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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing.

Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.501, in the Table to § 100.501, revise number 20 and number 42 to read as follows:

§ 100.501 Special local regulations; Marine events in the fifth Coast Guard district.

* * * * *

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

Number	Date	Event	Sponsor	Location
Coast Guard Sector Baltimore—COTP Zone				
*	*	*	*	* * *
20	June—2nd Sunday.	The Great Chesapeake Bay Bridge Swim Races and Chesapeake Challenge One Mile Swim.	Great Chesapeake Bay Swim, Inc.	The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00′36″ N, longitude 076°23′53″ W and the eastern shore at latitude 38°59′14″ N, longitude 076°20′00″ W, and 500 yards south of the south span of the bridge from the western shore at latitude 39°00′16″ N, longitude 076°24′30″ W and the eastern shore at latitude 38°58′39″ N, longitude 076°20′10″ W.
*	*	*	*	* * *
Coast Guard Sector Hampton Roads—COTP Zone				
*	*	*	*	* * *
42	July—last Wednesday and following Friday.	Pony Penning Swim.	Chincoteague Volunteer Fire Department.	The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′00″ N, longitude 075°22′45″ W, to latitude 37°54′47″ N, longitude 075°22′45″ W, and to the south by a line drawn from latitude 37°54′47″ N, longitude 075°22′45″ W, to latitude 37°54′47″ N, longitude 075°23′04″ W.

* * * * *

Dated: December 17, 2009.

Wayne E. Justice,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. E9–31410 Filed 1–5–10; 8:45 am]

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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: Final rule.

SUMMARY: The Coast Guard is adopting, as a final rule, without change, an interim rule published on July 1, 2009. The interim rule increased the limits of liability that apply under the Oil Pollution Act of 1990 (OPA 90) to vessels and to deepwater ports subject to the Deepwater Port Act of 1974, to reflect significant increases in the Consumer Price Index (CPI). The interim rule also established the methodology the Coast Guard uses to adjust the OPA 90 limits of liability for inflation, and made minor regulatory

amendments to clarify applicability of the OPA 90 single-hull tank vessel limits of liability.

DATES: This final rule is effective February 5, 2010. As discussed in the interim rule published on July 1, 2009, at 74 FR 31358, to the extent this rulemaking affects the collection of information in 33 CFR 138.85, the Coast Guard will not enforce the information collection request until it is approved by the Office of Management and Budget (OMB).

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket for this rulemaking, are part of Docket No. USCG–2008–0007 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also view the docket for this rulemaking on the Internet by going to *http://www.regulations.gov,* inserting USCG–2008–0007 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rulemaking, call or e-mail Benjamin White, National Pollution Funds Center, Coast Guard; telephone 202–493–6863, e-mail *Benjamin.H.White@uscg.mil.* If you have questions on viewing the docket for this rulemaking, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CFR Code of Federal Regulations
COFR Certificate of Financial Responsibility
CPI Consumer Price Index
CPI NPRM The notice of proposed rulemaking published on September 24, 2008, titled ''Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports'' (73 FR 54997)
CPI–U Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84=100
Deepwater Port A deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524)
DHS U.S. Department of Homeland Security
FR **Federal Register**
Fund Oil Spill Liability Trust Fund
Interim Rule The interim rule for this rulemaking, published on July 1, 2009, titled ''Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports'' (74 FR 31357)
OMB Office of Management and Budget
OPA 90 The Oil Pollution Act of 1990, as amended (Title I of which is codified at 33 U.S.C. 2701, et seq.; Title IV of which is codified in relevant part at 46 U.S.C. 3703a)
§ Section symbol
U.S.C. United States Code

II. Regulatory History

On September 24, 2008, the Coast Guard published a notice of proposed rulemaking in the **Federal Register**, at 73 FR 54997, entitled ''Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports'' (CPI NPRM). The CPI NPRM proposed to adjust the Oil Pollution Act of 1990, as amended (OPA 90), limits of liability set forth at 33 CFR part 138, subpart B, for vessels and for deepwater ports licensed under the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501–1524) (hereinafter ''Deepwater Ports''), as required by 33 U.S.C. 2704(d), to reflect significant increases in the Consumer Price Index (CPI). The CPI NPRM also proposed a methodology for calculating and implementing the proposed and future mandated OPA 90 limit of liability inflation adjustments.

