§ 1.6038D–7T [Removed]

■ **Par. 17.** Section 1.6038D–7T is removed.

■ **Par. 18.** Section 1.6038D–8 is added to read as follows:

§ 1.6038D–8 Penalties for failure to disclose.

(a) *In general.* If a specified person fails to file a Form 8938, ''Statement of Specified Foreign Financial Assets,'' that includes the information required by section 6038D(c) and § 1.6038D–4 with respect to any taxable year at the time and in the manner described in section 6038D(a) and § 1.6038D–2, a penalty of $10,000 will apply to that specified person.

(b) *Married specified individuals filing a joint annual return.* Married specified individuals who file a joint annual return and fail to file a required Form 8938 that includes the information required by section 6038D(c) and § 1.6038D–4 with respect to any taxable year at the time and in the manner described in section 6038D(a) and § 1.6038D–2 are subject to penalties under this section as if the married specified individuals are a single specified individual. The liability of married specified individuals who file a joint annual return with respect to any penalties under this section is joint and several.

(c) *Increase in penalty.* If any failure to comply with the applicable reporting requirement of section 6038D and the regulations continues for more than 90 days after the day on which the Commissioner or his delegate mails a notice of the failure to the specified person required to file the Form 8938, the specified person is required to pay an additional penalty of $10,000 for each 30-day period (or fraction thereof) during which the failure continues after the 90-day period has expired. The additional penalty imposed by section 6038D(d)(2) and this paragraph (c) is limited to a maximum of $50,000 for each such failure.

(d) *Presumption of aggregate value.* For the purpose of assessing penalties imposed under section 6038D(d), if the Commissioner or his delegate determines that a specified person has an interest in one or more specified foreign financial assets and the specified person does not provide sufficient information to demonstrate the aggregate value of the assets upon request by the Commissioner or his delegate, then the aggregate value of the assets is treated as being in excess of the applicable reporting threshold set forth in § 1.6038D–2(a).

(e) *Reasonable cause exception*—(1) *In general.* If the failure to report the information required in section 6038D(c) and § 1.6038D–4 is shown to be due to reasonable cause and not due to willful neglect, no penalty will be imposed under section 6038D(d) or this section.

(2) *Affirmative showing required.* In order to show that the failure to report the information required in section 6038D(c) and § 1.6038D–4 is due to reasonable cause and not due to willful neglect for purposes of section 6038D(g) and this section, the specified person must make an affirmative showing of all the facts alleged as reasonable cause for the failure to disclose.

(3) *Facts and circumstances taken into account.* The determination of whether a failure to disclose a specified foreign financial asset on Form 8938 was due to reasonable cause and not due to willful neglect is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the specified person (or any other person) for disclosing the required information is not reasonable cause.

(f) *Penalties for underpayments attributable to undisclosed foreign financial assets*—(1) *Accuracy-related penalty.* For application of the accuracy-related penalty in the case of any portion of an underpayment attributable to any undisclosed foreign financial asset understatement, see section 6662(j).

(2) *Criminal penalties.* In addition to other penalties, failure to comply with the reporting requirements of section 6038D and the regulations, or any underpayment related to such failure, may result in criminal penalties under sections 7201, 7203, 7206, *et seq.,* or other provisions of Federal law.

(g) *Effective/applicability dates.* This section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

§ 1.6038D–8T [Removed]

■ **Par. 19.** Section 1.6038D–8T is removed.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: December 4, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–29125 Filed 12–11–14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 553

[Docket ID: BOEM–2012–0076]

RIN 1010–AD87

Consumer Price Index Adjustments of the Oil Pollution Act of 1990 Limit of Liability for Offshore Facilities

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Final rule.

SUMMARY: The Oil Pollution Act of 1990 (OPA) establishes a comprehensive regime for addressing the consequences of oil spills, ranging from spill response to compensation for damages to injured parties. Other than deepwater ports subject to the Deepwater Port Act of 1974, the Bureau of Ocean Energy Management (BOEM) is authorized to adjust the limit of liability in OPA for offshore facilities, including pipelines. This rule amends BOEM's regulations to add to the regulations on Oil Spill Financial Responsibility (OSFR) for offshore facilities in order to increase the limit of liability for damages caused by the responsible party for an offshore facility from which oil is discharged, or which poses the substantial threat of an oil discharge, as described in OPA. This rule adjusts the limit of liability to reflect the significant increase in the Consumer Price Index (CPI) that has taken place since 1990. It also establishes a methodology for BOEM to use to periodically adjust the OPA offshore facility limit of liability for inflation. BOEM is hereby increasing the limit of liability for damages under OPA from $75 million to $133.65 million.

DATES: This final rule is effective January 12, 2015.

FOR FURTHER INFORMATION CONTACT: Peter Meffert, Office of Policy, Regulations and Analysis (OPRA), Bureau of Ocean Energy Management, Department of the Interior, at 381 Elden Street, MS–4050 Herndon, Virginia 20170–4817 at (703) 787–1610, or email at *peter.meffert@boem.gov.* Questions related to the limit of liability or the adjustment process should be directed to Dr. Marshall Rose, Chief, Economics Division, Office of Strategic Resources, Bureau of Ocean Energy Management, at 381 Elden Street, MS–4050 Herndon, Virginia 20170–4817 at (703) 787–1538, or email at *marshall.rose@boem.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

OPA requires inflation adjustments to the offshore facility limit of liability not less than every three years to reflect significant increases in the CPI. 33 U.S.C. 2704(d)(4). This requirement is to preserve the deterrent effect and ''polluter pays'' principle embodied in the OPA Title I liability and compensation provisions.

On February 24, 2014, BOEM published a proposed rule to increase the OPA offshore facility limit of liability to $133.65 million and establish the methodology for future inflation adjustments (79 FR 10056). The rulemaking comment period initially closed on March 26, 2014. Various groups requested additional time to review and analyze the implications of this proposed rule and BOEM extended the comment period by an additional 30 days (79 FR 15275) which closed on April 25, 2014.

