

§ 137.80 Commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located.

(a) Throughout the inquiries, persons specified in § 137.1(a) and environmental professionals conducting the inquiry must take into account commonly known or reasonably ascertainable information within the local community about the facility and the real property on which the facility is located and consider that information when seeking to identify conditions indicative of the presence or likely presence of oil at the facility and the real property.

(b) Commonly known information may include information obtained by the person specified in § 137.1(a) or by the environmental professional about the presence or likely presence of oil at the facility and the real property on which the facility is located that is incidental to the information obtained during the inquiry of the environmental professional.

(c) To the extent necessary to achieve the objectives and performance factors of § 137.30(a) and (b), the person specified in § 137.1(a) and the environmental professional must gather information from varied sources whose input either individually or taken together may provide commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located; the environmental professional may refer to one or more of the following sources of information:

(1) Current owners or occupants of neighboring properties or properties adjacent to the facility and the real property on which the facility is located.

(2) Local and state government officials who may have knowledge of, or information related to, the facility and the real property on which the facility is located.

(3) Others with knowledge of the facility and the real property on which the facility is located.

(4) Other sources of information, such as newspapers, Web sites, community organizations, local libraries, and historical societies.

§ 137.85 The degree of obviousness of the presence or likely presence of oil at the facility and the real property on which the facility is located and the ability to detect the oil by appropriate investigation.

(a) Persons specified in § 137.1(a) and environmental professionals conducting an inquiry of a facility and the real property on which it is located on their behalf must take into account the information collected under §§ 137.45 through 137.80 in considering the degree of obviousness of the presence or likely presence of oil at the facility and the real property on which the facility is located.

(b) Persons specified in § 137.1(a) and environmental professionals conducting an inquiry of a facility and the property on which the facility is located on their behalf must take into account the information collected under §§ 137.45 through 137.80 in considering the ability to detect the presence or likely presence of oil by appropriate investigation. The report of the environmental professional should include an opinion under § 137.35(c)(4) regarding whether additional appropriate investigation is necessary.

PART 138—EVIDENCE OF FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS, DEEPWATER PORTS AND ON-SHORE FACILITIES)

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AUTHORITY: 6 U.S.C. 552(d); 33 U.S.C. 2704, 2716, 2716a; 42 U.S.C. 9608, 9609; E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 193; E.O. 12777, Secs. 4 and 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, Sec. 89, 3 CFR, 2004 Comp., p. 166, and by E.O. 13638, Sec. 1, 3 CFR, 2014 Comp., p.227; Department of Homeland Security Delegation Nos. 00170.1, Revision 01.2 and 5110, Revision 01. Section 138.40 also issued under the authority of 46 U.S.C. 2103 and 14302.

SOURCE: USCG-2005-21780, 73 FR 53697, Sept. 17, 2008, unless otherwise noted.

Subpart A—Evidence of Financial Responsibility for Water Pollution (Vessels)

SOURCE: 86 FR 68139, Dec. 1, 2021, unless otherwise noted.

§ 138.10 Scope and purpose.

- (a) *Scope.* This subpart sets forth—
 - (1) The requirements and procedures each COFR Operator (as defined in §138.30(b)) must use to establish and maintain the evidence of financial responsibility required by the OPA 90 and CERCLA (both defined in §138.30), and to obtain Certificates of Financial Responsibility (COFR);
 - (2) The standards and procedures the Coast Guard uses to determine the acceptability of guarantors;
 - (3) The procedures guarantors must use to submit evidence of financial responsibility on behalf of the responsible parties for vessels to which this subpart applies;
 - (4) The requirements for designating and maintaining U.S. agents for service of process;

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(5) The requirements for reporting changes affecting compliance with this subpart; and

(6) The enforcement actions that may result from non-compliance with this subpart or OPA 90, CERCLA, or both, referenced in paragraph (a)(1) of this section.

(b) *Purpose.* These requirements ensure that the responsible parties for vessels to which this subpart applies, have sufficient available financial resources to cover their potential liabilities to the United States and other claimants in the following scenarios:

(1) Under OPA 90 in the event of a discharge, or substantial threat of a discharge, of oil; and

(2) In the case of vessels greater than 300 gross tons, under CERCLA in the event of a release, or threatened release, of a hazardous substance.

§ 138.20 Applicability.

(a) *Applicability generally.* This subpart applies—

- (1) To the COFR Operator of—
 - (i) Any vessel over 300 gross tons (except a vessel listed in paragraph (d)(1) or (2) of this section) using the navigable waters of the United States, or any port or other place subject to the jurisdiction of the United States, including any such vessel using a deepwater port or other offshore facility subject to the jurisdiction of the United States;

- (ii) Any vessel of any size (except a vessel listed in paragraph (d)(1) or (3) of this section) 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

- (iii) Any tank vessel over 100 gross tons (except a vessel listed in paragraph (d)(1) or (3) of this section) using the navigable waters of the United States, or any port or other place subject to the jurisdiction of the United States, including any such tank vessel using a deepwater port or other offshore facility subject to the jurisdiction of the United States;

- (2) To a guarantor providing evidence of financial responsibility under this subpart on behalf of one or more of a vessel's responsible parties;

(3) To responsible parties other than the COFR Operator designated to represent the responsible parties for purposes of this subpart; and

(4) To any person serving as a U.S. agent for service of process under this subpart.

(b) *How to apply this part to mobile offshore drilling units.* For the purposes of applying the evidence of financial responsibility required under OPA 90 and this subpart and the limits of liability set forth in subpart B of this part, and in addition to any OPA 90 offshore facility evidence of financial responsibility requirements that may apply under 30 CFR part 553, a mobile offshore drilling unit is treated as—

(1) A tank vessel when it is being used as an offshore facility; and

(2) A vessel other than a tank vessel when it is not being used as an offshore facility.

(c) *How to apply CERCLA evidence of financial responsibility to self-propelled vessels.* For the purposes of applying the evidence of financial responsibility required under CERCLA and for vessels identified in paragraph (a)(1)(i) of this section, this subpart applies to a self-propelled vessel over 300 gross tons even if it does not carry hazardous substances.

(d) *Exceptions.* (1) This subpart does not apply to public vessels.

(2) Paragraph (a)(1)(i) of this section does not apply to any non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.

(3) Paragraphs (a)(1)(ii) and (iii) of this section do not apply to: any offshore supply vessel; any fishing vessel or fish tender vessel of 750 gross tons or less that transfers fuel without charge to a fishing vessel owned by the same person; any towing or pushing vessel (tug) simply because it has in its custody a tank barge; or any tank vessel that only carries, or is adapted to carry, non-liquid hazardous material in bulk as cargo or cargo residue.

§ 138.30 Definitions.

(a) As used in this subpart, the following terms have the meanings set forth in—

(1) OPA 90 (specifically in 33 U.S.C. 2701): *Claim, claimant, damages, deep-*

water port, discharge, Exclusive Economic Zone, facility, incident, liable or liability, mobile offshore drilling unit, navigable waters, offshore facility, oil, owner or operator, person, remove, removal, removal costs, responsible party, tank vessel, United States, and vessel; and

(2) CERCLA (42 U.S.C. 9601): *Claim, claimant, damages, facility, hazardous substance, liable or liability, navigable waters, offshore facility, owner or operator, person, remove, removal, United States, and vessel.*

(3) 46 CFR 69.9: *Convention Measurement System, foreign-flag vessel, gross tonnage ITC (GT ITC)¹ and gross register tonnage (GRT), tonnage, and U.S.-flag vessel.*

(b) As used in this subpart—

Applicable amount means an OPA 90 or CERCLA evidence of financial responsibility amount determined to apply to a vessel as provided under § 138.100.

