of Regulatory Cost 1 for vessels is between $1.5 Million to $2.9 Million (non-discounted Dollars). Dividing the average annual cost by the three small entities possibly affected equals a per small entity cost of between $487,200 and $974,400 (non-discounted Dollars).

As previously discussed, the only deepwater port affected by this proposed rule is LOOP. LOOP, however, does not meet U.S. Small Business Administration's (SBA's) criteria to be categorized as a small entity.

Regulatory Cost 2

In this analysis, we researched vessel and deepwater port responsible party size and revenue data using public and proprietary business databases. We then determined which entities were small based on the SBA's criteria on business size standards for all sectors of the NAICS.

There are an estimated 600 small entities that would be affected by Regulatory Cost 2. These represent those vessel responsible parties required by 33 CFR 138 subpart A to provide evidence of financial responsibility to the Coast Guard. As discussed above, LOOP is not classified as a small entity.

We found that 82 distinct NAICS codes were represented in the population of small entities (of which 32 contained more than five entities). For those small entities using commercial insurance, this proposed rule could result in an increased average annual cost of $183 per vessel. An estimated 2 percent of small entities using self-insurance are expected to migrate to commercial insurance at an increased average annual cost of $7,540 per vessel.

Of the small entities impacted, 98 percent could experience an annual economic impact of less than 1 percent of their annual sales. The remaining 2 percent could experience an annual economic impact of less than 2 percent of their annual sales.

Based on this threshold analysis, we certify that implementation of this proposed rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. 605(b). The Coast Guard, however, is seeking comments to inform our decision regarding the economic impact of this proposed rule on small entities.

C. Assistance for Small Entities

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

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

D. Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

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

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

This proposed rule would revise the current information collection entitled, Financial Responsibility for Water Pollution (vessels) (Office of Management and Budget Control Number 1625–0046, Approved December 7, 2006).

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

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

Description of the Respondents: Operators, as this term is defined in 33 CFR part 138, subpart A, and guarantors of vessels that require COFRs under 33 CFR part 138, Subpart A.

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

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

Burden of Response: Increased burden associated with reporting requirements:

10,000 operators and guarantors × 1.0 hours per response = 10,000 hours.

Estimate of Total Annual Burden: We used the ''All Occupations'' average hourly wage of $18.84 per hour, found in the May 2006 *National Occupational Employment and Wage Estimates United States,* published by the Department of Labor's Bureau of Labor Statistics, and applied a 43 percent overhead factor to estimate employee benefits to calculate the burdened labor rate. Bureau of Labor Statistics data show that total employee benefits is approximately 30 percent of total compensation. By applying a benefit factor of 43 percent to the hour wage, we calculate total compensation:

$18.84 per hour + ($18.84 per hour × 43 percent) = $27 per hour.

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

Increased burden associated with the reporting requirements:

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

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

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

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

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

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

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

M. Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination, under the Instructions, that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 138

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

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

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

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

Authority: 33 U.S.C. 2704; 33 U.S.C. 2716, 2716a; 42 U.S.C. 9608, 9609; Sec. 1512 of the Homeland Security Act of 2002, Public Law 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552); E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 198; E.O. 12777, 3 CFR, 1991 Comp., p. 351; E.O. 13286, Sec. 89 (68 FR 10619, Feb. 28, 2003); Department of Homeland Security Delegation Nos. 0170.1 and 5110. Section 138.30 also issued under the authority of 46 U.S.C. 2103, 46 U.S.C. 14302.

2. Revise Subpart B to read as follows:

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

Sec.

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

§ 138.200. Scope.

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

§ 138.210. Applicability.

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

§ 138.220. Definitions.

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

(b) As used in this subpart—

CPI–U means the Consumer Price Index All Urban Consumers, Not Seasonally Adjusted, U.S. city average, All items, 1982–84=100, published by the U.S. Department of Labor, Bureau of Labor Statistics.

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

Double hull has the meaning set forth in 33 CFR part 157.

Single hull means any hull other than a double hull.

§ 138.230. Limits of liability.

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

(1) For a tank vessel greater than 3,000 gross tons with a single hull, including a single-hull vessel fitted with double sides only or a double bottom only, the greater of $3,200 per gross ton or $23,320,000;

(2) For a tank vessel greater than 3,000 gross tons with a double hull, the greater of $2,000 per gross ton or $19,960,000.

(3) For a tank vessel less than or equal to 3,000 gross tons with a single hull, including a single-hull vessel fitted with double sides only or a double bottom only, the greater of $3,200 per gross ton or $6,360,000.

(4) For a tank vessel less than or equal to 3,000 gross tons with a double hull, the greater of $2,000 per gross ton or $4,240,000.

(5) For any other vessel, the greater of $1,000 per gross ton or $848,000.

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

(1) Generally. For any deepwater port other than a deepwater port with a limit of liability established by regulation under Section 1004(d)(2) of OPA 90 (33 U.S.C. 2704(d)(2)) and set forth in paragraph (b)(2) of this section, $371,000,000;

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

(i) For the Louisiana Offshore Oil Port (LOOP), $86,924,000; and

(ii) [Reserved].

(c) [Reserved].

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

(a) Formula for calculating a cumulative percent change in the Annual CPI–U. The Director, NPFC, calculates the cumulative percent change in the Annual CPI–U from the year the limit of liability was established, or last adjusted by statute or regulation, whichever is later, to the present year, using the escalation formula described in Fact Sheet 00–1, U.S. Department of Labor Program Highlights, ''How to Use the Consumer Price Index for Escalation'', September 2000. This cumulative percent change value is rounded to one decimal place.

(b) Significance threshold. Every three years from the year a limit of liability was established, or last adjusted by statute or regulation, whichever is later, 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 adjustment to the limit 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 limit of liability was most recently established or last adjusted by statute or regulation, whichever is later, 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 limit of liability by an amount equal to the cumulative percent change in the Annual CPI–U.

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

New limit of liability = Current limit of liability value + (Current limit of liability value × 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, to the present year), then rounded to the closest $100.

(d) [Reserved].

Dated: September 17, 2008.

Craig A. Bennett,

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

[FR Doc. E8–22444 Filed 9–23–08; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 237, 239, 245, and 252

RIN 0750–AF92

Defense Federal Acquisition Regulation Supplement; Government Property (DFARS Case 2007–D020)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing management of Government property in the possession of contractors. The DFARS changes are consistent with changes made to the Federal Acquisition Regulation (FAR).

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 24, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007–D020, using any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

E-mail: dfars@osd.mil. Include DFARS Case 2007–D020 in the subject line of the message.

Fax: 703–602–7887.

Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703–602–0302.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule updates and reorganizes DFARS Subparts 245.1, 245.3, 245.4, and 245.5 for consistency with FAR changes addressing management of Government property in the possession of contractors, published at 72 FR 27364 on May 15, 2007. Minor related changes are made in Parts 204, 237, 239, and 252. The following table summarizes the proposed DFARS changes: