

TITLE 14, CALIFORNIA CODE OF REGULATIONS
SUBDIVISION 4, OFFICE OF SPILL PREVENTION AND RESPONSE
CHAPTER 2. FINANCIAL RESPONSIBILITY
SUBCHAPTER 1. CERTIFICATES OF FINANCIAL RESPONSIBILITY
SECTIONS 791 - 797

Approved September 3, 2015

791. DEFINITIONS.

In addition to the definitions in Chapter 1, Section 790 of this subdivision, the following definitions shall govern the construction of this subchapter. Where similar terms are defined, the following will supersede any definition in Chapter 1:

- (a) "Applicant" means an owner or operator or a person accepting responsibility for the oil who has submitted to the Administrator an application for a California Certificate of Financial Responsibility.

It shall be a conclusive presumption that any party making an application for a Certificate of Financial Responsibility pursuant to Section 8670.37.53 of the Government Code is either an owner or operator or is an authorized agent acting within the scope of employment, direction, and control of the owner or operator.

- (b) "Certificant" means an owner or operator or a person accepting responsibility for the oil who has been issued a Certificate of Financial Responsibility under this subchapter.
- (c) "Certificate of Financial Responsibility" ("Certificate" or "COFR") means an official written acknowledgment issued by the Administrator that an owner or operator of a tank vessel, nontank vessel, vessel carrying oil as a secondary cargo, facility, or the owner of the oil has demonstrated to the satisfaction of the Administrator the financial ability to pay for costs and damages caused by an oil spill.
- (d) "Large barge" for the purposes of determining financial responsibility, means a barge with a cargo capacity of 150,000 or more barrels of oil.
- (e) "Proof of entry" means the documents that evidence that an owner of a tanker, barge, nontank vessel, or person named is covered for oil pollution liabilities by a Protection and Indemnity Club.
- (f) "Reasonable Worst Case Spill" means a volume of oil in barrels as defined and determined in Chapter 3 of this subdivision at: Marine Facility – Section 817.02(d); Small Marine Fueling Facility – Section 817.03(d); Tank Vessel – Section 818.02(e); Vessels Carrying Oil As Secondary Cargo – Section 818.03 (e); Inland Facility – Section 817.04(k) and Nontank Vessel – 827.02(h).
- (g) "Small barge", for the purposes of determining financial responsibility, means a barge with a cargo capacity of less than 150,000 barrels of oil.

Authority: Sections 8670.7.5, 8670.37.53 and 8670.37.54 and, Government Code.

Reference: Sections 8670.3 and 8670.37.51-8670.37.58, Government Code.

791.6 PURPOSE AND SCOPE

- (a) The purpose of this subchapter is to specify the procedures and timelines for obtaining and renewing a Certificate of Financial Responsibility. Certificates of Financial Responsibility are not required if exempted from contingency plan requirements pursuant to Section 817.01(b), 818.01(b), 827.01(b) or 817.04(c).
- (b)
 - (1) Any vessel or facility owner/operator required to have an oil spill contingency plan pursuant to Subchapter 3 of Chapter 3 of Subdivision 4 of Division 1 of Title 14 of the California Code of Regulations shall demonstrate to the satisfaction of the Administrator the financial ability to pay for costs and damages caused by a spill. The owner or operator shall do so by applying for and being issued a valid Certificate of Financial Responsibility (hereafter referred to as a certificate).
 - (2) For any new or renewal applications for vessels only, applicable fees and any evidence offered to demonstrate financial responsibility shall be received by OSPR at least ten (10) calendar days prior to operating where a spill may impact Waters of the State. After expiration of any of the methods of evidence of financial responsibility listed in Section 795 documentation of the financial responsibility renewal shall be provided at least ten (10) calendar days before operating where a spill may impact Waters of the State.
 - (3) An owner or operator of an Inland Facility operating within the state must submit an application for a Certificate of Financial Responsibility to OSPR for review by January 1, 2016. OSPR shall review the application within thirty (30) calendar days.
 - (4) If at any the Administrator determines this subchapter shall be applicable to an Inland Facility that had been given an exemption or for which this subchapter had been deemed inapplicable, the Inland Facility owner or operator shall submit an application within one hundred twenty (120) days for review. OSPR shall review the application within thirty (30) calendar days.

Authority: Sections 8670.7.5, 8670.37.54, 8670.37.56 and 8670.37.58, Government Code.

Reference: Sections 8670.37.54-8670.37.56, Government Code.

791.7. PROCEDURES FOR APPLICATION FOR CALIFORNIA CERTIFICATE OF FINANCIAL RESPONSIBILITY.

- (a) The following applications shall be used to obtain a certificate:
 - (1) Application for Certificate of Financial Responsibility for Operators or Owners of Tank Vessels (application), referred to as DFW Form 1925 (8/14);
 - (2) Application for Certificate of Financial Responsibility for Operators or Owners of Nontank Vessels (application), referred to as DFW Form 1972 (8/14);
 - (3) Application for Certificate of Financial Responsibility for Marine Facilities, (application), referred to as DFW Form 1924 (8/14);

- (4) Application for Certificate of Financial Responsibility for Owners of Oil (application), referred to as DFW Form 1947 (8/0914); and
 - (5) Application for Certificate of Financial Responsibility for Mobile Transfer Units (application), referred to as DFW Form 1946 (8/14).
 - (6) Vessels Carrying Oils as Secondary Cargo (VCOASC) shall use DFW Form 1925 (8/14) to obtain a COFR;
 - (7) Application for Certificate of Financial Responsibility for Railroads, referred to as DFW Form 1931 (03/20/15).
 - (8) Application for Certificate of Financial Responsibility for Inland Facilities (other than Railroads), referred to as DFW Form 1932 (03/15).
 - (9) These forms shall collectively be referred to as applications and incorporated by reference herein.
 - (10) The applications shall be obtained from and, upon completion, submitted to the Office of Spill Prevention and Response (OSPR) at the following address:
 - Department of Fish and Wildlife
 - Office of Spill Prevention and Response (OSPR)
 - 1700 K Street, Suite 250
 - Sacramento, CA 95811 USA
 - www.dfg.ca.gov/ospr
- (b) Any facility owner/operator may request exemption from the requirement to obtain a certificate on the basis that a spill from the facility could not reasonably be expected to impact Waters of the State.
- (1) Such request must be submitted to the Administrator and must provide specific, technical justification for the request.
 - (2) Prior to granting or denying the request, the Administrator may inspect the facility to determine if a spill from the facility could potentially impact Waters of the State.
 - (3) Within forty-five (45) business days of receipt of a request for exemption, the Administrator shall inform the facility owner/operator in writing if the justification is complete and the exemption is granted, or that it is deficient and what specific information or documentation is required.
 - (4) If the exemption request is deemed deficient:
 - (A) within fifteen (15) business days of receipt of the notice of deficiency, the facility owner/operator must submit the required information or documentation to the Administrator;