Application means an “Application for Vessel Certificate of Financial Responsibility (Water Pollution)”, which the COFR Operator for one or more vessels has completed and verified in eCOFR, as provided in § 138.60(c)(1)(i), or signed, dated, and submitted to the NPFCA by one of the submission methods specified in § 138.60(c)(1)(ii) through (iv).

Cargo means goods or materials carried on board a vessel for purposes of transportation, whether proprietary or nonproprietary. A hazardous substance or oil carried solely for use aboard the carrying vessel is not cargo.

CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, *et seq.*).

COFR means a current Certificate of Financial Responsibility (Water Pollution) issued by the Director, under this subpart, as provided in § 138.70, and posted on the NPFCA COFR program website <https://npsc.uscg.mil/cofr/default.aspx>.

COFR Operator means a responsible party who conducts, or has responsibility for, the operation of a vessel to

¹The acronym “ITC” refers to the International Tonnage Convention. GT ITC, as defined in 46 CFR 69.9 means the gross tonnage measurement of a vessel as applied under the Convention Measurement System.

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which this subpart applies—that is, a person who is an operator as defined in OPA 90 and CERCLA, and, when there is more than one responsible party (including more than one operator), is the operator designated and authorized by all the vessel’s responsible parties to act on their behalf for the purpose of complying with this subpart, including submitting (or causing to be submitted) all Applications and requests for COFR renewal, evidence of financial responsibility and reports, and payment of all fees required by § 138.120.

(i) If a vessel has one owner and is operated by that owner, or the owner controls and is responsible for the vessel’s operation, the owner is the COFR Operator. In all other cases the person who operates, or controls and is principally responsible for the operation of, the vessel (for example, the demise charterer) is the COFR Operator.

(ii) A person who is responsible, or who agrees by contract to become responsible, for a vessel in the capacity of a builder, repairer, or scrapper, or for the purpose of holding the vessel out for sale or lease, is the COFR Operator. A person who takes possession of, or responsibility for, a newly built, modified, or repaired vessel from a builder or repairer, or who purchases and operates or becomes a demise charterer of a vessel held out for sale or lease, is the COFR Operator.

(iii) A time or voyage charterer who does not assume responsibility for the operation of a vessel is not a COFR Operator for purposes of this subpart.

(iv) The designation of an operator to act as the COFR Operator on behalf of a vessel’s responsible parties for purposes of this subpart does not limit who may be determined to be an operator under OPA 90, CERCLA, or both, in the event of an incident or a release.

Day or *days* means calendar days unless otherwise specified.

Director means the person in charge of the U.S. Coast Guard, National Pollution Funds Center (NPFC), or that person’s authorized representative.

eCOFR means the electronic Certificate of Financial Responsibility web-based process located on the NPFC COFR program website, <https://npsc.uscg.mil/cofr/default.aspx>, and is the

process COFR Operators may use to apply for and renew COFRs.

Evidence of financial responsibility means the demonstration of the financial ability of the responsible parties for a vessel to which this subpart applies to meet their potential liabilities under OPA 90, CERCLA, or both, up to the total applicable amount determined as provided under § 138.100.

Financial guarantor is a type of guarantor and means a business entity or other person providing a financial guaranty under § 138.110(c). A financial guarantor is distinct from a COFR insurance guarantor, a self-insurer, or a surety. A self-insurer, however, may also serve as a financial guarantor for others.

Fish tender vessel and *fishing vessel* have the same meanings as set forth in 46 U.S.C. 2101.

Fleet Certificate means a COFR issued by the Director under this subpart to the COFR Operator of a fleet of 2 or more unmanned, non-self-propelled barges that are not tank vessels and that, from time to time, may be subject to this subpart (for example, a hopper barge over 300 gross tons when carrying oily metal shavings or similar cargo). A Fleet Certificate covers, automatically, all unmanned, non-self-propelled, non-tank barges for which the COFR Operator may from time to time be responsible that does not exceed the maximum gross tonnage indicated on the Fleet Certificate.

Fuel means any oil or hazardous substance used, or capable of being used, to produce heat or power by burning, including power to operate equipment. A hand-carried pump with no more than 5 gallons of fuel capacity, that is neither integral to nor regularly stored aboard a non-self-propelled barge, is not equipment.

Guarantor means any person who has been determined to be acceptable by the Director, as provided in § 138.110, and who is providing evidence of financial responsibility on behalf of one or more of a vessel’s responsible parties, other than as a responsible party providing self-insurance under § 138.110(d).

Hazardous material has the same meaning as set forth in 46 U.S.C. 2101.

Individual Certificate means a COFR issued by the Director under this subpart to the COFR Operator for a single vessel.

Insurance guarantor is a type of guarantor and means an insurance company, association of underwriters, ship owners' protection and indemnity association, or other person, serving as a guarantor under §138.110(b). An *insurance guarantor* is distinct from a self-insurer, a financial guarantor, or a surety.

Master Certificate means a COFR issued by the Director under this subpart to the COFR Operator of one or more vessels that are under the custody of such person solely in the capacity of a builder, repairer, or scrapper, or for the purpose of holding vessels out for sale or lease, where such person does not physically operate the vessels. A Master Certificate covers, automatically, all of the vessels subject to this subpart held by the COFR Operator solely for purposes of construction, repair, scrapping, sale or lease. A vessel which is being operated commercially in any business venture, including the business of building, repairing, scrapping, leasing, or selling (for example, a sloop barge used by a shipyard) cannot be covered by a Master Certificate and must have either a current Individual Certificate or, if applicable, a current Fleet Certificate.

Net worth means the amount of all assets located in the United States, less all liabilities anywhere in the world.

NPFC means the U.S. Coast Guard, National Pollution Funds Center. NPFC is the U.S. Government office responsible for administering the OPA 90 and CERCLA vessel COFR program.

Offshore supply vessel has the same meaning as set forth in 46 U.S.C. 2101.

OPA 90 means the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*).

Public vessel means a vessel owned or demise chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

Release, for purposes of this subpart, means a release as defined in CERCLA (specifically, 42 U.S.C. 9601), or a

threatened release, of a hazardous substance.

Responsible party, for purposes of OPA 90 evidence of financial responsibility, has the same meaning as defined at 33 U.S.C. 2701; and, for purposes of CERCLA evidence of financial responsibility, means any person who is an "owner or operator," as defined at 42 U.S.C. 9601, including any person chartering a vessel by demise.

Self-insurer means a COFR Operator providing evidence of financial responsibility as the responsible party of the subject vessel, as provided under §138.110(d). A self-insurer is distinct from a guarantor.

Total applicable amount means an evidence of financial responsibility amount that must be demonstrated under this subpart, determined as provided in §138.100.

Working capital means the amount of current assets located in the United States, less all current liabilities anywhere in the world.

§ 138.40 General requirements.

(a) *Requirement to establish and maintain evidence of financial responsibility.* The COFR Operator of a vessel must establish and maintain (or cause to be established and maintained) evidence of financial responsibility acceptable to the Director using any one of the methods specified in §138.110, in an amount equal to or greater than the total applicable amount determined under §138.100 and, in the case of a financial guarantor, as further provided under §138.110(c)(2) (aggregation of total applicable amounts). The evidence of financial responsibility required by this paragraph must be—

(1) Established as of the date they become a responsible party; and

(2) Continuously maintained for so long as they remain a responsible party.

(b) *Requirement to have a COFR and report changes.* The COFR Operator must apply for and ensure the vessel is covered at all times by a current COFR, by complying with the requirements and procedures set forth in this subpart, including the reporting requirements in §138.150.

§ 138.50

§ 138.50 How to apply vessel gross tonnages.

(a) *Purpose.* This section sets forth the methods for applying vessel gross tonnage to—

(1) Determine whether a vessel exceeds the 100 or 300 gross ton threshold under §138.20 and OPA 90, CERCLA, or both;

(2) Calculate the OPA 90 and CERCLA applicable amounts of financial responsibility required, as provided in §138.100; and

(3) Determine the OPA 90 limit of liability under subpart B of this part in the event of an oil pollution incident, and the CERCLA limit of liability under 42 U.S.C. 9607 in the event of a hazardous substance release.

