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Subpart A—Financial Responsibility for Water Pollution (Vessels)

§ 138.10 Scope.

This subpart sets forth the procedures by which an operator of a vessel must establish and maintain, for itself and for the owners and demise charterers of the vessel, evidence of financial responsibility required by Section 1016(a) of the Oil Pollution Act of 1990, as amended (OPA 90) (33 U.S.C. 2716), and Section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) (42 U.S.C. 9608), equal to the total applicable amount determined under this subpart and sufficient to cover their liability arising under—

(a) Sections 1002 and 1004 of OPA 90 (33 U.S.C. 2702, 2704); and

(b) Section 107 of CERCLA (42 U.S.C. 9607).

§ 138.15 Applicability.

(a) This subpart applies to the operator as defined herein of—

(1) A tank vessel of any size, and a foreign-flag vessel of any size, using the waters of the exclusive economic zone to transship or lighter oil (whether delivering or receiving) destined for a place subject to the jurisdiction of the United States; and

(2) Any vessel using the navigable waters of the United States or any port or other place subject to the jurisdiction of the United States, including a vessel using an offshore facility subject to the jurisdiction of the United States, except—

(i) A vessel that is 300 gross tons or less; or

(ii) A non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.

(b) For the purposes of financial responsibility under OPA 90, a mobile offshore drilling unit is treated as a tank vessel when it is being used as an offshore facility and there is a discharge, or a substantial threat of a discharge, of oil on or above the surface of the water. A mobile offshore drilling unit is treated as a vessel other than a tank vessel when it is not being used as an offshore facility.

(c) In addition to a non-self-propelled barge over 300 gross tons that carries hazardous substances as cargo, for the purposes of financial responsibility under CERCLA, this subpart applies to a self-propelled vessel over 300 gross tons, even if it does not carry hazardous substances.

(d) This subpart does not apply to operators of public vessels.