- (B) within twenty-one (21) business days of receipt of this information, the Administrator shall notify the facility owner/operator if the exemption has been granted or denied.
- (5) If the request for exemption is denied, the facility owner/operator must submit an application for a certificate within ten (10) business days of the date the notice of denial is received by the owner/operator, unless a request for reconsideration is submitted pursuant to Section 791.7(g).
- (c) General Application Procedures.
 - (1) All applications and supporting documents shall be prepared in English and all monetary terms shall be in U.S. currency.
 - (2) All spaces on the application shall be completed with either the requested information or the phrase "Not applicable".
 - (3) All applications shall be signed by the applicant or authorized representative of the applicant, whose title shall be indicated in the space provided on the application.
 - (4) All applications shall be accompanied by a written delegation of authority to submit the application on behalf of the applicant where the person signing the application is an individual other than the individual applicant in the case of a sole proprietorship, a partner in the case of a partnership applicant, or an authorized signatory or official of a corporate applicant.
 - (5) Operator(s) or owner(s) of nontank vessels shall submit a nonrefundable fee per vessel with each new or renewal application as follows: (Do not deduct any processing fees from the per vessel fee.)
 - (A) Operator(s) or owner(s) of nontank vessels with a carrying capacity of over 6,500 barrels, or over 7,500 barrels for nontank vessels owned and operated by California or a federal agency, shall submit a nonrefundable USD \$3,250 fee per vessel, or;
 - (B) Operator(s) or owner(s) of nontank vessels that have a carrying capacity greater than 500 barrels of oil and less than or equal to 6,500 barrels of oil, or a carrying capacity greater than 500 barrels of oil and less than or equal to 7,500 barrels of oil for nontank vessels owned and operated by California or a federal agency, shall submit a nonrefundable USD \$1,950 fee per vessel, or.;
 - (C) Operator(s) or owners(s) of nontank vessels that have a carrying capacity of 500 barrels of oil or less shall submit a nonrefundable USD \$650 fee per vessel.
 - (6) If, prior to certificate issuance, an applicant becomes aware of a material change in any of the facts contained in the application or supporting documents, the applicant shall, within five (5) business days of becoming aware of the change or changes, notify the Administrator in writing of the change.

- (7) Each applicant shall provide the name, address, telephone number and e-mail of an agent for service of process designated to receive legal documents on behalf of the applicant. If the applicant contracts for this service, documentation that the agent for service of process acknowledges this capacity in the plan.
- (8) Each certificate issued by the Administrator shall:
 - (A) except as provided in Subsection (c)(9) below, expire no later than two years following its issuance date;
 - (B) provide instructions for the return of the certificate to OSPR upon certificate revocation (per Section 796 of this subchapter);
 - (C) provide instructions how to return the certificate to OSPR upon the certificate ceasing to be the owner or operator.
- (9) The Administrator may issue a certificate for a marine facility for a period of not longer than three years if the Administrator finds that:
 - (A) continued operation is necessary to finance abandonment of the marine facility; and
 - (B) the financial resources the applicant is able to demonstrate are reasonably sufficient to cover any spill-related damages from the facility.
- (d) Application processing by the OSPR-Tankers, Nontank Vessels, Large Barges, and Owners of Oil
 - (1) Applications and evidence of financial responsibility submitted by owners or operators of tankers, nontank vessels, large barges, and owners of oil will be reviewed within twenty-one (21) calendar days of receipt by the OSPR. Certificates will be issued within that period provided that the following has been received: (1) adequate information was furnished in the application, (2) receipt of the nontank vessel fee, and (3) acceptable evidence of financial responsibility, as determined by the Administrator. The criteria for demonstrating financial responsibility are set forth in Section 795 of this subchapter. Amounts of financial responsibility that must be demonstrated are as follows:
 - (A) Operator(s) or owner(s) of tankers, large barges, or owners of, or persons accepting responsibility for the oil, shall demonstrate their current financial ability to pay at least one billion dollars (\$1,000,000,000).
 - (B) Except as provided in (C) below, operator(s) or owner(s) of nontank vessels shall demonstrate their current financial ability to pay at least 300 million dollars (\$300,000,000) for any damages arising from an oil spill during the term of the certificate.
 - 1. Certificates of financial responsibility are not required for non-self propelled nontank vessels that do not carry any oil.
 - (C) Operator(s) or owner(s) of nontank vessels that have a carrying capacity of 6,500

barrels of oil or less, or a carrying capacity of 7,500 barrels of oil or less for nontank vessels owned and operated by California or a federal agency, shall demonstrate their current financial ability to pay the following appropriate amount of financial responsibility:

1. \$2,000,000 for those that have a carrying capacity from less than 1 to not more than 10 barrels;
 2. \$5,000,000 for those that have a carrying capacity greater than 10 to not more than 50 barrels;
 3. \$10,000,000 for those that have a carrying capacity greater than 50 to not more than 500 barrels;
 4. \$18,900,000 for those that have a carrying capacity greater than 500 to not more than 1,000 barrels.
 5. Those nontank vessels that have a carrying capacity greater than 1000 to not more than 6,500 barrels, or 7,500 barrels for nontank vessels owned and operated by California or a federal agency, shall determine the amount of financial responsibility as follows: subtract 1,000 barrels from the total carrying capacity of oil of the nontank vessel; multiply this amount by \$5,670 (which represents 30% of the cargo multiplied by the maximum per barrel clean-up and damage cost of spilled oil of \$18,900); then add \$18,900,000.
 6. The amount of financial responsibility shall not exceed the amount required for nontank vessels as set forth in Section 8670.37.58(a) of the Government Code.
 7. Certificates of financial responsibility are not required for non-self propelled nontank vessels that do not carry any oil.
- (2) These amounts in this subsection (d) are in effect unless amended by Section 8670.37.53(a), 8670.37.58(a) or 8670.41 of the Government Code.
- (3) If the information contained in the application, evidence of financial responsibility, or any supplemental information provided is insufficient, the Administrator shall notify the applicant of the nature of such insufficiency within twenty-one (21) calendar days from the date of receipt of the application and evidence of financial responsibility, or any supplemental information or additional evidence, whichever is applicable. Applicants shall then have ten (10) business days from the date of notification to provide the missing information or additional evidence.
- (A) Certificates will be issued within fifteen (15) calendar days of the submission of additional evidence or supplemental information provided that acceptable evidence or adequate information was received. In the event that acceptable evidence or adequate information is not received, the Administrator may deny the application by

providing written notice specifying the reasons for the denial following the ten (10) day period set forth in Subsection (d)(3) above.