(b) *Both GT ITC and GRT assigned.* For a vessel assigned both gross tonnage ITC (GT ITC) and gross register tonnage (GRT) under 46 CFR part 69, apply the tonnage thresholds in §138.20 using the assigned GRT tonnage, and

determine the applicable amounts of financial responsibility and the limits of liability using the assigned GT ITC tonnage.

(c) *GT ITC or GRT assigned.* For a vessel assigned only a GT ITC or a GRT tonnage under 46 CFR part 69, apply the tonnage thresholds in §138.20, and determine the applicable amounts of evidence of financial responsibility and the limits of liability using the assigned GT ITC or GRT tonnage.

(d) *High or low GRT assigned.* For a vessel assigned a high and low GRT tonnage under 46 CFR part 69, subpart D (Dual Regulatory Measurement System), apply the tonnage thresholds in §138.20, and determine the applicable amounts of financial responsibility and the limits of liability, using the high GRT tonnage.

(e) *Summary.* The use of assigned gross tonnages, as required by paragraphs (b) through (d) of this section, is summarized in the following table.

TABLE 1 TO § 138.50(e)—USE OF ASSIGNED GROSS TONNAGES

Category	Assigned tonnage	
	To apply the tonnage thresholds in § 138.20	To determine applicable amounts under § 138.100 and limits of liability
<i>Vessels Assigned Both GT ITC and GRT.</i>	GRT	GT ITC.
<i>Vessels Assigned— GT ITC only</i>	GT ITC	GT ITC.
<i>GRT only</i>	GRT	GRT.

(f) *Certified gross tonnage governs.* In the event of an incident or release, the responsible parties and guarantors are governed by the vessel’s assigned gross tonnage on the date of the incident. This is as determined under paragraphs (b) through (e) of this section and evidenced on the appropriate tonnage certifying document as provided for under the U.S. tonnage regulations or international conventions (for example, tonnage certificate or completed Simplified measurement application, International Tonnage Certificate (1969)), regardless of what gross tonnage is specified in the Application or guaranty form submitted under this subpart, except when the responsible parties or guarantors knew or should have known that the tonnage certificate in-

formation was incorrect (see also §138.110(h)(1)(iii)).

(g) *Requirement to present tonnage certifying document(s).* Each COFR Operator must submit to the Director, or other authorized United States Government official, upon request, for examination and copying, the original or an unaltered and legible electronic copy of the vessel’s applicable tonnage certifying document(s).

§ 138.60 Forms and submissions; ensuring submission timeliness.

(a) *Where to obtain forms.* All forms referred to in this subpart are available at the NPFC COFR program website, <https://npfc.uscg.mil/cofr/default.aspx>, and may be completed online or downloaded.

(b) *Where to obtain information.* Direct all questions concerning the requirements of this subpart to the NPFC at one of the addresses in paragraphs (c)(1)(ii) through (iv) of this section or by calling the NPFC at 202-795-6130.

(c) *How to present Applications and other required submissions.* (1) Provide all submissions required by this subpart to the Director, by one of the following four methods:

(i) Electronically, using the eCOFR process (located at <https://npfc.uscg.mil/cofr/default.aspx>);

(ii) By email, sent to such email address as the Director may specify, attaching legible electronic images scanned in a format acceptable to the Director;

(iii) By fax, sent to 202-795-6123 with a cover sheet specifying the total number of pages, the sender's telephone number, and referencing NPFC telephone number 202-795-6130; or

(iv) By mail, addressed to—
Director, National Pollution Funds Center, ATTN: VESSEL CERTIFICATION, U.S. Coast Guard Stop 7605, 2703 Martin Luther King Jr. Ave. SE, Washington, DC 20593-7605.

(2) Submissions may not be hand delivered to the NPFC.

(3) Do not present submissions by more than one method.

(d) *Required contents of submissions.* Unless otherwise instructed by the Director, all submissions required by this subpart must—

(1) Set forth, in full, the correct legal name of the COFR Operator to whom the COFR is to be, or has been, issued;

(2) Be in English, and

(3) Express all monetary terms in United States dollars.

(e) *Ensuring the timeliness of submissions; requesting deadline exceptions.* (1) Compliance with a submission deadline will be determined based on the day the submission is received by NPFC. If a deadline specified in this subpart falls on a weekend or Federal holiday, the deadline will occur on the next business day.

(2) Ensuring the timeliness of the submissions is the sole responsibility of the person making the submission.

(3) The Director may, in the Director's sole discretion, grant an excep-

tion to a deadline specified in this subpart for good cause shown.

(f) *Public access to information.* Financial data and other information submitted to the Director is considered public information to the extent required by the Freedom of Information Act (5 U.S.C. 552) and permitted by the Privacy Act (5 U.S.C. 552(a)).

§ 138.70 Issuance and renewal of COFRs.

(a) *Types of COFRs.* The Director issues the following three types of COFRs as provided further in § 138.80: Individual Certificates, Fleet Certificates and Master Certificates.

(b) *Requirements before issuance and renewal of COFRs.* The Director will issue or renew a COFR only after NPFC receives a completed Application or request for COFR renewal, and satisfactory evidence of financial responsibility.

(c) *COFRs are issued only to designated COFR Operators.* Each COFR of any type is issued only in the name of the COFR Operator designated in the Application or request for COFR renewal.

(d) *Form of issuance.* All COFRs are issued by the Director in electronic form on NPFC's COFR program website (<https://npfc.uscg.mil/cofr/default.aspx>) for a term of no more than 3 years from the date of issuance.

(e) *Information included in COFRs.* The following information is available on NPFC's COFR program website for each COFR issued by the Director:

(1) The name of the COFR Operator;

(2) The date of COFR expiration;

(3) The COFR number;

(4) For an Individual Certificate, the name of the covered vessel, and the vessel's gross tonnage information, including the measurement system(s) used;

(5) For a Fleet Certificate, the gross tons of the largest unmanned, non-self-propelled, non-tank barge within the fleet, including the measurement systems(s) used; and

(6) For a Master Certificate, the gross tons of the largest tank vessel and largest vessel other than a tank vessel eligible for coverage by the Master Certificate, including the measurement systems(s) used.

§ 138.80 Applying for COFRs.

(a) *How to apply for a COFR.* To apply for a COFR of any type, the COFR Operator must—

(1) Submit, or cause to be submitted, to the Director, by one of the submission methods provided in §138.60(c):

(i) An Application;

(A) For an Individual Certificate, list the name of the covered vessel, and the vessel's gross tonnage information, including the measurement system(s) used on the application;

(B) For a Fleet Certificate, instead of listing each individual barge, mark the box with the following statement: "This is an Application for a Fleet Certificate. The largest unmanned, non-self-propelled, non-tank barge to be covered by this Application is [INSERT APPLICABLE GROSS TONS] GT ITC and [INSERT GROSS TONNAGE] GRT"; and

(C) For a Master Certificate, instead of listing each individual vessel, mark the box with the following statement: "This is an Application for a Master Certificate. The largest tank vessel to be covered by this Application is [INSERT APPLICABLE GROSS TONS] GT ITC and [INSERT APPLICABLE GROSS TONS] GRT, as applicable. The largest vessel other than a tank vessel to be covered by this Application is [INSERT APPLICABLE GROSS TONS] GT ITC and [INSERT APPLICABLE GROSS TONS] GRT, as applicable."

(ii) The evidence of financial responsibility using one of the guaranty methods provided in §138.110;

(A) For a Fleet Certificate, the evidence of financial responsibility must be in the total applicable amount, determined as provided in §138.100, for the largest unmanned, non-self-propelled, non-tank barge to be covered.