Of the public comments received, all were generally supportive of the proposed rule. Also, one offered an alternative CPI adjustment. BOEM has posted all comments received in the docket [BOEM–2012–0076] for this rulemaking at *www.regulations.gov.*

Background

In general, under Title I of OPA, the responsible parties for any vessel or facility, including any offshore facility that discharges or poses a substantial threat of discharge of oil into or upon navigable waters, adjoining shorelines, or the exclusive economic zone, are liable for the OPA removal costs and damages that result from such incident (as specified in 33 U.S.C. 2702(a) and (b)). Under 33 U.S.C. 2704(a), however, the total liability of the responsible parties is limited (with certain exceptions specified in 33 U.S.C. 2704(c)). In instances when the OPA liability limit applies, the Oil Spill Liability Trust Fund (OSLTF) is available to compensate claimants for damages in excess of the liability limit and to reimburse responsible parties for damages that they pay for that are in excess of the liability limit, as provided in 33 U.S.C. 2708, 2712(a)(4), and 2713. The OPA at 33 U.S.C. 2704(a)(3) provides that responsible parties for an offshore facility incident are liable for ''the total of all removal costs plus $75,000,000.'' The $75 million limit of liability only applies to damages covered by OPA.

To prevent the real value of the amount of liability authorized by OPA from declining over time as a result of inflation, and shifting the financial risk of oil spill incidents to the OSLTF, OPA (33 U.S.C. 2704(d)(4), requires that the President adjust the limit of liability'' not less than every three years,'' by regulation, to reflect significant increases in the CPI. This mandate has been in place since 1990.

Executive Order 12777, as amended, delegates the implementation of the President's OPA limit of liability inflation adjustment authority, dividing the responsibility among several Federal agencies. Among those delegations, section 4 of Executive Order 12777 vests the Secretary of the Interior (DOI) with authority to adjust the limit of liability for ''offshore facilities, including associated pipelines, other than deepwater ports subject to the [Deepwater Port Act of 1974]'' for inflation. Under Secretarial Order 3299, BOEM exercises this authority on behalf of DOI. In addition, section 4 of Executive Order 12777, as amended and in relevant part, vests in the Secretary of the Department in which the Coast Guard is operating the President's authority to adjust for inflation the OPA limits of liability for vessels and deepwater ports (including associated pipelines), and the statutory limit of liability for onshore facilities. This authority has been redelegated by the Secretary of Homeland Security to the Coast Guard.

Regulatory History

On July 1, 2009, following substantial coordination with DOI, the Environmental Protection Agency and the Department of Transportation to achieve consistent approaches to the inflation adjustment mandate, the Coast Guard published an Interim Final Rule With Request For Comments (IFR) (74 FR 31357), implementing the first set of regulatory inflation adjustments to the limits of liability for vessels and deepwater ports, and establishing the methodology the Coast Guard will use for future inflation adjustments to the limits of liability for its delegated source categories. (See 33 CFR 138.240. See also, Notice of Final Rulemaking, 73 FR 54997 (September 24, 2008), and Final Rule, 75 FR 750 (January 6, 2010)).

As described in the preamble to the Coast Guard's IFR, DOI and other agencies with delegated authority for adjusting the OPA liability limits agreed to follow the Coast Guard's inflation adjustment methodology. BOEM has coordinated with the Coast Guard on the inflation adjustments to the OPA liability limit in this rulemaking.

BOEM published its proposed rule to increase the OPA offshore facility limit of liability on February 24, 2014 (79 FR 10056). The comment period closed on April 25, 2014. This final rule increases the offshore facility limit of liability for OPA damages to $133.65 million and establishes the methodology for future inflation adjustments, which generally follows the Coast Guard's approach.

Offshore Facility Limit of Liability

This rule implements the first mandated adjustment, under 33 U.S.C. 2704(d)(4), to the OPA limit of liability for damages for offshore facilities to reflect significant increases in the CPI. This rule also establishes a methodology for making inflation adjustments to the OPA limit of liability for offshore facilities. To ensure maximum consistency in promulgating rules for CPI adjustments to the OPA limit of liability, the approach used by BOEM follows, in most respects, the inflation adjustment approach used by the Coast Guard in its 2009 CPI rulemaking that adjusted the limits of liability for vessels and deepwater ports. That approach, found at 33 CFR part 138, subpart B, went through a full notice and comment rulemaking and received no adverse comments.

Offshore facilities are unique among the vessels and facilities covered under OPA. The OPA, at 33 U.S.C. 2704(a), assigns unlimited liability to the responsible parties for removal costs resulting from an offshore facility oil spill incident, and only limits their liability for the damages that result from such a spill and that are covered by OPA. This rulemaking adjusts the offshore facility limit of liability for OPA damages to $133.65 million. Under OPA, the responsible parties' liability for removal costs resulting from an offshore facility oil spill incident remains unlimited.

Oil Spill Financial Responsibility Requirements Are Not Affected by This Rulemaking

This rulemaking does not affect the level of oil spill financial responsibility (OSFR) coverage (found in 33 U.S.C. 2716(c), and 30 CFR 553.13) that responsible parties must demonstrate for covered offshore facilities (COFs) under subparts B through E in the regulations at 30 CFR part 553.

The OPA offshore facility limit of liability applies to more facilities than are covered by the OSFR requirement. The limit of liability for offshore facilities applies to all offshore facilities (other than deepwater ports), while OSFR coverage is required only for offshore facilities (other than deepwater ports) located seaward of the coastline, or in any portion of a bay connected to the sea generally, with a worst case oil discharge potential of more than 1,000 barrels and meeting other specific

criteria in the definition of COF found in 30 CFR 553.3.

The OSFR coverage levels are specified at 33 U.S.C. 2716 and are not tied to the offshore facility limit of liability and, therefore, are not affected by the inflation adjustments required under OPA at 33 U.S.C. 2704(d)(4). The OSFR coverage provisions of OPA establish minimum and maximum coverage amounts for any activity involving a COF. The OSFR coverage amounts are found in OPA at 33 U.S.C. 2716(c) and in the regulations at 30 CFR 553.13.