- (e) Application processing by OSPR - Small Barges, Marine and Inland Facilities, Small Marine Fueling Facilities, Mobile Transfer Units, and Vessels Carrying Oil As Secondary Cargo
- (1) Applications regarding small barges, marine and inland facilities, small marine fueling facilities (as defined in Section 790 of this subdivision), mobile transfer units, and vessels carrying oil as secondary cargo (as defined in Section 790 of this subdivision) will be reviewed and applicants notified of the amount of financial responsibility required within thirty (30) calendar days of receipt by the OSPR.
 - (2) The OSPR shall determine the amount of financial responsibility as follows:
 - (A) for small barges, except for those vessels carrying oil as secondary cargo addressed under Subsection (e)(2)(F) of this section:
 1. the product derived by multiplying the maximum per barrel clean-up and damage cost of spilled oil (\$12,500) times thirty percent (30%) of the maximum cargo capacity, as measured in barrels, of the small barge.
 2. The amount of financial responsibility shall not exceed the amount required for tankers as set forth in Section 8670.37.53(a) of the Government Code.
 3. The amount of financial responsibility required for small barges used exclusively to transfer, transport, store, or mechanically treat oily waste water may be reduced if allowed by the Administrator following reconsideration pursuant to the procedures established in Subsection 791.7(g). If a reduced financial responsibility amount is allowed, it shall be based on: \$12,500 times thirty percent (30%) of the maximum concentration of oil found in the oily waste water, as measured in barrels.
 4. However, the amount of financial responsibility will, in no case, be reduced below the minimum of \$1,000,000.
 - (B) for marine facilities, except for those offshore marine facilities, small marine fueling facilities, and mobile transfer units addressed under Subsections (e)(2)(C), (e)(2)(D) and (e)(2)(E), respectively, of this section:
 1. the product derived by multiplying the maximum per barrel clean-up and damage cost of spilled oil (\$12,500) times the reasonable worst case spill volume, as measured in barrels, calculated in the applicant's oil spill contingency plan, in accordance with Sections 817.02(d)(1)(A), 817.02(d)(1)(B), 817.02(d)(1)(C) and 817.02 (d)(1)(E) of Title 14 of the California Code of Regulations.
 2. The amount determined pursuant to this paragraph shall not be less than \$1,000,000 or in excess of \$300,000,000, unless otherwise determined by the Administrator following reconsideration pursuant to subsection 791.7(g).

- (C) for offshore marine facilities engaged in drilling operations which may have the potential for resulting in an uncontrolled release of oil from the reservoir into marine waters:
1. the product derived by multiplying the maximum per barrel clean-up and damage cost of spilled oil (\$12,500) times the reasonable worst case spill volume, as measured in barrels. This volume is based on calculations and parameters proposed by the offshore marine facility in the certificant's oil spill contingency plan, in accordance with Sections 817.02(d)(1)(C)-(E) of Title 14 of the California Code of Regulations; plus
 2. The amount determined pursuant to this paragraph shall not be less than \$10,000,000 or in excess of \$300,000,000, unless otherwise determined by the Administrator following reconsideration pursuant to subsection 791.7(g).
- (D) for small marine fueling facilities except for those mobile transfer units addressed under Subsection (e)(2)(E) of this section:
1. the product derived by multiplying the maximum per barrel clean-up and damage cost of spilled oil (\$12,500) times the reasonable worst case spill volume, as measured in barrels, calculated in the certificant's oil spill contingency plan, in accordance with Section 817.03(d)(1)(A) of Title 14 of the California Code of Regulations.
- (E) for mobile transfer units:
1. the product derived by multiplying the maximum per barrel clean-up and damage cost of spilled oil (\$12,500) times thirty percent (30%) of the maximum cargo capacity, as measured in barrels, of the unit.
 2. The amount of financial responsibility required for mobile transfer units used exclusively to transport oil-water mixture may be reduced if allowed by the Administrator following reconsideration pursuant to the procedures established in Subsection 791.7(g). If a reduced financial responsibility amount is allowed, it shall be based on: \$12,500 times thirty percent (30%) of the maximum concentration of oil found in the oily waste water, as measured in barrels.
- (F) for vessels carrying oil as secondary cargo:
1. the product derived by multiplying the maximum per barrel clean-up and damage cost of spilled oil (\$12,500) times thirty percent (30%) of the maximum oil cargo capacity, as measured in barrels, of the vessel.
 2. The amount of financial responsibility shall not exceed the amount required for tankers as set forth in Section 8670.37.53(a) of the Government Code.
 3. However, the amount of financial responsibility will, in no case, be reduced below the minimum of \$1,000,000.

(G) for Inland Facilities (including railroads):

1. The product of the Reasonable Worst Case Spill volume in barrels (as determined in the applicant's oil spill contingency plan (pursuant to Title 14, California Code of Regulations S. 817.04(k)(3), as applicable)) multiplied by \$10,000.

(3) Evidence of financial responsibility must be submitted within twenty-one (21) calendar days from the date applicant receives notice of the amount of financial responsibility. The Administrator may waive the twenty-one (21) day period for submitting such evidence.

(4) Certificates will be issued within ten (10) business days following the receipt of acceptable evidence of financial responsibility by OSPR, as determined by the Administrator. The criteria for demonstrating financial responsibility are set forth in Section 795 of this subchapter.

(5) If the information contained in the application, evidence of financial responsibility, or the other supplemental information provided is insufficient, the Administrator shall notify the applicant of the nature of such insufficiency within twenty-one (21) calendar days from the date of receipt of either the application, evidence of financial responsibility, or supplemental information, whichever is applicable. Applicants shall then have ten (10) business days from the date of notification to provide the missing information or additional evidence.

(A) Certificates will be issued within ten (10) business days following the submittal of evidence of financial responsibility and any additional evidence required, provided that acceptable evidence and adequate information is received. In the event that acceptable evidence or adequate information is not received, the Administrator may deny the application by providing written notice specifying the reasons for the denial following the ten (10) day period set forth above.

(B) If no evidence of financial responsibility is submitted following issuance of the notice of financial responsibility or if the response to a notice of insufficiency is inadequate, the Administrator may deny the application by providing written notice specifying the reasons for the denial following the twenty-one (21) day or ten (10) day submittal period specified above, whichever is applicable.

(f) Application renewals.