(B) For a Master Certificate, the evidence of financial responsibility must be in the total applicable amount determined as provided in §138.100 for the largest tank vessel and largest non-tank vessel to be covered by the Master Certificate.

(iii) The agent for service of process designations required by §138.130; and

(iv) All other supporting documentation required by this subpart.

(A) At the time of Application for a Master Certificate, the COFR Operator

must submit a report to the Director, indicating: the name; previous name, if applicable; type; gross tonnage and measurement system(s) used, for each vessel covered by the Master Certificate, indicating which vessels, if any, are tank vessels. If a vessel has both a GT ITC and GRT tonnage, specify both gross tonnages.

(B) Six months after receiving a Master Certificate, and every 6 months thereafter, each COFR Operator must submit to the Director, an updated report, separately listing the vessels no longer covered by that Master Certificate. If a vessel has both a GT ITC and GRT, both gross tonnages must be specified. If a vessel has been transferred to another responsible party and the COFR Operator to whom the Master Certificate was issued ceases to be the vessel's operator, the COFR Operator must report the date and place of the transfer, and the name and contact information of the responsible party to whom the vessel was transferred. If the vessels covered by the Master Certificate have not changed from the previous report, the COFR Operator may submit an updated report that indicates no change from previous report.

(2) Pay, or cause to be paid, all fees required by §138.120.

(b) *Application deadline.* The Director must receive the Application, evidence of financial responsibility, and other required supporting documentation, at least 21 days prior to the date the Certificate is required. The COFR Operator may seek an exception to the 21-day submission deadline only as provided in §138.60(e)(3).

(c) *Where to obtain Application forms.* COFR Operators may create an Application using the online eCOFR web process (located at <https://mpfc.uscg.mil/cofr/default.aspx>) or, if not using eCOFR, may obtain an "Application for Vessel Certificate of Financial Responsibility (Water Pollution)" at the same website.

(d) *Requirement to verify, or sign and date, the Application.* (1) The COFR Operator must complete and either verify the Application in eCOFR as provided in §138.60(c)(1)(i) or, if not using eCOFR, sign and date the hard-copy signature page of the Application and submit the signed Application to the

Director, by one of the methods specified in § 138.60(c)(1)(i) through (iv).

(2) The Application must include the title of the person signing it.

(3) If the person signing the Application is acting under a Power of Attorney, they must include a copy of the Power of Attorney with the Application.

(e) *Requirement to update Applications.* The COFR Operator must report any changes to the Application to the Director in writing, no later than 5 business days after discovery of the change. The Director may require that the COFR Operator submit a revised Application and provide additional evidence of financial responsibility, and pay any additional fees required by § 138.120.

(f) *Amending Fleet and Master Certificates.* Before operating a barge or vessel that exceeds the maximum gross tonnage indicated on the COFR, the COFR Operator must:

(1) Submit a new or amended Application, or a written request to supplement the Application, to reflect the new maximum gross tonnages on the COFR;

(2) Unless the COFR Operator qualifies as a self-insurer at the higher total applicable amount, submit, or cause to be submitted, evidence of financial responsibility using one of the guaranty methods provided in § 138.110 to the Director, demonstrating increased coverage based on the new maximum gross tonnage; and

(3) Pay a new certification fee, as required by § 138.120.

§ 138.90 Renewing COFRs.

(a) The COFR Operator must submit a request for COFR renewal to the NPFC at least 21 days, but no earlier than 90 days, before the expiration date of the current COFR.

(b) The COFR Operator may seek an exception to the 21-day request for COFR renewal submission deadline in paragraph (a) of this section only as provided in § 138.60(e)(3).

(c) The COFR Operator must identify in the request for COFR renewal all changes to the information contained in the initial Application, including the gross ton measurement system(s) used (if not previously provided), the evidence of financial responsibility,

and all other supporting documentation previously submitted to the Director, as provided in § 138.150.

§ 138.100 How to calculate a total applicable amount.

The total applicable amount is the sum of the OPA 90 applicable amount determined under paragraph (a) of this section plus the CERCLA applicable amount determined under paragraph (b) of this section.

(a) *OPA 90 applicable amount.* The applicable amount under OPA 90 is equal to the applicable limit of liability determined as provided in subpart B of this part.

(b) *CERCLA applicable amount.* The applicable amount under CERCLA is determined as follows:

(1) For a vessel over 300 gross tons carrying a hazardous substance as cargo, and for any vessel covered under § 138.110(c)(3) or (d)(2)(ii) (calculation of CERCLA applicable amounts for financial guarantors and self-insurers), the greater of \$5,000,000 or \$300 per gross ton.

(2) For any other vessel over 300 gross tons, the greater of \$500,000 or \$300 per gross ton.

(c) *Amended applicable amounts.* If an applicable amount determined under paragraph (a) or (b) of this section is amended by statute or regulation, the COFR Operator must establish and maintain evidence of financial responsibility in an amount equal to or greater than the amended total applicable amount, as provided in § 138.240(a).

(d) *OPA 90 and CERCLA applicable amounts and limits of liability.* The responsible parties are strictly, jointly and severally liable, for the costs and damages resulting from an incident or a release, but together they need only establish and maintain an amount of financial responsibility equal to the single limit of liability per incident or release. Only that portion of the evidence of financial responsibility under this subpart with respect to—

(1) OPA 90 is required to be made available by a guarantor for the costs and damages related to an incident where there is not also a release; and

(2) CERCLA is required to be made available by a guarantor for the costs and damages related to a release where

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there is not also an incident. A guarantor (or a self-insurer for whom the exceptions to a limitations of liability are not applicable), therefore, is not required to apply the entire amount of financial responsibility to an incident involving oil alone or a release involving a hazardous substance alone.

§ 138.110 How to establish and maintain evidence of financial responsibility.

(a) *General requirement; guaranty effective date and termination date.* The

COFR Operator of each vessel must submit, or cause to be submitted, to the Director, the evidence of financial responsibility required by §138.40(a) using one of the methods specified in this section.

(1) If submitted on behalf of the COFR Operator, the guarantor must provide evidence of financial responsibility to the Director.

(2) The effective and termination dates are as follows:

TABLE 1 TO § 138.110(a)(2)—EFFECTIVE AND TERMINATION DATES

Type of certificate	Effective date	Termination date
Individual	Guaranty form submission date	30 days after the date the Director and the COFR Operator receive written notice from the guarantor that the guarantor intends to cancel the guaranty for that vessel.
Fleet	Guaranty form submission date or date COFR Operator becomes a Responsible Party for the vessel.	
Master	Guaranty form submission date or date COFR Operator becomes a Responsible Party for the vessel.	

(3) Termination provisions:

(i) The guarantor must specify the reason for terminating the guaranty in the notice required by this paragraph, if known.

(ii) Termination of the guaranty as to any covered vessel will not affect the liability of the guarantor in connection with an incident or release commencing or occurring prior to the effective date of the guaranty termination.

(4) If, at any time, the information contained in the evidence of financial responsibility submitted under this section changes, or there is a material change in a guarantor or self-insurer's financial position, the guarantor or COFR Operator or self-insurer (as applicable), must report the change to the Director, as provided in §138.150.

(b) *Insurance guaranty method.* The COFR Operator may establish and maintain evidence of financial responsibility using the insurance guaranty method by submitting an Insurance Guaranty Form to the Director.

(1) Each form must be executed by no more than four COFR insurance guarantors accepted by the Director. A lead underwriter is considered one of the COFR insurance guarantors.

(2) The process for establishing and maintaining the acceptability of a COFR insurance guarantor is as follows:

(i) The COFR insurance guarantor must request an initial determination by the Director of the COFR insurance guarantor's acceptability to serve as a COFR insurance guarantor under this subpart, at least 90 days before the date a COFR is required, by submitting information describing the COFR insurance guarantor's structure, business practices, history, and financial strength, and such other information as may be requested by the Director.