Unlike the evidence of financial responsibility requirements applicable to vessels and deepwater ports, which are administered by the Coast Guard and are directly tied to the applicable CPI-adjusted limits of liability, OSFR coverage requirements are not directly tied to, and their levels do not automatically increase with changes in, the offshore facility limit of liability. OPA does not authorize an OSFR increase based solely on an increase in the limit of liability for offshore facilities occasioned by CPI adjustments. Rather, as stated in 33 U.S.C. 2716(c)(1)(C), any adjustment to the required OSFR coverage amount must be separately ''justified based on the relative operational, environmental, human health, and other risks posed by the quantity or quality of oil that is explored for, drilled for, produced, or transported by the responsible party . . . .''

BOEM specifically requested comments on any potential OSFR insurance underwriter premium increases. We received no comments related to OSFR insurance premiums during the proposed rule comment period.

Additional Regulatory Changes in 30 CFR Part 553

Section 553.1 of this rule, consistent with the proposed rule, expands the purpose section to include adjusting the limit of liability. In section 553.3, the final rule also adds, consistent with the proposed rule, the following three new definitions to facilitate the implementation of the inflation adjustment process: *Annual CPI–U, Current Period,* and *Previous Period*. It also adds a new definition for *Responsible Party,* in the context of Subpart G.

Discussion of This Rule

I. Explanation of the CPI Adjustment to the Offshore Facility Limit of Liability for Damages

This rule implements the first adjustment, mandated by 33 U.S.C. 2704(d)(4), to the OPA limit of liability for damages caused by the responsible party for a facility from which oil is discharged, or which poses the substantial threat of a discharge from offshore facilities other than deepwater ports to reflect significant increases in the CPI. This rule also establishes the methodology that BOEM will use to make periodic CPI adjustments to the OPA offshore facility limit of liability for damages. These provisions are encompassed in a new 30 CFR part 553 subpart G.

1. How will BOEM calculate CPI adjustments to the limit of liability for offshore facilities?

BOEM will calculate the new limit of liability for the offshore facility source category using the following formula: New limit of liability = Previous limit of liability + (Previous limit of liability multiplied by the decimal equivalent of the percent change in the CPI from the year the previous limit of liability was established, or last adjusted by statute or regulation, whichever is later, to the present year), then rounded to the closest $100.

2. Which CPI will BOEM use?

The Bureau of Labor Statistics (BLS) publishes a variety of inflation indices, including the ''Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84 = 100,'' also known as ''CPI–U,'' for both monthly and annual periods. Consistent with the Coast Guard regulations at 33 CFR 138.240, BOEM will use CPI–U values, which may be viewed on the BLS Web site at: *http://www.bls.gov/cpi/cpifiles/cpiai.txt.* For consistency with the Coast Guard's limits of liability CPI adjustment rule, BOEM will use the annual period CPI–U (hereinafter the ''Annual CPI–U''), rather than the monthly period CPI–U.

3. How will BOEM calculate the percent change in the Annual CPI–U?

Consistent with the Coast Guard's inflation adjustment methodology, BOEM will calculate the percent change in the Annual CPI–U using the BLS escalation formula described in Fact Sheet 00–1, U.S. Department of Labor Program Highlights, ''How to Use the Consumer Price Index for Escalation,'' September 2000. This formula provides that: Percent change in the Annual CPI–U = [(Annual CPI–U for Current Period—Annual CPI–U for Previous Period) ÷ Annual CPI–U for Previous Period] × 100. Fact Sheet 00–1 is available from the BLS online at *http://www.bls.gov/cpi/cpi1998d.pdf.*

4. Which Annual CPI–U ''Previous Period'' and ''Current Period'' will BOEM use for its first inflation adjustment to the offshore facility limit of liability?

To maintain the real value of the amount of liability authorized by OPA for damages, as contemplated in the original OPA mandate that directed the limit of liability be adjusted for the CPI, BOEM will use a ''Previous Period'' of 1990, the year OPA was enacted. For the ''Current Period,'' BOEM will use the most recently published Annual CPI–U (see 30 CFR 553.703(a)). The latter is consistent with the Coast Guard's OPA limits of liability rule at 33 CFR 138.240 for vessels and deep water ports.

For the calculations in this rule, BOEM has used the 2013 Annual CPI–U, published on January 16, 2014. Future updates will proceed on a 3-year schedule, as provided in 30 CFR 553.703.

5. How has BOEM calculated the adjustment to the limit of liability and what is the new limit?

The following illustrates how BOEM will apply the BLS escalation formula to calculate the decimal equivalent of the percent change in the Annual CPI–U to adjust the limit of liability for offshore facilities. The Annual CPI–U (index base period (1982–84 = 100)) for Current Period (2013): 232.957 − Annual CPI–U for Previous Period (1990): 130.7 = an index point change: 102.257 ÷ Annual CPI–U for Previous Period: 130.7 = 0.782; result multiplied by 100: 0.782 × 100 = percent change in the Annual CPI–U of 78.2 percent. Note that the cumulative percent change value is rounded to one decimal place as provided in § 553.703.

The ''Current Period'' value for this methodology is the Annual CPI–U for the previous calendar year, due to the BLS Annual CPI–U publication schedule.

Applying these values, this final rule adjusts the statutory offshore facility limit of liability for OPA damages of $75 million by the 78.2 percent increase in the Consumer Price Index Annual (CPI–U) that has taken place since 1990, to $133,650,000.

6. How will BOEM calculate the percent change for subsequent inflation adjustments to the OPA limit of liability for offshore facilities?

This rule establishes the adjustment methodology BOEM will use for subsequent CPI adjustments to the OPA limit of liability for offshore facilities. Key features for the future inflation adjustments to the limit of liability include:

• BOEM plans to publish, through a final rule in the **Federal Register**, the inflation adjustments to the limit of liability for offshore facilities every three years, counting from 2014 with this rulemaking, provided that the threshold for a significant increase in the Annual CPI–U is met. A three percent or more change constitutes the significant increase threshold. The current adjustment uses the 2013 Annual CPI–U for the ''Current Period.''