On July 1, 2009, we published the Interim Rule, at 74 FR 31357, responding to public comments submitted on the CPI NPRM, adjusting the OPA 90 limits of liability as proposed, and establishing the methodology for adjusting the limits of liability. In addition, in response to a public comment, the Interim Rule made minor amendments to clarify the applicability of the single-hull tank vessel limits of liability, and solicited additional public comment on this clarification.

In the docket for this rulemaking, we received two letters containing a total of seven comments on the Interim Rule. We also received a non-public oral comment on the Interim Rule, which we have summarized in a memo to the docket. These comments are discussed in part IV, below.

No public meeting was requested at either the CPI NPRM or Interim Rule stages of this rulemaking, and none was held. All comments and other materials related to this rulemaking have been placed in the public docket for this rulemaking (Docket No. USCG–2008–0007).

For further discussion of the regulatory history for this rulemaking, see the Interim Rule. That document is available in the docket for this rulemaking.

III. Background

In general under Title I of OPA 90, the responsible parties for a vessel or facility which discharges, or poses a substantial threat of discharge of, oil into or upon United States navigable waters, adjoining shorelines or the exclusive economic zone, are liable for the OPA 90 removal costs and damages that result from such incident. (33 U.S.C. 2702(a).) The responsible parties' total liability for OPA 90 removal costs and damages is, however, limited under certain circumstances, as provided in 33 U.S.C. 2704, to the applicable limit of liability amounts set forth at 33 CFR part 138, subpart B.

In instances when the liability limits apply, the Oil Spill Liability Trust Fund (Fund) is available to compensate the excess OPA 90 removal costs and damages. (See 33 U.S.C. 2708, 2712(a)(4), and 2713; and 33 CFR part 136.) Therefore, to prevent the real value of the OPA 90 limits of liability from depreciating over time as a result of inflation and preserve the polluter-pays principle embodied in OPA 90, OPA 90 requires that the President periodically adjust the limits of liability, by regulation, to reflect significant increases in the CPI. (See 33 U.S.C. 2704(d)(4).)

On September 24, 2008, in accordance with this mandate and further delegations to the Coast Guard, we proposed to adjust the OPA 90 limits of liability for vessels and Deepwater Ports in 33 CFR part 138, subpart B, for inflation, and to establish the methodology for the proposed and future mandated OPA 90 limit of liability inflation adjustments. (CPI NPRM, 73 FR 54997.)

During the public comment period for the CPI NPRM, the Coast Guard vessel certification program received a question asking what applicable amounts of OPA 90 financial

responsibility apply under the Certificate of Financial Responsibility (COFR) program regulations, at 33 CFR part 138, subpart A, to single-hull tank vessels that do not carry oil as cargo. As explained further in the Interim Rule, it was not until after the comment period for the CPI NPRM closed that we determined the question raised a substantive issue concerning applicability of the single-hull tank vessel limits of liability amended by this rulemaking. The question was, therefore, submitted as a comment to the public docket for this rulemaking after the close of the CPI NPRM comment period.

To avoid delaying the required inflation adjustments to the OPA 90 limits of liability, we published the Interim Rule, at 74 FR 31357, instead of a final rule. This permitted us to receive additional public comment on the single-hull tank vessel limit of liability applicability issue before issuing a final rule. The Interim Rule increased the OPA 90 limits of liability for vessels and Deepwater Ports, effective July 31, 2009, to reflect significant increases in the CPI. In addition, the Interim Rule established the methodology the Coast Guard uses to adjust the OPA 90 limits of liability for inflation. Finally, the Interim Rule made minor amendments to §§ 138.220(b) and 138.230(a), clarifying that the OPA 90 single-hull tank vessel limits of liability only apply to single-hull tank vessels that are constructed or adapted to carry, or that carry, oil as cargo or cargo residue, and specifically invited public comment on this clarification.

For further discussion of the background for this rulemaking, see the preambles for the CPI NPRM and the Interim Rule. Both documents are available in the docket for this rulemaking.

IV. Discussion of Comments and Changes

Two letters with seven comments, and a memorandum summarizing one non-public oral comment related to the Interim Rule, were submitted to the docket for this rulemaking. The comments were generally supportive of this rulemaking and, as discussed below, none of the comments raised any issue that persuaded or convinced the Coast Guard to change the regulatory text published in the Interim Rule. This final rule, therefore, adopts the Interim Rule, at 74 FR 31357, without change.

