

## § 138.200

## 33 CFR Ch. I (7-1-14 Edition)

### § 138.200 Scope.

This subpart sets forth the limits of liability for vessels and deepwater ports under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*) (OPA 90), as adjusted under Section 1004(d) of OPA 90 (33 U.S.C. 2704(d)). This subpart also sets forth the method for adjusting the limits of liability by regulation for inflation under Section 1004(d) of OPA 90 (33 U.S.C. 2704(d)).

### § 138.210 Applicability.

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

### § 138.220 Definitions.

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

(b) As used in this subpart—

*Annual CPI-U* means the annual “Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All items, 1982–84=100”, published by the U.S. Department of Labor, Bureau of Labor Statistics.

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

*Single-hull* means the hull of a tank vessel that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, that is not a double hull as defined in 33 CFR part 157. *Single-hull* includes the hull of any such tank vessel that is fitted with double sides only or a double bottom only.

### § 138.230 Limits of liability.

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

(1) For a single-hull tank vessel greater than 3,000 gross tons, the greater of \$3,200 per gross ton or \$23,496,000;

(2) For a tank vessel greater than 3,000 gross tons, other than a single-hull tank vessel, the greater of \$2,000 per gross ton or \$17,088,000.

(3) For a single-hull tank vessel less than or equal to 3,000 gross tons, the greater of \$3,200 per gross ton or \$6,408,000.

(4) For a tank vessel less than or equal to 3,000 gross tons, other than a single-hull tank vessel, the greater of \$2,000 per gross ton or \$4,272,000.

(5) For any other vessel, the greater of \$1,000 per gross ton or \$854,400.

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

(1) For any deepwater port other than a deepwater port with a limit of liability established by regulation under Section 1004(d)(2) of OPA 90 (33 U.S.C. 2704(d)(2)) and set forth in paragraph (b)(2) of this section, \$373,800,000;

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

(i) For the Louisiana Offshore Oil Port (LOOP), \$87,606,000; and

(ii) [Reserved]

(c) [Reserved]

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

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

Percent change in the Annual CPI-U =  
[(Annual CPI-U for Current Period – Annual CPI-U for Previous Period) ÷ Annual CPI-U for Previous Period] × 100.

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

(b) *Significance threshold*. Not later than every three years from the year the limits of liability were last adjusted for inflation, the Director, NPFCC, will evaluate whether the cumulative percent change in the Annual

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CPI-U since that date has reached a significance threshold of 3 percent or greater. For any three-year period in which the cumulative percent change in the Annual CPI-U is less than 3 percent, the Director, NPFC, will publish a notice of no inflation adjustment to the limits of liability in the FEDERAL REGISTER. If this occurs, the Director, NPFC, will recalculate the cumulative percent change in the Annual CPI-U since the year in which the limits of liability were last adjusted for inflation each year thereafter until the cumulative percent change equals or exceeds the threshold amount of 3 percent. Once the 3-percent threshold is reached, the Director, NPFC, will increase the limits of liability, by regulation, for all source categories (including any new limit of liability established by statute or regulation since the last time the limits of liability were adjusted for inflation) by an amount equal to the cumulative per-

cent change in the Annual CPI-U from the year each limit was established, or last adjusted by statute or regulation, whichever is later. Nothing in this paragraph shall prevent the Director, NPFC, in the Director's sole discretion, from adjusting the limits of liability for inflation by regulation issued more frequently than every three years.

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

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

(d) [Reserved]

[USCG-2005-21780, 73 FR 53697, Sept. 17, 2008, as amended by USCG-2012-0306, 77 FR 37315, June 21, 2012]