• BOEM has discretion to adjust the offshore facility limit of liability more frequently than every three years, by regulation, to reflect significant increases in the CPI.

• If Congress amends the limit of liability for offshore facilities, BOEM will calculate the Annual CPI–U change with the ''Previous Period'' beginning with the year in which Congress amends the limit of liability. Otherwise we will calculate the percent change in the CPI–U for the next CPI adjustment to the offshore facility limit using the 2013 Annual CPI–U (the ''Current Period'' for today's adjustment to the limit of liability) as the ''Previous Period'' value.

• BOEM will evaluate whether the cumulative percent change in the Annual CPI–U since the last adjustment has exceeded three percent no later than 2017 (using the 2016 Annual CPI–U as the ''Current Period''). If the change is three percent or greater, BOEM will publish a final rule in the **Federal Register** with the new inflation-adjusted offshore facility limit of liability. If, by the end of the three-year period, the cumulative percent change in the Annual CPI–U is less than three percent, BOEM will publish a notice in the **Federal Register** of no inflation adjustment to the limit of liability.

• Following a notice of no inflation adjustment, BOEM will evaluate the cumulative percent change in the Annual CPI–U annually and adjust the limit based on the cumulative percent change in the Annual CPI–U, once the three-percent threshold is reached. After this adjustment is made, BOEM will resume its process of conducting a review every three years.

7. How will BOEM provide public notice for the offshore facility limit of liability adjustments?

BOEM will publish subsequent CPI or statutory adjustments to the offshore facility limit of liability for damages in a final rule in the **Federal Register**. A final rule will provide for timely notice of the CPI adjustments and will keep the offshore facility limit of liability amount current in BOEM regulations.

II. Additional Changes to 30 CFR Part 553

1. Update to Section 553.1 (What is the purpose of this part?'')

Consistent with the proposed rule, BOEM is making the following changes to 30 CFR part 553, setting forth the limit of liability for offshore facilities under OPA.

2. Definition Changes for Terms Found at 30 CFR 553.3 (''How are the terms used in this regulation defined?'')

BOEM is adding the following definitions to 30 CFR 553.3: *Annual CPI–U, current period, previous period* and *Responsible party for purposes of Subpart G.*

Changes Made Between the Proposed Rule and This Final Rule

The proposed rule would have revised the definition of ''responsible party'' in the existing regulation at 30 CFR 553.3, which addresses the party's responsibilities for COFs under the OSFR program. While the existing definition of ''responsible party'' adequately addresses the needs of the OSFR program, it does not contemplate the broader range of facilities that are covered by the limit of liability for offshore facilities under OPA at 33 U.S.C. 2704. In the context of OPA liability, a responsible party's liability is not limited to damages or removal costs associated with a COF. In this final rule, the new definition of ''responsible party'' for the limit of liability for offshore facilities in subpart G now makes clear that it also applies to all offshore facilities, whether the facilities are COFs (subject to the financial responsibility requirements of subparts A through F), or not, while the existing definition of ''responsible party'' for OSFR remains unchanged.

Further, BOEM has removed the following sentence from the definition of ''responsible party'' that appeared in the notice of proposed rulemaking: ''The owner of operating rights in a lease is a responsible party with respect to facilities that serve or served an area and depth in which it holds operating rights, but not with respect to any facility that only serves parts of the lease to which it does not hold operating rights.'' A lessee of the area in which the facility is located is a responsible party under OPA at sec. 2701(32)(C). The definition of ''responsible party'' in both the proposed rule and in this final rule includes lessees as responsible parties. BOEM's definition of ''lessee'' in its existing regulation at 30 CFR 553.3 (which is not changed by this final rule) includes a holder of operating rights (working interest owner). Therefore, when read together, the definition of ''responsible party'' without the described sentence and the definition of ''lessee'' hold operating rights owners responsible, making this sentence unnecessary. To reinforce this connection between the definitions, BOEM has added a phrase in the second sentence of the definition of ''responsible party for purposes of Subpart G'' to expressly state that a responsible party includes lessees ''as defined in this subpart.''

Response to Comments

BOEM published a proposed rule entitled, ''Consumer Price Index Adjustments of the Oil Pollution Act of 1990 Limit of Liability for Offshore Facilities'' in the **Federal Register** on February 24, 2014, with a 30 day request for comment period. The comment period was extended by an additional 30 days on March 26, 2014. The comment period ended on April 25, 2014. BOEM received a number of comment letters from interested stakeholders, and carefully considered them prior to finalizing the rulemaking.

Sixteen distinct written comments, eight from organizations and eight from individuals, were submitted regarding the proposed rule. Of the organizations, BOEM received three comments from industry/trade associations, one from a charitable trust, and the four remaining comments, submitted on behalf of a total of 17 organizations, were from environmental organizations. None of the comments that BOEM received expressed any opposition to the proposed increase in the limit of liability for offshore facilities.

One company, ConocoPhillips, supported the rule as proposed; while other industry organizations, the Independent Petroleum Association of America and the National Ocean Industries Association took no position on the proposed rule. The Pew Charitable Trust, the Gulf Restoration Network, the Ocean Conservancy, and five of the individual commenters supported the rule as proposed.

The Alaska Wilderness League, the Center for Biological Diversity (CBD), the Alaska Inter-Tribal Council, the Citizens' Coalition to Ban Toxic Dispersants, Clean Ocean Action, Defenders of Wildlife, Friends of the Earth, Greenpeace, Hands Across the Sand, the Natural Resources Defense Council, the Northern Alaska Environmental Center, Oasis Earth, Ocean Conservation Research, Pacific Environment, and the Surfrider Foundation also supported the proposed

increase, but argued that the amount of increase is too small. The CBD suggested an alternative limit of between $20 and $50 billion.

With one exception, all of the comments expressed support for the proposed inflation index and methodology, which BOEM proposed to use to adjust the limit of liability on an ongoing basis. BOEM received a comment suggesting the Chained CPI–U (C–CPI–U) be used instead of the standard CPI–U for adjusting the offshore facility limit of liability. The commenter suggested that the C–CPI–U is a ''closer approximation to a cost-of-living index'' than the CPI–U.