(1) Certificate renewal applications are sent to the applicant approximately forty-five (45) days prior to the expiration of the existing certificate. In order to renew a certificate, renewal applications must be submitted prior to the expiration date.

- (2) If at any time after a certificate has been issued, a certificant becomes aware of a material change in any facts contained in the application or supporting documents, which includes, but is not limited to, the certificant ceasing to be the owner or operator of the applicable vessel or facility, or the owner of the oil; or that the method of demonstrating financial responsibility will be terminated or any coverage thereunder will cease; the certificant shall notify OSPR, in writing, within five (5) business days of becoming aware of the material change. If there is a change in applicant name, or vessel name change, or if the certificate expires, a new certificate will be necessary.
- (3) If the method of demonstrating financial responsibility, as provided in the certificant's application pursuant to this section is about to expire, the certificant shall submit to the Administrator, prior to expiration, proof of renewal or change in the method of demonstrating financial responsibility. As applicable, see Section 795 (a): Insurance; (b): Self-insurance; (c): Surety Bond; (d): Letter of Credit; (e): Guaranty; or (f): P&I Clubs. These sections describe the expiration and renewal process, and timeframe for submission of renewal information.
- (4) Operator(s) or owner(s) of nontank vessels shall submit a nonrefundable fee per vessel, as set forth in Section 791.7(c)(5) of this subchapter. Do not deduct any processing fees from the per vessel fee.

(g) Requests for Reconsideration.

- (1) Applicants may submit a written request to the Administrator requesting reconsideration of the amount of financial responsibility that the applicant must demonstrate to obtain a certificate, or any decision to deny issuance of a certificate or a renewal certificate, or any decision to deny exemption from the requirement to obtain a certificate. Requests must be submitted within ten (10) business days from the date that the applicant receives notice of denial or of the amount of financial responsibility to be demonstrated. The Administrator may waive the ten (10) day period for submitting a request.
- (2) The request must contain the basis for requesting reconsideration and, if applicable, provide evidence which rebuts the basis for the Administrator's denial of the application, renewal application, exemption, or financial responsibility determination.
- (3) Within ten (10) business days from the date the request for reconsideration is received, the OSPR will advise the applicant of the Administrator's decision whether the request will be considered.
- (4) Within fifteen (15) calendar days following the notice that the Administrator will consider the request, the applicant will either be sent a notice that the Administrator shall adhere to his or her earlier decision (i.e., deny the request for reconsideration); or a certificate shall be issued; or a revised notice of financial responsibility shall be issued; or an exemption shall be granted.

Authority: Sections 8670.7.5, 8670.41, 8670.37.54 and 8670.37.58, Government Code.

Reference: Sections 8670.41, 8670.37.53, 8670.37.54, and 8670.37.58, Government Code.

792. CERTIFICATION REQUIREMENTS: TANKERS, NONTANK VESSELS, LARGE BARGES, AND OWNERS OF OIL.

- (a) Each tanker or barge operator or owner who transports oil across Waters of the State, or the owner(s) of all the oil contained in and to be transferred to or from the tanker or barge, or the person accepting responsibility for the oil or each nontank vessel operator or owner operating in Waters of the State, shall apply for a certificate issued by the Administrator prior to operating in Waters of the State.
- (b) To obtain a certificate, the operator(s) or owner(s) of tankers, nontank vessels, large barges, or owner(s) of oil contained therein, or the person accepting responsibility for the oil, shall demonstrate the required amounts of financial responsibility found in Subsection 791.7(d).
- (c) The required amounts of financial responsibility in no way restricts or sets financial limitations on any duty, obligation or liability of the responsible party to the State of California or any other public or private entity. This includes civil penalties assessed pursuant to all applicable federal, state and local laws.
- (d) When the owner(s) of all of the oil contained in the tanker, barge or nontank vessel, or the person accepting responsibility for the oil, hold the certificate(s) in lieu of the tanker, barge or nontank vessel operator or owner, the owner(s) or person accepting responsibility for the oil, shall provide a copy of documentation demonstrating ownership of, or responsibility for, all the oil contained in the vessel, a written statement authorizing application of the certificate(s) to the tanker, barge or nontank vessel, and a copy of the certificate to the tanker, barge or nontank vessel operator.
- (e) If the operator or owner of a vessel intends to rely on the certificate(s) issued to the owner(s) of or person (s) accepting responsibility for the oil cargo, the vessel operator shall, at least twenty-four (24) hours prior to operating in Waters of the State, provide the Administrator with the following:
 - (1) A copy or copies of the certificate(s) applicable to all of the oil at all times during the transport; and
 - (2) A copy of a written statement by the holder(s) of the applicable certificate(s) authorizing its (their) application to the vessel.
- (f) Operators who are not also the owners of the certificated tankers, barges or nontank vessels, shall carry on board such tankers, barges or nontank vessels a copy of the charter-party or any other written document which demonstrates that the operators are the operators designated on the certificates.
- (g) Owners or operators of tankers, barges or nontank vessels used exclusively to respond to, contain, and clean up oil spills shall be exempt from the financial responsibility requirements set forth in this chapter, provided the responsible party or the Administrator agrees to indemnify the owner or operator, or the owner or operator is subject to the qualified immunity provisions set forth in Government Code Section 8670.56.6.

Authority: Sections 8670.7.5, 8670.37.54, 8670.37.51, 8670.37.53, and 8670.37.58, Government Code. Reference: Sections 8670.37.51-8670.37.58 and 8670.56.6, Government Code.