(ii) The Director reviews the continued acceptability of COFR insurance guarantors annually. Each COFR insurance guarantor must submit updates to the initial request submitted under paragraph (b)(2)(i) of this section, annually, within 90 days after the close of the COFR insurance guarantor's fiscal year, describing any material changes to the COFR insurance guarantor's legal status, structure, business practices, history, and financial strength, since the previous year's submission, and providing such other information as may be requested by the Director.

(c) *Financial guaranty method.* The COFR Operator may establish and maintain evidence of financial responsibility using the financial guaranty method by submitting a Financial Guaranty Form to the Director.

(1) Each form must be executed by no more than four financial guarantors accepted by the Director, at least one of which must be a parent or affiliate of the COFR Operator. (See paragraph (g) of this section for additional requirements if more than one financial guarantor signs the form.)

(2) The process for establishing and maintaining the acceptability of a financial guarantor is as follows:

(i) The financial guarantor must comply with the self-insurance provisions in paragraph (d) of this section, and the periodic reporting requirements in paragraphs (e)(1) through (4) of this section.

(ii) The financial guarantor must also demonstrate that it maintains net worth and working capital, each in amounts equal to or greater than—

(A) The aggregate total applicable amounts, calculated for each COFR Operator vessel for which the financial guaranty is being provided, based on each such COFR Operator's vessel with the greatest total applicable amount, plus—

(B) The total applicable amount required to be demonstrated by a self-insurer under this subpart if the financial guarantor is also acting as a self-insurer.

(3) In the case of a vessel greater than 300 gross tons, calculate the CERCLA applicable amount under §138.100(b)(1) based on a vessel carrying hazardous substances as cargo.

(d) *Self-insurance method.* The COFR Operator may establish and maintain evidence of financial responsibility using the self-insurance method as follows:

(1) Submit to the Director the financial statements specified in paragraphs (e)(1) through (4) of this section for the fiscal year preceding the date the COFR Operator signs the Application or request for COFR renewal.

(2) Demonstrate that the COFR Operator maintains, in the United States, working capital and net worth, each in amounts equal to or greater than the

total applicable amount, calculated as follows:

(i) If the self-insurer has multiple vessels, calculate the total applicable amount based on the vessel with the greatest total applicable amount.

(ii) In the case of a vessel greater than 300 gross tons, calculate the CERCLA applicable amount under §138.100(b)(1) based on a vessel carrying hazardous substances as cargo.

(e) *Reporting requirements for self-insurers and financial guarantors.* (1) Each self-insurer and financial guarantor must submit the following reports to the Director with the Application and annually thereafter, within the deadlines specified in paragraph (e)(4) of this section:

(i) Submit the self-insurer or financial guarantor's annual, current, and audited non-consolidated financial statements prepared in accordance with Generally Accepted Accounting Principles, and audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards.

(ii) Accompany the financial statements with a declaration from the self-insurer or financial guarantor's chief financial officer, treasurer, or equivalent official, certifying the amount of the self-insurer or financial guarantor's current assets, and the amount of the self-insurer or financial guarantor's total assets included in the accompanying balance sheet, which are located in the United States.

(iii) If the financial statements cannot be submitted in non-consolidated form, submit a consolidated statement accompanied by an additional declaration prepared by the same Certified Public Accountant—

(A) Verifying the amount by which the total assets located in the United States exceed the self-insurer or financial guarantor's total (worldwide) liabilities, and the self-insurer or financial guarantor's current assets located in the United States exceed the self-insurer or financial guarantor's total (worldwide) current liabilities;

(B) Specifically naming the self-insurer or financial guarantor;

(C) Confirming that the amounts so verified relate only to the self-insurer

or financial guarantor, apart from any parent or other affiliated entity; and

(D) Identifying the consolidated financial statement to which it applies.

(2) When the self-insurer or financial guarantor's demonstrated net worth is not at least ten times the cumulative total applicable amounts, their chief financial officer, treasurer, or equivalent official must submit to the Director with the Application and semi-annually thereafter, within the deadline specified in paragraph (e)(4) of this section, an affidavit stating that neither their working capital nor net worth fell during the first 6 months of the self-insurer or financial guarantor's current fiscal year, below the cumulative total applicable amounts.

(3) All self-insurers and financial guarantors must—

(i) Submit, upon the Director's request, additional financial information within the time specified; and

(ii) Notify the Director in writing within 5 days following the date the self-insurer or financial guarantor knows, or has reason to know, that its working capital or net worth has fallen below the total applicable amounts.

(4) All required annual financial statements and declarations must be submitted to the Director within 90 days after the close of the self-insurer or financial guarantor's fiscal year. All required semi-annual financial statements and declarations must be submitted to the Director within 30 days after the close of the applicable 6-month period. The Director will grant an extension of the time limits for submissions under this paragraph only as provided in § 138.60(e).

(5) A failure by a self-insurer or financial guarantor to timely submit to the Director any statement, data, notification, or other submission required may result in the Director denying or revoking the COFR, and may prompt enforcement action as provided under § 138.170.

(6) The Director may waive the working capital requirement for any self-insurer or financial guarantor that—

(i) Is a regulated public utility, a municipal or higher-level governmental entity, or an entity operating solely as a charitable, non-profit organization qualifying under the Internal Revenue

Code (26 U.S.C. 501(c)), provided that the self-insurer or financial guarantor demonstrates in writing that the waiver would benefit a local public interest; or

(ii) Demonstrates in writing that working capital is not a significant factor in the self-insurer or financial guarantor's financial condition, in which case the self-insurer or financial guarantor's net worth in relation to the required cumulative total applicable amounts, and a history of stable operations, are the major elements considered by the Director.

(f) *Other guaranty methods for establishing evidence of financial responsibility.* (1) The COFR Operator may request that the Director accept a guaranty method for establishing evidence of financial responsibility that is different from one of the methods described in paragraphs (b) through (e) of this section as follows:

(i) The COFR Operator must submit the request to the Director in writing, at least 90 days prior to the date the COFR is required.

(ii) The request must describe in detail: The method proposed; the reasons why the COFR Operator does not wish to (or is unable to) use one of the methods described in paragraphs (b) through (e) of this section; and how the proposed guaranty method assures that the vessel's responsible parties have the financial ability to meet their potential liabilities under OPA 90 and CERCLA in the event of an incident or a release.

(iii) Each COFR Operator making a request under this paragraph must provide the Director a proposed guaranty form that includes all the elements described in paragraphs (g) and (h) of this section.

(2) The Director will not accept a self-insurance method other than the one described in paragraph (d) of this section. The Director also will not accept a guaranty method under this paragraph that merely deletes or alters a requirement or provision of one of the guaranty methods described in paragraphs (b) through (e) of this section (for example, one that alters the termination clause of the Insurance Guaranty).

(3) A Director's decision to accept an alternative guaranty method of establishing evidence of financial responsibility under this paragraph is final agency action.

(g) *Additional rules regarding multiple guarantors.* If more than one guarantor executes the relevant guaranty form, the following rules apply:

(1) If a guarantor's percentage of vertical participation is specified on the relevant guaranty form, the guarantor is subject to direct action and is liable for the payment of costs and damages under OPA 90 or CERCLA, as applicable, only in accordance with the percentage of vertical participation so specified for that guarantor.

(2) Participation in the form of layering (tiers, one in excess of another) is not permitted. Only vertical participation on a percentage basis and participation with no specified percentage allocation is acceptable.

(3) If no percentage of vertical participation is specified for a guarantor on the relevant guaranty form, the guarantor's liability is joint and several for the total of the unspecified portion.

(4) The participating guarantors must designate a lead guarantor having authority to bind all of the participating guarantors for actions required of guarantors under OPA 90 or CERCLA and this subpart, including but not limited to reporting changes in the evidence of financial responsibility as provided in §138.150(d), receipt of source designations, advertisement of source designations and the responsible party's claims procedures, and receipt and settlement of claims.