Responses to those comments are contained in the table below.

Comment received	BOEM response
Commenter Tupper suggested that BOEM should use a chained Consumer Price Index (C–CPI–U) instead of the CPI for All Urban Consumers (CPI–U).	That issue is addressed in detail at the end of this Section.
Commenter Tupper also suggested that the update methodology should include a mechanism for adjusting the limit for offshore facilities downward, as well as upward, to account for potential deflation, as well as inflation.	BOEM's authority to increase the financial responsibility requirements is limited to the circumstances and amount set forth in 33 U.S.C. 2716(c)(1)(C). The Oil Pollution Act does not have any provision to allow for downward revisions in the limits of liability for deflation. In addition to the statutory restriction, BOEM believes that the limit of liability is already potentially too low and that any downward adjustment would conflict with the goals of the statute. For these reasons, the adjustment formula is not revised to allow for downward adjustments in the limit of liability amount.
The CBD and its co-respondents suggested that BOEM ''should also increase the financial responsibility requirements to ensure that companies in fact have the capability to meet the increased liability requirements''.	BOEM's authority to increase the financial responsibility requirements is limited to the circumstances and amount set forth in 33 U.S.C. 2716(c)(1)(C).
Commenter Dobkin suggested that the state and federal tax deductibility of payments made in connection with an oil spill be eliminated.	Laws related to taxation are outside the scope of this rule and not within BOEM's authority to regulate.
Commenter Commeaux suggested that an automatic stop-work order be issued in the event of a spill.	Stop work orders are outside the scope of this rule.
Commenter Commeaux also suggested that criminal penalties be implemented against those responsible for any spill.	Authority to invoke criminal penalties against those responsible for oil spills is outside the scope of this rule and not within BOEM or the DOI's authority to regulate.
Commenter Commeaux also implied that new or increased civil penalties be considered against those responsible for any spill.	Authority to impose or increase civil penalties against those responsible for oil spills is outside the scope of this rule and not within BOEM or the DOI's authority to regulate.
Commenter Donovan suggested that BOEM redefine the meaning of the word ''expenditure'' as used in the context of any oil spill. ''. . . the proper definition of the term ''expenditure,'' under the OSLTF, means an expenditure that is not reimbursed by the responsible party.'' Mr. Donovan explains why he believes this change would be appropriate: ''The advantage of defining an expenditure, under the OSLTF, as ''an expenditure that is not reimbursed by the responsible party,'' is twofold: (a) It eliminates, without the need to pass retroactive legislation, the $1 billion cap which may be paid from the OSLTF with respect to any single incident and allows the OSLTF to maintain a balance of at least $1 billion for the purpose of paying claims for damages resulting from other oil spill incidents. As the OSLTF pool of $1 billion is depleted by payments made to oil spill claimants, it is replenished, by virtue of subrogation, by reimbursements made to the OSLTF by the responsible party; and (b) It ensures that the cost of a catastrophic oil spill incident shall be borne by the responsible party, not the federal taxpayer''.	Interpreting the meaning of the word ''expenditure,'' as used in 26 U.S.C. 9509(c) (per incident cap on Oil Spill Liability Trust Funds (OSLTF) expenditures), is outside the scope of this rule and not within BOEM or the DOI's authority to regulate.

The CPI–U measures prices of a base basket, which uses a single expenditure base period to compute the price change over time; in contrast, the C–CPI–U, which the commenter suggested, reflects the effect of any substitutions consumers make across item categories in response to relative price changes. BOEM is retaining the CPI–U for several reasons.

(a) The adjustment of the limit of liability addresses inflation since 1990 when the current offshore facility limit was established. The C–CPI–U was first published by Bureau of Labor Statistics (BLS) in 2002, with a historical series dating back to 1999. The officially published C–CPI–U series from BLS does not extend back to 1990. Although it may be possible to join the published C–CPI–U with the older, non-chained CPI–U series or with data not included in the officially published C–CPI–U, such an adjustment would not represent an official BLS statistical series. Therefore, to ensure a consistent adjustment to reflect inflation, this rule uses the CPI–U.

(b) The CPI–U was the primary CPI measure at the time of the Delaware River Protection Act (DRPA) OPA amendments in 2006 (Pub. L. 109–241). The DRPA amendments maintained the requirement of three year adjustments to ''reflect significant increases in the Consumer price Index.'' In addition, the C–CPI–U was available when DRPA amended the limits of liability adjustment provision of OPA, 33 U.S.C. 2704(d)(4), and Congress could have, but did not, require its use.

(c) The CPI–U is the most frequently used escalation variable in private sector collective bargaining agreements, rental contracts, and insurance policies with automatic inflation protection.

(d) Also, the U.S. Coast Guard uses the CPI–U for the OPA limit of liability

adjustments under its jurisdiction. Based on this and the three previous considerations, BOEM has concluded that the C–CPI–U does not provide a compelling advantage for more accurate price measurements of changes in potential liabilities under this rulemaking.

Summary of Changes to 30 CFR Part 553 by Subpart

Amendments to Subpart A

Changes to sections 553.1 and 553.3, as described above.

Amendments to Subpart B

None.

Amendments to Subpart C

None.

Amendments to Subpart D

None.

Amendments to Subpart E

None.

Amendments to Subpart F

None.

Addition of New Subpart G

New Subpart, as described above.

Legal and Regulatory Analyses

Presidential Executive Orders

E.O. 12630—Takings Implication Assessment

According to Executive Order 12630, this final rule does not have significant takings implications. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights. A Takings Implication Assessment is not required.