An anonymous commenter expressed the view that fines ''oil profiteers'' have to pay for polluting should be raised by 1,000 percent. This comment is beyond the scope of this rulemaking. The primary purpose of this rulemaking is to implement the statutorily-mandated inflation increases to the OPA 90 limits of liability and to clarify their applicability. Any other increase to the limits of liability would have to be authorized by Congress. Moreover, the OPA 90 limits of liability only concern the liability of responsible parties under 33 U.S.C. 2702 for OPA 90 removal costs and damages. The OPA 90 limits of liability and 33 CFR part 138, subpart B, as amended by this rulemaking do not limit, or otherwise affect or concern, the amount of fines, penalties or other liability of responsible parties under other provisions of law.

An environmental organization supported increasing the limits of liability to reflect significant increases in the CPI, agreed with the Coast Guard's assessment that the statute does not allow for CPI-based reductions in the limits of liability, agreed with the process established to ensure future increases occur on a regular basis, and agreed with the procedure to immediately update limits as soon as the percentage target is reached if it does not occur at the 3 year interval. This commenter further stated that the threshold of 3 percent CPI increase over 3 years set forth in the Interim Rule is appropriate. The commenter, however, expressed the view that a lower percentage threshold should be considered by the Coast Guard (i.e., a 1% CPI increase over 3 years). In response to that comment, we considered whether a lower threshold should be adopted. We concluded, based on the entire historical record of annual changes in the CPI–U (the Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84 = 100) going back to 1913, that a CPI increase threshold of 3 percent over 3 years will almost always result in future inflation adjustments to the OPA 90 limits of liability every 3 years, and is therefore adequate to protect against risk shifting to the Fund. We are, therefore, making no changes to the CPI increase threshold adopted in the Interim Rule in response to this comment.

The non-public oral comment, from a financial responsibility guarantor, expressed support for the minor amendments made by the Interim Rule, at §§ 138.220(b) and 138.230(a), to clarify that the single-hull tank vessel limits of liability only apply to single-hull tank vessels that are constructed or adapted to carry, or that carry, oil as cargo or cargo residue. The clarifying amendments are being adopted by this final rule without change.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

This final 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. OMB has not reviewed it under that Order. Public comments on the Interim Rule are summarized in Part IV of this preamble. We made no changes to the Interim Rule and we received no public comments that would alter our assessment of the impacts of the Interim Rule. As explained in Part IV, above, we are adopting the Interim Rule without change. We are, therefore, adopting the Regulatory Assessment prepared for the Interim Rule as final. See the ''Regulatory Planning and Review'' section of the Interim Rule for more information.

B. Small Entities

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

In the CPI NPRM and again in the Interim Rule, we certified under 5 U.S.C. 605(b) that the rule would not have a significant economic impact on a substantial number of small entities. We have found no additional data or information that would change our findings in this respect. We, therefore, adopt for this final rule, the certification of the Interim Rule, under 5 U.S.C. 605(b), that this rulemaking will not have a significant economic impact on a substantial number of small entities. See the ''Small Entities'' sections of the Interim Rule and the NPRM for additional information.

C. Assistance for Small Entities

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

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 collection, 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.

Public comments on the Interim Rule are summarized in Part IV of this preamble, above. We received no public comments that would alter our assessment of the collection of information impacts in the Interim Rule. We have adopted the assessment in the Interim Rule as final. See the ''Collection of Information'' section of the Interim Rule in the public docket for this rulemaking (USCG–2008–0007).

OMB has not yet completed its review of this collection request titled ''Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability — Vessels and Deepwater Ports'' (OMB CONTROL NUMBER: 1625–0046). Therefore, the Coast Guard will not enforce the information collection requirement at 33 CFR 138.85 triggered by this rulemaking until its information collection request is approved by OMB. We will publish a document in the **Federal Register** informing the public of OMB's decision to approve, modify, or disapprove the collection.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the public docket for this rulemaking, where indicated above under **ADDRESSES**.

List of Subjects in 33 CFR Part 138

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

For the reasons discussed in the preamble, the interim rule amending 33 CFR part 138, published at 74 FR 31368 on July 1, 2009, is adopted as a final rule without change.

Dated: December 30, 2009.

William R. Grawe,

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

[FR Doc. E9–31349 Filed 1–5–10; 8:45 am]

BILLING CODE 9110–04–P