(h) *Direct action.* (1) Each guarantor providing evidence of financial responsibility must submit to the Director a written acknowledgment by the guarantor that a claimant (including a claimant by right of subrogation) may assert any claim for costs or damages arising under OPA 90, CERCLA, or both, directly against the guarantor, regardless of whether the claim is asserted in an action in court or other proceeding. The guarantor must also acknowledge that, in the event a claim is asserted directly against the guarantor under OPA 90, CERCLA, or both,

the guarantor may invoke only the following rights and defenses—

(i) The incident, release, or both, were caused by the willful misconduct of a responsible party for whom the guaranty was provided;

(ii) All rights and defenses, which would be available to the responsible party under OPA 90, CERCLA, or both, as applicable;

(iii) A defense that the amount of the claim, or all claims asserted with respect to the same incident or release, whether asserted in court or in any other proceeding, exceeds the amount of the guaranty, except when the guaranty is based on the gross tonnage of the vessel (instead of the statutory minimums) and the guarantor knew or should have known that the applicable tonnage certificate was incorrect (see §138.50(f)); and

(iv) The claim is not one made under OPA 90, CERCLA, or both.

(2) Except when the guaranty is based on the gross tonnage of the vessel (instead of the statutory minimums) and the guarantor knew or should have known that the evidence of financial responsibility or applicable tonnage certificate is incorrect (see §138.50(f)), a guarantor who provides evidence of financial responsibility under this subpart will be liable, with respect to any one incident or release, or both, as applicable, only for the amount of costs and damages specified in the evidence of financial responsibility.

(3) A guarantor will not be considered to have consented to direct action under any law other than OPA 90 or CERCLA, or to unlimited liability under any law or in any venue, solely because the guarantor has provided evidence of financial responsibility under this subpart.

(4) In the event of any finding that the liability of a guarantor under OPA 90 or CERCLA exceeds the amount of the guaranty provided under this subpart, that guaranty is considered null and void with respect to that excess.

(i) *Process upon disapproval of guarantor.* If the Director intends to disapprove or revoke the approval of a guarantor (for example, due to the guarantor's change in financial position), the Director will notify the

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COFR Operator of the need to establish new evidence of financial responsibility within a specified period.

(1) If the COFR Operator establishes, or causes to be established, new acceptable evidence of financial responsibility within the period specified by the Director in the notice, the Application if otherwise complete will be approved or the COFR will remain in effect, and the COFR Operator will not have to pay a new Application fee or certification fee.

(2) If the COFR Operator fails to establish, or cause to be established, new acceptable evidence of financial responsibility within the period specified by the Director in the notice, the Director may deny or revoke the COFR and, if revoked, the COFR Operator will have to apply for a new COFR and pay a new certification fee. The COFR Operator's failure to establish, or cause to be established, new acceptable evidence of financial responsibility within the period specified by the Director may also result in enforcement as provided under § 138.170.

§ 138.120 Fees.

(a) *Fee payment methods.* Each COFR Operator applying for a COFR, or requesting a COFR renewal, must pay the fees required by paragraphs (b) and (c) of this section as follows:

(1) All fees required by this section must be paid in United States dollars.

(2) For COFR Operators using eCOFR as provided under § 138.60(c)(1)(1), credit card payment is required.

(3) For COFR Operators submitting Applications and requests for COFR renewal under § 138.60(c)(1)(ii) through (iv) (email, fax, and mail submissions), the fees must be paid by a check, cashier's check, draft, or postal money order, made payable to the "U.S. Coast Guard". Cash payments will not be accepted.

(i) For Applications and requests for COFR renewal submitted under § 138.60(c)(1)(ii) and (iii) (email and fax submissions, respectively), all fee payments must be received by the Director no later than 21 days following submission of the Application or request for COFR renewal.

(ii) For Applications and requests for COFR renewal submitted under

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§ 138.60(c)(1)(iv) (mail submissions), all fee payments must be enclosed with the Application or request for COFR renewal.

(4) Any failure to timely pay the fees required by this section may result in COFR denial or revocation, debt collection (see 6 CFR part 11, 44 CFR part 11, and 31 CFR parts 285, and 900 through 904), and such other enforcement under § 138.170 as may be appropriate.

(b) *Application fee.* (1) Except as provided in paragraph (b)(2) of this section, the COFR Operator must pay a non-refundable Application fee of \$200 for each Application submitted under this subpart (for each Application for one or more Individual Certificates, for a Fleet Certificate, or for a Master Certificate).

(2) An Application fee is not required when the COFR Operator submits—

(i) A request for an additional Individual Certificate under an existing Application;

(ii) A request to amend an Application;

(iii) A request for Certificate renewal; or

(iv) A request to reinstate a Certificate, if submitted within 90 days following the Certificate's revocation.

(c) *Certification fees.* In addition to the Application fees required by paragraph (b) of this section, each COFR Operator who submits an Application or request for COFR renewal must pay the following certification fees:

(1) \$100 for each vessel listed in, or added to, an Application for one or more Individual Certificates;

(2) \$100 for each Application for a Fleet Certificate or Master Certificate; and

(3) \$100 for each request for renewal of an Individual Certificate, a Fleet Certificate or a Master Certificate.

(d) *Fee refunds.* (1) A certification fee will be refunded, upon receipt by the Director of a written request, if the Application or request for COFR renewal is denied by the Director, or if the Application is withdrawn by the COFR Operator before the Director issues the COFR.

(2) Overpayments of Application and certification fees will be refunded to the COFR Operator.

§ 138.130 Agents for Service of process.

(a) *Designation of U.S. agents for service of process.* Each COFR Operator and guarantor must designate on the forms submitted a person located in the United States as its U.S. agent for service of process and (in the event of an incident, a release, or both) for receipt of notices of source designation, claims presented under OPA 90, CERCLA, or both, and lawsuits brought under OPA 90, CERCLA, or both.

(b) *U.S. agent for service of process acknowledgment.* Each U.S. agent for service of process designated under paragraph (a) must acknowledge the agency designation in writing unless the agent has already submitted a written master (that is, blanket) agency acknowledgment to the Director showing that the agent has agreed in advance to act as the U.S. agent for service of process for the COFR Operator or guarantor in question.

(c) *How to change the U.S. agent for service of process.* A COFR Operator or guarantor may change a designated U.S. agent for service of process, at any time and for any reason, by submitting a new U.S. agent for service of process designation in accordance with the procedure in paragraph (a), and by causing the new U.S. agent for service of process to submit the agency acknowledgment required by paragraph (b) of this section.

(d) *Replacement of unavailable U.S. agent for service of process.* In the event a designated U.S. agent for service of process becomes unavailable at any time, for any reason, the COFR Operator or guarantor must designate a new U.S. agent for service of process in accordance with the procedures in paragraph (a), within 5 days of the COFR Operator or guarantor becoming aware of such unavailability. In addition, the new U.S. agent for service of process must submit to the Director the agency acknowledgment required by paragraph (b) of this section.

(e) *Service on the Director.* If a designated U.S. agent for service of process cannot be served, then service of process on the Director, as provided in this paragraph, will constitute valid service of process on the COFR Operator or guarantor. Service of process

on the Director will not be effective unless the server—

(1) Has sent a copy of each document served on the Director to the COFR Operator or guarantor, as applicable, by registered mail, at the COFR Operator or guarantor's last known address on file with the Director;

(2) Indicates, at the time process is served upon the Director, that the purpose of the mailing is to effect service of process on the COFR Operator or guarantor; and

(3) Provides evidence acceptable to the Director at the time process is served upon the Director, that service was attempted on the designated U.S. agent for service of process but failed, stating the reasons why service on the U.S. agent for service of process was not possible, and that the document was sent to the COFR Operator or guarantor, as required by paragraph (e)(1) of this section.