E.O. 12866—Regulatory Planning and Review

The Office of Management and Budget (OMB) has not reviewed this rulemaking under section 6(a)(3) of E.O. 12866. BOEM does not believe this rulemaking constitutes a ''significant regulatory action'' under E.O. 12866 based on the following:

(1) These provisions simply adjust the offshore facility limit of liability for damages by the CPI. This rule will likely not have an annual effect of $100 million or more on the economy. It will likely also not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The new offshore facility limit of liability increases the pollution liability of offshore facility responsible parties and may result in increased costs if damages exceed $75 million. If damages from an offshore facility oil spill exceed $75 million, the higher limit of liability ($133.65 million) in this rule will impose greater nominal costs on the responsible parties. In constant 1990 dollars, the limit of liability for offshore facilities implemented by this final rule is the same as established in OPA and preserves the ''polluter pays'' principle. The infrequent occurrence of large oil spills from offshore facilities suggests that the compliance costs from this increase in the limit of liability are likely to be immaterial to the operating costs for offshore facility responsible parties over time.

(2) This final rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. BOEM has coordinated with the Coast Guard and the Department of Justice on this rulemaking.

(3) This final rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This final rule does not raise any novel legal or policy issues. OPA requires the offshore facility limit of liability to be adjusted for inflation not less than every three years to reflect significant increases in the CPI.

E.O. 12988—Civil Justice Reform

This final rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

E.O. 13045—Protection of Children From Environmental Health Risks and Safety Risks

BOEM has analyzed this final rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and an analysis of environmental health risks is therefore not required. Regardless, this is an administrative rule and it does not create any environmental risk to health or any risk to safety that may disproportionately affect children.

E.O. 13132—Federalism

Under the criteria in E.O. 13132, this final rule does not have federalism implications. This final rule does not have substantial direct effects on the relationship between the Federal and State governments. This final rule will not affect the role of State and local governments with respect to their offshore facility activities. A Federalism Assessment is not required.

E.O. 13175—Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Under the criteria in E.O. 13175, we evaluated this final rule and determined that it has no substantial direct effects on federally recognized Indian tribes.

E.O. 13211—Effects on the Nation's Energy Supply

BOEM has analyzed this final rule under E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' BOEM has determined that it is not a ''significant energy action'' under that order. This final rule 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 E.O. 13211.

E.O. 13563—Improving Regulation and Regulatory Review

E.O. 13563 requires that our regulatory system protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

This E.O. is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in E.O. 12866. As stated in that E.O., and to the extent permitted by law, each agency must, among other things: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive benefits; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information with which choices can be made by the public.

The increased offshore facility limit of liability for damages in this rulemaking is required by statute (OPA). This rulemaking does not amend the OSFR requirements in 30 CFR part 553. BOEM does not believe that OSFR insurance premiums will be significantly impacted by this rulemaking. BOEM solicited comments on that issue; however, no comments were received. The limit of liability increase is necessary to ensure that the deterrent effect and the ''polluter pays'' principle embodied in OPA's liability provisions are preserved.

Clarity of this Regulation

E.O. 12866 (section 1(b)(2)), E.O. 12988 (section 3(b)(1)(B)), and, E.O. 13563 (section 1(a)), and the Presidential Memorandum of June 1, 1998, require that every agency write its rules in plain language. This means that, wherever possible, each rule must: (a) Have a logical organization; (b) use the active voice to address readers directly; (c) use common, everyday words, and clear language, rather than jargon; (d) use short sections and sentences; and (e) maximize the use of lists and tables.

With the issuance of the proposed rule, BOEM requested that any commenters that believed that it has not met these requirements should send their comments to Peter Meffert at *Peter.Meffert@boem.gov.* To better help us revise the final rule, BOEM requested that your comments be as specific as possible. For example, BOEM asked whether any of the sections or the paragraphs were written unclearly, which sections or sentences were too long, what additional sections, lists or tables would be useful, etc. No comments were received on this topic. For that reason, BOEM has concluded that no changes in the clarity and organization of the rule are necessary.

Public Availability of Comments

All written comments that have been received in the docket [BOEM–2012–0076] for this rulemaking, including names and addresses of respondents, have been posted at *www.regulations.gov.*

Statutes

Data Quality Act

In developing this final rule, BOEM did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153 to 154).

National Environmental Policy Act (NEPA) of 1969

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEM has analyzed this final rule under the criteria of NEPA and DOI's regulations implementing NEPA. This final rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental Categorical Exclusion in that this final rule is ''. . . of an administrative, financial, legal, technical, or procedural nature . . .'' BOEM also has analyzed this final rule to determine if it involves any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement, as set forth in 43 CFR 46.215, and concluded that this final rule would not involve any extraordinary circumstances.

Further, this final rule involves congressionally mandated regulations and there is no discretion in the agency to be informed by NEPA analysis.

National Technology Transfer and Advancement Act (NTTAA)

The NTTAA, Public Law 104–113 (15 U.S.C. 272 note) 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 final rule does not require the use of any technical specifications or standards and, therefore, the requirement to follow voluntary consensus standards does not apply to this rulemaking.

Paperwork Reduction Act (PRA) of 1995

This rule does not contain new information collection requirements that require approval by OMB under the PRA (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the information collection requirements associated with 30 CFR 553 and assigned OMB Control Number 1010–0106, which expires December 31, 2016. BOEM may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Regulatory Flexibility Act (RFA)

DOI certifies that this final rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

The changes in this final rule will potentially affect all oil and gas lessees, operators of leases, holders or rights of use and easement, and pipeline right-of-way holders in the OCS and in State waters. The changes further may affect any operators of oil and gas facilities in other offshore locations, such as navigable rivers and lakes; however, the level of damages for inland water offshore facility incidents have historically been far below the statutory limit and are not likely to exceed the statutory limit of liability. Available information indicates that the changes would mainly affect about 170 active operators and owners on the OCS and State offshore waters. These approximately 170 operators and owners provide OSFR coverage for more than 7,800 OCS Right-of-Use and Easement (RUE) facilities, pipeline Rights-of-Way (ROWs), and leases (both with and without permanent facilities). Small lessees, ROW or RUE holders or operators that operate under this final rule primarily fall under the Small Business Administration's North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, 213111, Drilling Oil and Gas Wells and

237120, Oil and Gas Pipeline and Related Structures. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated two-thirds of these companies are considered small. This final rule, therefore, will affect a substantial number of small entities, but it would not have a significant economic effect on those entities, since the OSFR thresholds are not being adjusted.