793. CERTIFICATION REQUIREMENTS: SMALL BARGES, MARINE FACILITIES, INLAND FACILITIES, SMALL MARINE FUELING FACILITIES, MOBILE TRANSFER UNITS, AND VESSELS CARRYING OIL AS SECONDARY CARGO.
- (a) Operators or owners of small barges, marine facilities, inland facilities, small marine fueling facilities, mobile transfer units and vessels carrying oil as secondary cargo shall demonstrate the financial ability to pay for any damages arising from an oil spill resulting from their operations
 - (b) Each operator or owner of a small barge, marine facility, inland facility, small marine fueling facility, mobile transfer unit or vessel carrying oil as secondary cargo shall obtain a Certificate of Financial Responsibility from the Administrator.
 - (c) Each operator or owner of a marine terminal within the state may only transfer oil to or from a vessel following receipt and verification of a copy(s) of the certificate(s) issued by the Administrator to the operator of the vessel or owner(s) of or person(s) accepting responsibility for the oil contained in the vessel, as well as all the oil to be transferred to or from the vessel.
 - (d) Each marine terminal operator or owner may only transfer oil to a vessel which is intended to be used for transporting oil to a second vessel located within twelve (12) miles of the California shoreline and which is intended to be used for transporting such oil as cargo, following receipt and verification of a copy(s) of the certificate(s) issued to the person(s) responsible for both vessels or all of the oil contained in both vessels, as well as all the oil to be transferred to both vessels.
 - (e) Each marine terminal operator or owner may only transfer oil from a vessel which has been used for transporting oil cargo from a second vessel located within twelve (12) miles of the California shoreline, following receipt and verification of a copy(s) of the certificate(s) issued to the person(s) responsible for both vessels or all of the oil contained in both vessels, as well as all the oil to be transferred from both vessels.
 - (f) Each marine terminal operator or owner shall be determined to have met the verification requirements set forth in Subsections (d), (e), and (f) of this section, when, at the time of oil transfer, the marine terminal operator or owner has:
 - (1) obtained verbal verification that the certificate(s) is (are) current and applicable to the vessel(s) and, if applicable, all of the oil contained in or to be transferred to or from the vessel from the person(s) responsible for the vessel(s) or from person(s) responsible for the oil to be transferred to or from the affected vessels or from person(s) authorized to provide this verification; and
 - (2) visually inspected all relevant manifests or similar documentation (e.g., U.S. Customs Cargo Declarations) to confirm the information ascertained pursuant to Subsection (g)(1), above; and

- (3) assured that the information contained in Certificates of Financial Responsibility, required to be obtained pursuant to this subchapter, is consistent with the information acquired in Subsections (g)(1) and (2), above.
- (g) The operator or owner of the marine terminal must retain a copy of the certificate(s) obtained in accordance with Subsections (d), (e), and (f) of this section for a period of not less than one year.
- (h) The Administrator shall determine the amount of financial responsibility that owners or operators of small barges, marine facilities, inland facilities, small marine fueling facilities, mobile transfer units, and vessels carrying oil as secondary cargo must demonstrate. The amount shall be based on the procedures described in Subsection 791.7(e)(2) of this subchapter.
- (i) The required amounts of financial responsibility in no way restricts or sets financial limitations on any duty, obligation or liability of the responsible party to the State of California or any other public or private entity. This includes civil penalties assessed pursuant to all applicable federal, state and local laws.
- (j) Owners or operators of mobile transfer units used exclusively to respond to, contain, and clean up oil spills shall be exempt from the financial responsibility requirements set forth in this subchapter, provided the responsible party or the Administrator agrees to indemnify the owner or operator, or the owner or operator is subject to the qualified immunity provisions set forth in Government Code Section 8670.56.6.
- (k) Special procedures for owners or operators of offshore marine facilities engaged in drilling operations.
- (1) The operator or owner of any offshore marine facility from which drilling operations are being carried out, where the drilling operations may have the potential for resulting in an uncontrolled release of oil from the reservoir into marine waters, shall demonstrate the financial ability to pay for any damages resulting from the operations of the offshore marine facility during an oil spill from the facility or from the drilling operations. The amount shall be based on the procedures described in Subsection 791.7(e)(2)(C).
- (2) At such time as an operator or owner described in Subsection (l)(1) of this section submits an application to the State Lands Commission or the Division of Oil, Gas and Geothermal Resources in the Department of Conservation for permission to carry out drilling operations which may have the potential for resulting in an uncontrolled release of oil from the reservoir into marine waters, that operator or owner shall apply for and obtain from the Administrator an amended Certificate of Financial Responsibility to reflect the requirements of Subsection (l)(1) of this section. The amended certificate shall no longer be required once the drilling operations are completed.

Authority: Sections 8670.7.5, 8670.37.51, 8670.37.53 and 8670.37.54, Government Code.
Reference: Sections 8670.37.51-8670.37.57 and 8670.56.6, Government Code.

794. MULTIPLE VESSELS/FACILITIES CERTIFICATIONS.

- (a) Certificates shall be issued, one for each tanker, barge or nontank vessel or facility listed on the completed application, following approval of the application by the OSPR.
- (b) Total financial responsibility for multiple small barges, multiple marine facilities, multiple small marine fueling facilities, multiple mobile transfer units, or multiple vessels carrying oil as secondary cargo shall be based on the barge, facility, unit, or tanker, barge or nontank vessel which poses the greatest financial risk during an oil spill as determined pursuant to Subsection 791.7(e)(2).
- (c) An oil spill or spills occurring from one or more tankers, barges, nontank vessels, marine facilities, or inland facilities within or outside of Waters of the State, which may cause the certificate holder(s) to be liable for damages exceeding five percent (5%) of the total financial resources reflected by the certificate, as determined by the Administrator, shall cause the Administrator to:
 - (1) Immediately review the certificant's financial resources to determine the applicability of this section to the certificate holder and notify the holder of the results of the review prior to issuing a determination that the certificate is inapplicable to any vessel or facility not associated with the spill;
 - (2) Consider the certificate inapplicable to any vessel or facility not associated with the spill; and
 - (3) Require the certificant to demonstrate to the satisfaction of the Administrator financial responsibility for the vessels or facilities not associated with the spill, pursuant to the process described in this Chapter.
- (d) Operators or owners holding certificates deemed inapplicable to any vessel or facility not associated with the spill(s), pursuant to Subsection (c) above, shall reapply for a certificate for any or all vessel(s) or facility(s) not associated with the spill. Upon reapplication, the operator(s) or owner(s) shall demonstrate to the satisfaction of the Administrator that:
 - (1) The operator(s) or owner(s) has (have) the amount of financial ability required pursuant to this subchapter; and
 - (2) The operator(s) or owner(s) has (have) the financial ability to pay all damages which arise or have arisen from the spill or spills which have occurred.

Authority: Sections 8670.7.5, 8670.37.54, 8670.37.55, and 8670.37.58, Government Code.
Reference: Section 8670.37.55, Government Code.

795. EVIDENCE OF FINANCIAL RESPONSIBILITY.

In the application submitted pursuant to Section 791.7, financial responsibility must be demonstrated by an applicant using the method(s) described below:

(a) Insurance.