§ 138.140 Application withdrawals, COFR denials and revocations.

(a) *Application withdrawal.* A COFR Operator, or anyone authorized to act on their behalf, may withdraw an Application at any time prior to issuance of the COFR.

(b) *Application denials and COFR revocations.* The Director may deny an Application or revoke a COFR, and the United States may initiate enforcement under §138.170, for any failure to comply with the requirements of this subpart, including—

(1) If the COFR Operator, or other person acting on the COFR Operator's behalf, makes a false statement in, or in connection with, any submission required by this subpart;

(2) If the COFR Operator, or other person acting on the COFR Operator's behalf, fails to establish or maintain acceptable evidence of financial responsibility, as required by this subpart;

(3) If the COFR Operator fails to pay the Application and certification fees required by §138.120;

(4) If the COFR Operator or guarantor fails to designate and maintain a U.S. agent for service of process as required by §138.130;

(5) If the COFR Operator, or other person acting on the COFR Operator's

behalf, fails to comply with, or respond to, lawful inquiries, regulations, or orders of the U.S. Coast Guard pertaining to the activities subject to this subpart;

(6) If the COFR Operator, or other person acting on the COFR Operator's behalf, fails to timely report information required to be reported to the Director under this subpart, including failing to timely submit to the Director statements, data, financial information, notifications, affidavits, or other submissions required by this subpart; or

(7) If the Director obtains information indicating that the Application should be denied or that a new COFR is required (for example, a permanent vessel transfer, new COFR Operator, vessel renaming, guaranty termination, disapproval of a guarantor).

(c) *Procedure for reinstating COFRs following termination of guaranties.* If a COFR is revoked by the Director under paragraph (b)(2) of this section based on the expiration of 30 days following the date the Director receives a guarantor's notice of termination as provided under §§ 138.110(a)(3) and 138.150(d), the Director may reinstate the COFR if the guarantor promptly notifies the Director following the revocation that the guarantor rescinded the termination and that there was no gap in guarantor coverage.

(d) *Notice to COFR Operator of intent to deny an Application or revoke a COFR.* If the Director obtains information indicating that an Application should be denied or that a COFR should be revoked for reasons that the COFR Operator may not be aware of, the Director will notify the COFR Operator, in writing, stating the reason for the intended action.

(1) A notice from the Director that an Application is incomplete will be considered a denial unless the Application is completed by the COFR Operator within the period specified in the notice. A COFR subject to revocation remains valid until the COFR is revoked as provided in § 138.140(d)(2) and (3).

(2) If the Director issues a notice of intent to deny an Application or revoke a COFR due to a violation under paragraph (b) of this section, the COFR

Operator may demonstrate compliance to the Director in writing by no later than the date specified by the Director in the notice. If the COFR Operator demonstrates compliance by that date, the Application will remain under consideration, and any current COFR will remain in effect, unless and until the Director issues a written decision denying the Application or revoking the COFR, as applicable. Otherwise, the Application denial or COFR revocation is effective as of the date specified by the notice.

(3) The denial of an Application or revocation of a COFR does not terminate the guaranty.

(e) *Request for reconsideration.* (1) A COFR Operator may ask the Director to reconsider a denial of the COFR Operator's Application or the revocation of a COFR as follows:

(i) The COFR Operator must submit the request for reconsideration, in writing, to the Director no later than 21 days after the date of the denial or revocation.

(ii) The submission must state the COFR Operator's reasons for requesting reconsideration and include all supporting documentation.

(2) A decision by the Director on reconsideration of an Application denial or a COFR revocation is final agency action. If the Director does not issue a written decision on the request for reconsideration within 30 days after its submission, the request for reconsideration will be deemed to have been denied, and the Application denial or COFR revocation will be deemed to have been affirmed as a matter of final agency action. Unless the Director issues a decision reversing the revocation, the COFR revocation remains in effect.

(f) *Duty to remedy violations.* If the COFR for a vessel expires or is revoked while the vessel is located in the navigable waters, at any port or other place subject to the jurisdiction of the United States, or in the Exclusive Economic Zone, the COFR Operator and the vessel's other responsible parties will be deemed in violation of this subpart. In such event, the COFR Operator or, if unavailable or no longer operating the vessel, the vessel's current

responsible parties, must notify the Director within 24 hours, by email or other electronic means. The notice must include the information required by §138.150(b) and must establish new evidence of financial responsibility, designate a new COFR Operator if applicable, and cure any other violation of this subpart.

§ 138.150 Reporting requirements.

(a) *Report changes of submitted information.* When there is a change in any of the facts contained in an Application, a request for COFR renewal, evidence of financial responsibility, or other submission made under this subpart, the change must be reported, in writing, to the Director. The reports required by this section may be submitted with, but are in addition to, other submissions required by this subpart (for example, Applications, requests for COFR renewal, semi-annual and annual financial reports, Master Certificate reports).

(b) *A 21-day prior reporting requirement of permanent vessel transfers and other changes requiring issuance of a new COFR.* Current COFR Operators of vessels, and owners or operators of vessels not currently in U.S. navigable waters or the U.S. Exclusive Economic Zone, must report to the Director, and (if applicable) to the guarantor, the following information, no later than 21 business days before the new COFR is required:

- (1) The number of the current COFR;
- (2) The name of the covered vessel;
- (3) The type of change planned;
- (4) The date the change will take place;
- (5) The reason for the change;
- (6) For a vessel that will be located in U.S. navigable waters or U.S. Exclusive Economic Zone on the date the change is scheduled to take place, where the vessel will be located on that date (for example, name and location of port);
- (7) For a vessel name change, the vessel's new legal name;
- (8) For the planned transfer of a vessel to a new responsible party, and even if the transferee's intent is to scrap or otherwise dispose of the vessel, the name and contact information of the responsible party to whom the vessel is being transferred;

(9) For a change of COFR Operator, the name and contact information of the person who will replace the COFR Operator; and

(10) Any other changes in the information previously submitted to ensure the information on record at the NPFCC is current.

(c) *Three-day prior reporting of changes not requiring issuance of a new COFR.* In addition to the prior reporting required by paragraph (b) of this section, the COFR Operator must report any change to information contained in a submission to the Director that does not require issuance of a new COFR, by no later than 3 business days before implementing the change, including, but not limited to: Changes to the U.S. agent for service of process (other than termination), a change of a non-operator vessel owner, new contact information, and changes in vessel particulars (for example, flag, measurement, type, and scheduled vessel scrapping).

(d) *Reporting by guarantors.* Each guarantor (or, if there are multiple guarantors, each lead guarantor) must give the Director 30 days notice before terminating a guaranty as provided in §138.110(a)(3), explaining the reason for the intended termination, once known, or should have known, in the ordinary course of business.

(e) *Enforcement; deadline exceptions.* A failure to timely submit the reports required by this section may result in enforcement actions as provided in §138.170. Exceptions to the reporting deadlines will only be granted as provided in §138.60(e).

§ 138.160 Non-owning COFR Operator's responsibility for identification.

(a) Each COFR Operator of a vessel with a COFR, other than an unmanned, non-self-propelled barge, who is not also an owner of the vessel must ensure that the original or a legible copy of the vessel's demise charter-party (or other written document on the owner's letterhead, signed by the vessel owner, which specifically identifies the COFR Operator named on the COFR) is maintained on board the vessel.

(b) The demise charter-party or other document required by paragraph (a) of this section must be presented, upon

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request, for examination and copying, to the Director or other United States Government official.

§ 138.170 Enforcement.

(a) *Applicability.* Any person who fails to comply with the requirements of this subpart, including the reporting requirements in §138.150, may be subject to enforcement as provided in this section, including if—

(1) The COFR Operator fails to maintain acceptable evidence of financial responsibility as required;

(2) The name of a covered vessel is changed without reporting the change to the Director as required in §138.150;

(3) The COFR Operator ceases, for any reason, to be an operator of a covered vessel, including when a vessel is scrapped or transferred to a new owner or operator, and a new Application and report have not been submitted to the Director as required by §§138.80 and 138.150; or

(4) The COFR Operator fails to maintain a U.S. agent for service of process.