This final rule could impact certain OCS and other offshore operators and owners through negligibly higher insurance premiums. Most small entities do not self-insure, but rather share ownership with larger companies that provide them with OSFR coverage or else they obtain insurance for their OSFR obligations in the private marketplace. BOEM does not expect the 78.2 percent increase in the limit of liability to cause the OSFR insurance premiums to materially increase because of the very low anticipated frequency of claims and because each guarantor's or insurer's exposure is limited to the OSFR prescribed coverage limit of $35 million or $150 million. Any potential increased insurance premium should be relatively insignificant as compared to the considerable operational costs and liability risks associated with activities on the OCS. This is true for even the smallest of OCS and other offshore operators and owners. BOEM welcomed specific comments on any expected or potential corresponding OSFR premium increases that may occur because of the increased limit of liability or for some related reason. No such comments were received. For this reason, BOEM believes that its original assessment was correct that no such OSFR premium increases will necessarily occur as a result of this rulemaking.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually rate an agency's responsiveness to their comments and evaluate the enforcement activities. If you wish to comment on the actions of BOEM, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

Pursuant to section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), BOEM wants to assist small entities in understanding this final rule so that they can better evaluate its effects and participate in the rulemaking. If you believe that this final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marshall Rose, of the BOEM Economics Division, at the address in the Technical Information Section listed above.

This final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule will not:

- Have an annual effect on the economy of $100 million or more;
- cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,
- have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements of this rule will apply to all entities having oil and gas operations offshore, including in State waters.

Based on the maximum potential worst case oil spill discharge, approximately 110 of the 170 companies with covered offshore facilities are required to demonstrate OSFR coverage of $70 million or less (see 30 CFR 553.13). These 110 companies will likely not experience any insurance premium increases because of the increased limit of liability, since the level of required OSFR is not impacted by the offshore limit of liability adjustment to $133.65 million. Another five companies must demonstrate OSFR coverage of $105 million. BOEM believes that these companies are unlikely to experience increased insurance premiums resulting from the increased offshore facility limit of liability, just as the few companies demonstrating the $150 million in OSFR coverage that are not self-insured or guaranteed are unlikely to be affected by this rule.

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 businesses. If you wish to comment on actions by employees of BOEM, call 1–888–REG–FAIR (1–888–734–3247).

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate on State, local, or tribal governments, or the private sector, of more than $100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

List of Subjects in 30 CFR Part 553

Administrative practice and procedure, Continental shelf, Economic analysis, Environmental impact statements, Environmental protection, Financial responsibility, Government contracts, Intergovernmental relations, Investigations, OCS, Oil and gas exploration, Oil pollution, Liability, Limit of liability, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Treasury securities.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Bureau of Ocean Energy Management amends 30 CFR part 553 as follows:

PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

■ 1. Revise the authority citation for part 553 to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

■ 2. Revise § 553.1 to read as follows:

§ 553.1 What is the purpose of this part?

This part establishes the requirements for demonstrating Oil Spill Financial Responsibility for covered offshore facilities (COF), sets forth the procedures for claims against COF guarantors, and sets forth the limit of liability for offshore facilities, as adjusted, under Title I of the Oil Pollution Act of 1990, as amended, 33 U.S.C. 2701 *et seq.* (OPA).

■ 3. Amend § 553.3 by:

■ a. Adding in alphabetical order the definitions of ''Annual CPI–U,''

''Current period,'' and ''Previous period;''

■ b. Revising the definition of ''Responsible party'' to read as follows: *§ 553.3 How are the terms used in this regulation defined?*

§ 553.3 How are the terms used in this regulation defined?

* * * * *

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.

* * * * *

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

Responsible party, for purposes of subparts B through F, has the following meanings:

(1) For a COF that is a pipeline, responsible party means any person owning or operating the pipeline;

(2) For a COF that is not a pipeline, responsible party means either the lessee or permittee of the area in which the COF is located, or the holder of a right-of-use and easement granted under applicable State law or the OCSLA (43 U.S.C. 1301–1356) for the area in which the COF is located (if the holder is a different person than the lessee or permittee). A Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body that as owner transfers possession and right to use the property to another person by lease, assignment, or permit is not a responsible party; and

(3) For an abandoned COF, responsible party means any person who would have been a responsible party for the COF immediately before abandonment.

Responsible party, for purposes of subpart G, has the meaning in 33 U.S.C. 2701(32)(C), (E) and (F). This definition includes, as applicable, lessees as defined in this subpart, permittees, right-of-use and easement holders, and pipeline owners and operators.

* * * * *

■ 4. Add a new subpart G to part 553 to read as follows:

Subpart G—Limit of Liability for Offshore Facilities

Sec.

§ 553.700 What is the scope of this subpart?

This subpart sets forth the limit of liability for damages for offshore facilities under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701 *et seq.*) (OPA), as adjusted, under section 1004(d) of OPA (33 U.S.C. 2704(d)). This subpart also sets forth the method for adjusting the limit of liability for damages for offshore facilities for inflation, by regulation, under section 1004(d) of OPA (33 U.S.C. 2704(d)).

§ 553.701 To which entities does this subpart apply?

This subpart applies to you if you are a responsible party for an offshore facility, other than a deepwater port under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), but including an offshore pipeline, or an abandoned offshore facility, including any abandoned offshore pipeline, unless your liability is unlimited under OPA 90 (33 U.S.C. 2704(c)).

§ 553.702 What limit of liability applies to my offshore facility?

Except as provided in 33 U.S.C. 2704(c), the limit of liability under OPA for a responsible party for any offshore facility, including any offshore pipeline, is the total of all removal costs plus $133.65 million for damages with respect to each incident.

§ 553.703 What is the procedure for calculating the limit of liability adjustment for inflation?

The procedure for calculating limit of liability adjustments for inflation is as follows:

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

Percent change in the Annual CPI–U = [(Annual CPI–U for Current Period − Annual CPI–U for Previous Period) ÷ Annual CPI–U for Previous Period] × 100. This cumulative percent change value is rounded to one decimal place.