(1) Applicants may submit any of the following:

- (A) an insurance policy or other documentation, and a certificate of insurance that is acceptable to the Administrator specifying the nature, type, and amount of insurance. At a minimum, the insurance policy or certificate must include the following information:
1. name and address of insured;
 2. name and principal characteristics of tanker(s), barge(s) or nontank vessel(s) or facility covered;
 3. name and address of insurer(s);
 4. policy number(s);
 5. effective date and term of coverage;
 6. all conditions and limitations of the policy or certificate which may affect coverage in the event of discharge of oil;
 7. language that the policy covers damages as specified in Government Code Section 8670.56.5(h), except as provided in (D) below;
 8. evidence of dollar amounts of insurance policy or certificate of insurance; and
 9. amount of deductibles and/or self-insured retention (SIR); and
 10. language that termination or cancellation of this policy insofar as it serves as proof of the Insured's financial responsibility pursuant to Section 795, shall not become effective until 30 days after a notice of termination or cancellation has been submitted to OSPR. However, this policy shall only remain in effect for 10 days after a notice of termination or cancellation for failure to pay the premium by the due date has been submitted in writing by the Insurer to the Insured and to the Office of Spill Prevention and Response, and the notice was issued after the date the premium was due.
- (B) a certificate of insurance that is acceptable to the Administrator and an endorsement executed by the underwriter or insurer which contains the language set forth in the California standard endorsement. Refer to the Endorsement for Vessels Calling Upon California - Oil Spill Liabilities, FG OSPR Form 1929 (2/08) for endorsements to policies for tankers, barges or nontank vessels; and to Endorsement for Marine Facilities - Oil Spill Liabilities, FG OSPR Form 1962 (3/16/15) for endorsements to facilities; and to the Endorsement for Mobile Transfer Units and

Transportable Treatment Units - Oil Spill Liabilities, FG OSPR Form 1930 (2/08) for endorsements to policies provided as evidence of coverage for mobile transfer units and transportable treatment units, incorporated by reference herein.

- (C) similar or comparable evidence of insurance acceptable to the Administrator.
- (D) If an insurance policy or broker's cover note is being submitted as evidence for excess coverage over and above a P&I Club policy, then one of the following is required:
 - 1. language that the policy covers damages as specified in Government Code Section 8670.56.5(h); or
 - 2. the insurance policy shall be signed by the underwriter and shall state that the insurance policy covers the assured's legal liability for oil pollution claims, and is issued under the same terms and conditions as the underlying P&I Club policy; or
 - 3. the underwriter shall acknowledge in writing that the broker has the authority to include language in the broker's cover note that the insurance policy covers the assured's legal liability for oil pollution claims, and is issued under the same terms and conditions as the underlying P&I Club policy.

When multiple underwriters are providing coverage, the underwriter who sets rates and conditions shall execute the appropriate documents.

- (E) If an insurance policy is being submitted for excess coverage over and above the primary policy, then one of the following is required:
 - 1. language that the policy covers damages as specified in Government Code Section 8670.56.5; or
 - 2. a copy of the following form@ language which states that the policy is issued under the same terms and conditions as the primary or underlying policy or policies.
- (2) At the Administrator's discretion, a deductible provision or self-insured retention (SIR) layer which is greater than \$250,000, in any policy of insurance or certificate is only acceptable if:
 - (A) the applicant shows supplemental coverage for the amount of the deductible or SIR by means of other acceptable insurance, surety, guaranty, self-insurance, letter of credit, or other proof of financial responsibility acceptable to the Administrator; or
 - (B) the deductible provision provides for a loss reimbursement plan which contains language guaranteeing that the insurer will be responsible for payment of all claims on a first dollar basis, without waiting for the insured to pay the amount of the deductible.

- (3)
 - (A) No later than thirty (30) calendar days following the expiration of the current policy period, certificants using insurance as evidence of financial responsibility shall submit a certificate of insurance or other written documentation acceptable to the Administrator evidencing that the renewal of certificant's insurance policy occurred on or before the previous policy's expiration date. Failure to submit the certificate of insurance or other acceptable written documentation within thirty (30) calendar days following the expiration of the current policy period, or at least 10 calendar days before operating in Waters of the State, may result in the revocation of the certificate as outlined in section 796 of this subsection.
 - (B) No later than forty-five (45) calendar days following the expiration of the current policy period the certificant shall also submit a copy of that portion of the renewal policy that includes language that the policy covers damages as specified in Government Code Section 8670.56.5; an Endorsement form (FG OSPR Form 1929 (2/08), FG OSPR Form 1930 (2/08); or FG OSPR Form 1962 (3/16/15)); other documentation which contain the minimum information set forth in Subsection (a)(1) above; or similar or comparable evidence of insurance acceptable to the Administrator. Any additional terms or limitations which may affect coverage, including the renewal and new expiration dates, shall be included. Failure to submit the endorsement or other acceptable written documentation within forty-five (45) calendar days following the expiration of the current policy period, or at least 10 calendar days before operating in Waters of the State, may result in a revocation of the certificate as outlined in section 796 of this subsection.
 - (4) If an insurance policy is submitted that for any reason states that it cannot be used or offered as evidence of financial responsibility, then the applicant must simultaneously submit a declaration from the underwriter, or a broker designated and authorized by the underwriter, containing the information required in Subsection (a)(1), above.
 - (5) For insurance coverage to be acceptable, the insurer providing coverage must be licensed or approved by the California Insurance Commissioner to do business in the State of California (i.e., be an admitted company) or, must be on the list of eligible surplus line insurers pursuant to Section 1765.1 of the Insurance Code or is otherwise acceptable to the Administrator based on conditions similar to those listed above. The insurer providing coverage must also have a current AM Best rating of at least A- , but the Administrator may waive this rating requirement on a case-by-case basis if sufficient justification is provided.
- (b) Qualification as a self-insurer.
 - (1) An applicant may satisfy financial responsibility requirements by demonstrating, to the Administrator's satisfaction, that the applicant meets the requirements specified in this subsection. To qualify as a self-insurer, the applicant must meet the criteria of either Subsections (b)(1)(A) (Test I), or (b)(1)(B) (Test II) below.
 - (A) Test I - The applicant must have:

1. one of the following two ratios:
 - a. a ratio of total liabilities to net worth less than 1.5;
 - b. a ratio of cash flow (the sum of net income, after taking into consideration the effect of any extraordinary items, plus depreciation, depletion, and amortization) minus \$20 million to total liabilities greater than 0.1; and
 2. worldwide owners' equity minus intangible assets (i.e., "tangible net worth") equal to at least \$20 million plus two times the amount of self-insurance to be established as set forth in Section 791.7; and
 3. assets in the United States amounting to at least ninety percent (90%) of total assets or at least two times the amount of self-insurance to be established as set forth in Section 791.7.
- (B) Test II - The applicant must have:
1. a current rating of the applicant's most recent bond issuance of AAA, AA, A, or BBB-stable or better, as issued by Standard and Poors or Aaa, Aa, A, or Baa as issued by Moody's or commercial paper rating of A1, A2, or the equivalent; and
 2. worldwide owners' equity minus intangible assets (i.e., "tangible net worth") of at least \$20 million plus two times the amount of self-insurance to be established; and
 3. assets in the United States amounting to at least ninety percent (90%) of total assets or at least two times the amount of self-insurance to be established.
- (2) Applicants relying upon self-insurance provisions set forth in Subsection (b)(1) of this section as evidence of financial responsibility shall submit the following additional documentation to the Administrator:
- (A) a letter signed by a financial officer if the applicant is a corporation; a general partner if the applicant is a partnership; or the proprietor if the applicant is a sole proprietorship; or an authorized representative of the aforementioned, stating:
 1. he or she is a financial officer, general partner, proprietor (as applicable) or authorized representative of the organization or business entity; and
 2. that the letter supports the applicant's use of a financial test to demonstrate financial responsibility by self-insurance pursuant to this section; and
 3. whether the applicant or a subsidiary of the applicant is the owner or operator of the tankers, barges or nontank vessels, or facilities described in the applications or the owner of oil; and

4. if the applicant is a subsidiary of a larger parent entity, and the parent entity will assume financial responsibility, the parent entity will provide the Guaranty FG OSPR form 1928 (1/08) as referenced in this subsection, upon the request of the Administrator. The Guaranty form 1928 will include the signature of an authorized representative of the parent company.
 5. the applicant agrees to notify the Administrator by certified mail within five (5) business days if, at any time, the applicant fails to meet the self-insurance test criteria.
 6. A letter stating that the certificant expects to meet the self-insurance test criteria for the upcoming year shall be submitted annually, at least five (5) days prior to the close of the certificant's fiscal year.
- (B) annual financial statements audited by an independent certified public accountant must be submitted every year after the close of the certificant's fiscal year. The applicant may submit, in lieu of audited financial statements, copies of the most recent Form 10-K and any subsequent Forms 10-Q filed pursuant to the Securities Exchange Act of 1934 providing that the Form 10-K includes audited financial statements. These documents shall be submitted every year within ninety (90) days of the close of certificant's fiscal year.
- (c) Surety bond.
- (1) An applicant may demonstrate financial responsibility by obtaining and submitting to the Administrator a surety bond which conforms to the requirements of this subsection. The surety bond form shall be in the form provided by Title 11, California Code of Regulations, Chapter 2, Section 25. Refer to bond form number 44.2, titled "Surety Bond for Oil Spill Response and Damages". The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.
 - (2) Upon written request, the Administrator may waive the thirty (30) day notice period for terminations prior to the bond's expiration date pursuant to item 10 of the bond form with respect to any unloaded tanker(s), barge(s) or nontank vessel(s) covered by the surety bond.
 - (3) The bond shall contain no additional terms or conditions which limit the surety company's obligation to pay for costs and damages arising under Government Code Section 8670.56.5.
 - (4) Under the terms of the bond, the bond shall be subject to and governed by the laws of the State of California.
 - (5) Applicants utilizing surety bonds to demonstrate evidence of financial responsibility shall establish a standby trust fund. The Trust Agreement shall be in

the form prescribed by this subchapter. Refer to FG OSPR Form 1926 (3/99) for tankers, barges or nontank vessels/owners of oil and FG OSPR Form 1961 (3/15/15) for facilities, and FG OSPR Form 1948 (3/15/15) for other entities under OSPR's jurisdiction, incorporated by reference herein, for approved language. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with the Administrator's instructions.

(d) Letter of Credit.

- (1) An applicant may satisfy financial responsibility requirements by obtaining and submitting to the Administrator an Irrevocable Standby Letter of Credit in favor of the State of California. The issuing institution must be an entity which is acceptable to the Administrator and which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency. The letter of credit shall be in the form prescribed by this section. Refer to FG OSPR Form 1927 (3/97), incorporated by reference herein. The Irrevocable Letter of Credit shall:
 - (A) be effective on or before the approval date of the Certificate of Financial Responsibility; and
 - (B) be addressed to the Administrator.
- (2) The letter of credit shall contain no additional terms or conditions which limit the issuing institution's obligation to make funds available for costs and damages arising under Government Code Section 8670.56.5.
- (3) An applicant utilizing a letter of credit to demonstrate evidence of financial responsibility shall establish a standby trust fund. The Trust Agreement shall be in the form prescribed by this section. Refer to FG OSPR Form 1926 (3/99) for tankers, barges or nontank vessels/owners of oil and FG OSPR Form 1961 (3/15/15) for marine facilities for approved trust agreement language. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the State of California shall be deposited by the issuing institution directly into the standby trust fund in accordance with the Administrator's instructions.

(e) Guaranty.

- (1) An applicant may satisfy the financial responsibility requirements determined pursuant to this chapter by obtaining a written guaranty which conforms to the requirements of this subsection. The Guaranty of Financial Responsibility for Oil Spill Response and Damages shall be in the form prescribed by this section. Refer to FG OSPR Form 1928 (1/08), incorporated by reference herein, for approved language.
- (2) Applicants utilizing guarantees to demonstrate evidence of financial responsibility must submit a properly executed guaranty to the OSPR.

- (3) Upon written request, the Administrator may waive the thirty (30) day notice period for terminations prior to the guaranty's expiration date pursuant to item 9 of the guaranty form with respect to any unloaded tanker(s), barge(s) or nontank vessel(s) covered by the guaranty.
- (4) The guaranty shall contain no additional terms or conditions which limit the guarantor's obligation to pay for costs and damages arising under Government Code Section 8670.56.5.
- (5) Except in circumstances where the guarantor itself is a responsible party, no guarantor shall be held liable for any cleanup costs and damages which exceed the amount of financial responsibility that the guarantor has provided.
- (6) Applicants utilizing guarantees shall establish a standby trust fund.
 - (A) The Trust Agreement shall be in the form prescribed by this section. Refer to FG OSPR Form 1926 (3/99) for tankers, barges or nontank vessels/owners of oil and FG OSPR Form 1961 (3/15/15) for marine facilities for approved language.
 - (B) Under the terms of the guaranty, all payments made thereunder shall be deposited by the guarantor directly into the standby trust fund in accordance with the Administrator's instructions.
 - (C) Where the guarantor is the parent corporation of the applicant, the requirement to establish a standby trust fund is waived.
- (f) Protection and Indemnity Club (P&I Club).