(b) *Non-compliance.* During a period of non-compliance with this subpart, all use by the vessel of the navigable waters of the United States, of any port or other place subject to the jurisdiction of the United States, or of the Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States, is forbidden.

(c) *Withholding and revoking vessel clearance.* The Secretary of the Department of Homeland Security will withhold or revoke the clearance required by 46 U.S.C. 60105 of any vessel subject to this subpart that does not have a COFR or for which the evidence of financial responsibility required has not been established and maintained.

(d) *Denying vessel entry, and detention.* The U.S. Coast Guard may deny entry to any port or other place in the United States or the navigable waters, and may detain at any port or other place in the United States in which it is located, any vessel subject to this subpart, which does not have a COFR or for which the evidence of financial responsibility required by this subpart has not been established and maintained.

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(e) *Seizure and forfeiture.* In accordance with OPA 90, any vessel subject to this subpart which is found in the navigable waters without a COFR, or for which the necessary evidence of financial responsibility has not been established and maintained as required, is subject to seizure by, and forfeiture to, the United States.

(f) *Administrative and judicial penalties and other relief.* (1) Any person who fails to comply with the requirements of this subpart or the evidence of financial responsibility requirements of OPA 90, CERCLA, or both, including a failure to comply with the reporting requirements in §138.150, is subject to civil administrative and judicial penalties under OPA 90 and CERCLA, as applicable. In addition, under OPA 90, the Attorney General may secure such relief as may be necessary to compel compliance with OPA 90 and this subpart, including termination of operations.

(2) Under 18 U.S.C. 1001, any person making a false statement in, or in connection with, a submission under OPA 90 or CERCLA or this subpart is subject to prosecution.

(3) Any person who fails to timely pay the fees required by §138.120 or any other amounts due under OPA 90 or CERCLA or this subpart may also be subject to Federal debt collection under 6 CFR part 11, 44 CFR part 11 and 31 CFR parts 285, and 900 through 904.

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

SOURCE: 80 FR 72355, Nov. 19, 2015, unless otherwise noted.

§ 138.200 Scope.

This subpart sets forth the limits of liability under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*) (OPA 90), for vessels, deepwater ports, and onshore facilities, as adjusted under OPA 90 (33 U.S.C. 2704(d)). This subpart also sets forth the method and procedure the Coast Guard uses to periodically adjust the OPA 90 limits of liability by regulation under OPA 90 (33 U.S.C. 2704(d)(4)), to reflect significant increases in the Consumer Price Index (CPI), and to update

the limits of liability when they are amended by statute. In addition, this subpart cross-references the U.S. Department of the Interior regulation setting forth the OPA 90 limit of liability applicable to offshore facilities, as adjusted under OPA 90 (33 U.S.C. 2704(d)(4)) to reflect significant increases in the CPI.

§ 138.210 Applicability.

This subpart applies to you if you are a responsible party for a vessel, a deep-water port, or an onshore facility (including, but not limited to, motor vehicles, rolling stock and onshore pipelines), unless your liability is unlimited under OPA 90 (33 U.S.C. 2704(c)).

§ 138.220 Definitions.

(a) As used in this subpart, the following terms have the meanings set forth in OPA 90 (33 U.S.C. 2701): *deep-water port*, *facility*, *gross ton*, *liability*, *oil*, *offshore facility*, *onshore facility*, *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.

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.

Director, NPFC means the person in charge of the U.S. Coast Guard, National Pollution Funds Center (NPFC), or that person’s authorized representative.

Edible oil tank vessel means a tank vessel referred to in OPA 90 (33 U.S.C. 2704(c)(4)(A)).

Oil spill response vessel means a tank vessel referred to in OPA 90 (33 U.S.C. 2704(c)(4)(B)).

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

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*. (1) The OPA 90 limits of liability for tank vessels, other than edible oil tank vessels and oil spill response vessels, are—

(i) For a single-hull tank vessel greater than 3,000 gross tons, the greater of \$4,000 per gross ton or \$29,591,300;

(ii) For a tank vessel greater than 3,000 gross tons, other than a single-hull tank vessel, the greater of \$2,500 per gross ton or \$21,521,000;

(iii) For a single-hull tank vessel less than or equal to 3,000 gross tons, the greater of \$4,000 per gross ton or \$8,070,400; and

(iv) For a tank vessel less than or equal to 3,000 gross tons, other than a single-hull tank vessel, the greater of \$2,500 per gross ton or \$5,380,300.

(2) The OPA 90 limits of liability for any vessel other than a vessel listed in paragraph (a)(1) of this section, including for any edible oil tank vessel and any oil spill response vessel, are the greater of \$1,300 per gross ton or \$1,076,000.

(b) *Deepwater ports*. (1) The OPA 90 limit of liability for any deepwater port, including for any component pipelines, other than a deepwater port listed in paragraph (b)(2) of this section, is \$725,710,800;

(2) The OPA 90 limits of liability for deepwater ports with limits of liability established by regulation under OPA 90 (33 U.S.C. 2704(d)(2)), including for any component pipelines, are—

(i) For the Louisiana Offshore Oil Port (LOOP), \$110,332,600; and

(ii) [Reserved]

(c) *Onshore facilities*. The OPA 90 limit of liability for onshore facilities, including, but not limited to, motor vehicles, rolling stock and onshore pipelines, is \$725,710,800.

(d) *Offshore facilities*. The OPA 90 limit of liability for offshore facilities other than deepwater ports, including

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for any offshore pipelines, is set forth at 30 CFR 553.702.

[80 FR 72355, Nov. 19, 2015, as amended at 84 FR 39974, Aug. 13, 2019; 87 FR 78864, Dec. 23, 2022]

§ 138.240 Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI-U) and statutory changes.

(a) *Update and publication.* The Director, NPFC, will periodically adjust the limits of liability set forth in § 138.230(a) through (c) to reflect significant increases in the Annual CPI-U, according to the procedure for calculating limit of liability inflation adjustments set forth in paragraphs (b)–(d) of this section, and will publish the inflation-adjusted limits of liability and any statutory amendments to those limits of liability in the FEDERAL REGISTER as amendments to § 138.230. Updates to the limits of liability under this paragraph are effective on the 90th day after publication in the FEDERAL REGISTER of the amendments to § 138.230, unless otherwise specified by statute (in the event of a statutory amendment to the limits of liability) or in the FEDERAL REGISTER notice amending § 138.230.

(b) *Formula for calculating a cumulative percent change in the Annual CPI-U.* (1) The Director, NPFC, calculates the cumulative percent change in the Annual CPI-U from the year the limit of liability was established, or last adjusted by statute or regulation, whichever is later (*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 =
$$\frac{[(\text{Annual CPI-U for Current Period} - \text{Annual CPI-U for Previous Period}) \div \text{Annual CPI-U for Previous Period}] \times 100.$$

(2) The cumulative percent change value calculated using the formula in paragraph (b)(1) of this section is rounded to one decimal place.

(c) *Significance threshold.* Not later than every three years from the year the limits of liability were last adjusted for inflation, the Director, NPFC, will evaluate whether the cumulative percent change in the Annual CPI-U since that date has reached a significance threshold of 3 percent or greater. For any three-year period in which the cumulative percent change in the Annual CPI-U is less than 3 percent, the Director, NPFC, will publish a notice of no 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 using the procedure set forth in paragraph (a) of this section, 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 percent 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.

(d) *Formula for calculating inflation adjustments.* The Director, NPFC, calculates adjustments to the limits of liability in § 138.230 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 (b) of this section), then rounded to the closest \$100.