(b) *Significance threshold.*

(1) A cumulative increase in the Annual CPI–U equal to three percent or more constitutes a significant increase in the Consumer Price Index within the meaning of 33 U.S.C. 2704(d)(4).

(2) Not later than every three years from the year the limit of liability was last adjusted for inflation, BOEM will evaluate whether the cumulative percent change in the Annual CPI–U since that year has reached a significance threshold of three percent or greater.

(3) For any three-year period evaluated under paragraph (b)(2) of this section in which the cumulative percent increase in the Annual CPI–U is less than three percent, if BOEM has not issued an inflation adjustment during that period, BOEM will publish a notice of no inflation adjustment to the offshore facility limit of liability for damages in the **Federal Register**.

(4) Once the three-percent threshold is reached, BOEM will increase by final rule the offshore facility limit of liability for damages in § 553.702 by an amount equal to the cumulative percent change in the Annual CPI–U from the year the limit was established by statute, or last adjusted by regulation, whichever is later. After this adjustment is made, BOEM will resume its process of conducting a review every three years.

(5) Nothing in this section will prevent BOEM, in BOEM's sole discretion, from adjusting the offshore facility limit of liability for damages for inflation by regulation issued more frequently than every three years.

(c) *Formula for calculating inflation adjustments.* BOEM calculates adjustments to the offshore facility limit of liability in 30 CFR 553.702 for inflation using the following formula:

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

§ 553.704 How will BOEM publish the offshore facility limit of liability adjustment?

BOEM will publish the inflation-adjusted limit of liability, and any statutory amendments to that limit of liability in the **Federal Register**, as amendments to § 553.702. Updates to the limit of liability under this section are effective on the 90th day after

publication in the **Federal Register** of the amendments to § 553.702, unless otherwise specified by statute (in the event of a statutory amendment to the limit of liability), or in the **Federal Register** rule amending § 553.702.

[FR Doc. 2014–29093 Filed 12–11–14; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AB24

Federal Government Participation in the Automated Clearing House

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Final rule; technical correction.

SUMMARY: This document corrects a technical error that appeared in the July 24, 2014 amendments to our regulation governing the use of the Automated Clearing House (ACH) network by Federal agencies.

DATES: This technical correction is effective December 12, 2014.

FOR FURTHER INFORMATION CONTACT: Ian Macoy, Director, Settlement Services Division, at (202) 874–6835 or *ian.macoy@fiscal.treasury.gov* or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 24, 2014, the Bureau of the Fiscal Service (Service) published a final rule in the **Federal Register** *(79 FR 42974)* to amend our regulation at 31 CFR part 210 (Part 210) governing the use of the ACH network by Federal agencies. Among the revisions to Part 210 that were published in the final rule were several non-substantive changes to § 210.8(b) to reflect the re-numbering of the NACHA Rules and the updated citation to the Consumer Financial Protection Bureau's Regulation E. In revising § 210.8(b), subparagraphs (1) and (2) of paragraph (b) were inadvertently omitted due to a drafting error.

Description of Correction

This action corrects the omission of paragraphs (b)(1) and (2) from § 210.8(b). In the section-by-section analysis of the final rule preamble published on July 24, 2014, the Service stated that the changes to § 210.8 consisted of the replacement of specific ACH Rules references to reflect re-numbering of the ACH Rules and the updating of the regulatory citation to Regulation E to reflect its re-codification at 12 CFR part 1005. There was no indication in the section-by-section analysis or discussion elsewhere in the preamble of the deletion of subparagraphs (1) and (2), which have no relation to the reasons for the technical revisions to § 210.8, *i.e.,* the re-numbering of the ACH Rules and the re-codification of Regulation E. Similarly, there was no proposal to make any substantive change to § 210.8 in the preamble or section-by-section analysis of the Service's notice of proposed rulemaking to amend Part 210, which was published on December 12, 2013 (78 FR 75528). Subparagraphs (1) and (2) were omitted by error from the final rule purely due to a drafting error in which the text of the subparagraphs was not included in the amendatory instructions to § 210.8(b).

Procedural Matters

Section 553 of the Administrative Procedure Act (APA) (*5 U.S.C. 553(b)(3)(B)*) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, and provides a statement of the reasons for that finding, the agency may issue a final rule without providing notice and an opportunity for public comment. The APA also generally requires that a final rule be effective no sooner than 30 days after the date of publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause why the effective date should not be delayed, and the agency incorporates a statement of the findings and its reasons in the rule issued.

The Service finds that there is good cause, and that it would be contrary to the public interest and unnecessary, to undertake notice and comment procedures to make this technical correction. As discussed above, the preamble and the section-by-section analysis to both the notice of proposed rulemaking and the final rule amendments correctly refer to and discuss the substance of the section affected by this technical correction. The Service is also waiving the 30-day delay in effective date for this correction. We believe that it is in the public interest to ensure that the correction be made as expeditiously as possible to avoid confusion. Therefore, we find that delaying the effective date of this correction would be contrary to the public interest and we find good cause to waive the 30-day delay in the effective date.

This document is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866, entitled Regulatory Planning and Review.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

Words of Issuance

Accordingly, 31 CFR part 210 is corrected by making the following correcting amendments:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. Amend § 210.8 by revising paragraph (b) to read as follows:

§ 210.8 Financial institutions.

* * * * *

(b) *Liability.* Notwithstanding ACH Rules Subsections 2.4.4, 2.8.4, 4.8.5, 2.9.2, 3.2.2, and 3.13.3, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section. A financial institution shall not be liable to any third party for any loss or damage resulting directly or indirectly from an agency's error or omission in originating an entry. Nothing in this section shall affect any obligation or liability of a financial institution under Regulation E, 12 CFR part 1005, or the Electronic Funds Transfer Act, 12 U.S.C. 1693 *et seq.*

(1) An ODFI that transmits a debit entry to an agency without the prior written or similarly authenticated