Membership in a P&I Club is acceptable evidence of financial responsibility if the following documentation is provided: proof of entry of each tank vessel or nontank vessel, into a protection and indemnity club (P&I Club), which also reflects that each entered tank vessel or nontank vessel; is covered for pollution risk in the amount set forth in Section 791.7 above and which names the applicant as an assured or member ; all addenda which pertain to pollution risk and deductibles; and a copy of the applicable P&I Club rules.
- (1) At the Administrator's discretion, an applicant submitting evidence of P&I Club cover containing a deductible or similar provision which is greater than \$250,000 may be required to submit the following additional proof before applicant's evidence of financial responsibility shall be deemed acceptable:
 - (A) the applicant shows supplemental coverage for the amount of the deductible by means of other acceptable insurance, surety, guaranty, self-insurance, letter of credit, or other proof of financial responsibility acceptable to the Administrator; or
 - (B) the deductible provision provides for a loss reimbursement plan which contains language guaranteeing that the P&I Club will be responsible for payment of all claims on a first dollar basis, without waiting for the member to pay the amount of the deductible.

(2) Renewal:

No later than forty-five (45) calendar days, following expiration of the P&I Club coverage, and at least 10 calendar days before operating in California waters, certificants using P&I Club membership as the method of evidence of financial responsibility shall submit a copy of the addendum or renewal certificate of entry, both of which contain the information required by Subsection (f), and any additional terms or conditions which may affect cover, including the renewal and new expiration dates.

- (g) Other evidence of financial responsibility. Applicants may provide other evidence of financial responsibility that is not specifically mentioned in this subchapter and which is acceptable to the Administrator.
- (h) Combination of methods. Any one or a combination of the above-described methods may be utilized to establish the amount of financial responsibility required pursuant to this subchapter.
- (i) At any time during the application process or the period for which a certificate is issued, the Administrator may require the applicant or certificant to demonstrate that the method used to provide financial assurances remains current and in effect.

Authority: Sections 8670.7.5, 8670.37.53, 8670.37.54 and 8670.37.58, Government Code.

Reference: Sections 8670.37.53 and 8670.37.54, Government Code.

796. CERTIFICATE REVOCATION.

- (a) A certificate may be revoked immediately with concurrent written notice by the Administrator to the certificant for any of the following reasons:
 - (1) Making a false material statement in connection with an application for or renewal of a certificate;
 - (2) Failure to establish or maintain evidence of financial responsibility as required by this Subchapter;
 - (3) When the holder of the certificate is no longer the owner or operator of the vessel or facility or owner of the oil in question; or
 - (4) When the certificant did not provide their evidence of financial responsibility within the time frames specified by this Subchapter.
- (b) A certificate is invalid if the evidence of financial responsibility required under Section 795 lapses or is otherwise no longer in effect.
- (c) Request for Reconsideration.
 - (1) Certificants may submit a written request to the Administrator requesting reconsideration of any decision to revoke a certificate. Requests must be submitted within ten (10)

business days from the date the applicant receives notice of revocation. The Administrator may waive the ten (10) day period for submitting a request.

- (2) The request must contain the basis for requesting reconsideration, and, if applicable, provide evidence which rebuts the basis for the Administrator's revocation of the certificate. The certificate shall remain valid while the request for reconsideration is reviewed.
- (3) Within ten (10) business days from the date the request for reconsideration is received, the OSPR will advise the certificant of the Administrator's decision whether the request will be considered.
- (4) Within fifteen (15) calendar days following the notice that the Administrator will consider the request, the certificant will either be sent a notice that the Administrator shall adhere to his or her earlier decision (i.e., deny the request for reconsideration), or the notice of revocation shall be rescinded.

(d) If a certificate is revoked, a new application and fee, if applicable, are required.

Authority: Sections 8670.7.5, 8670.37.54, 8670.37.56, and 8670.37.58, Government Code.

Reference: Sections 8670.37.54-8670.37.56, Government Code.

797. REPORTING AND SUSPENSION.

- (a) The certificant shall provide written notification to the Administrator of an event which could produce a material change that affects the certificant's ability to comply with the financial responsibility requirement. Such events include, but are not limited to, an oil spill or discharge occurring within or outside of Waters of the State from one or more tankers, barges or nontank vessels, marine facilities, inland facilities or other facilities for which the certificant may be liable for damages, or other significant action against the certificant (e.g., bankruptcy, insolvency). Additionally, the certificant must notify the Administrator in writing of any potential liability that could produce a material change that affects the certificant's ability to comply with the financial responsibility requirement. Written notification must be submitted within ten (10) business days of knowledge of the incident or knowledge of sufficient facts which would lead a reasonably prudent person to investigate and learn of the incidents. For purposes of this subsection, "material change" means an event or action which could cause the certificant to be liable for damages in an amount exceeding five percent (5%) of the total financial resources reflected by the certificate or if owners' equity exceeds the total amount of financial resources reflected by the certificate, five percent (5%) of the owners' equity.
- (b) Upon notification of the oil spill or discharge or other action or potential liability, as required by Subsection 797(a), the Administrator shall reevaluate the validity of the Certificate of Financial Responsibility.
- (c) Upon a determination by the Administrator that the certificant lacks sufficient financial resources to assume financial responsibility for both the current spill or liability and have adequate resources remaining available to meet the requirements of this subchapter, the Administrator shall suspend the certificate following ten (10) business days written notice.

- (d) Suspension of the certificate shall continue until the responsible party demonstrates, to the satisfaction of the Administrator, that the responsible party has the financial resources needed to meet the requirements of this subchapter.
- (e) Request for Reconsideration.
 - (1) Certificants may submit a written request to the Administrator requesting reconsideration of any decision to suspend a certificate. Requests must be submitted within ten (10) business days from the date the applicant receives notice of suspension. The Administrator may waive the ten (10) day period for submitting a request.
 - (2) The request must contain the basis for requesting reconsideration, and, if applicable, provide evidence which rebuts the basis for the Administrator's suspension of the certificate. Upon a showing of good cause, the Administrator may reinstate the certificate pending a final decision by the Administrator.
 - (3) Within ten (10) business days from the date the request for reconsideration is received, the OSPR will advise the certificant of the Administrator's decision whether the request will be considered.
 - (4) Within fifteen (15) calendar days following the notice that the Administrator will consider the request, the certificant will either be sent a notice that the Administrator shall adhere to his or her earlier decision (i.e., deny the request for reconsideration), or the notice of suspension shall be rescinded.

Authority: Sections 8670.7.5, 8670.37.54(b), 8670.37.56, and 8670.37.58, Government Code.
Reference: Sections 8670.37.54-8670.37.56, Government Code.

798. SEVERABILITY.

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

Authority: Sections 8670.7.5, 8670.37.54(b), 8670.37.56 and 8670.37.58, Government Code. Reference: Sections 8670.37.54-8670.37.56, Government Code.