

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 [Amended Language Only]

Approved 9/3/15

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:

Subsection (a): No Change.

- (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, ~~marine~~ 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.

Subsections (d) and (e): No Change.

- (f) "Reasonable Worst Case Oil Spill" ~~is defined~~ means a volume of oil in barrels as defined and determined in Chapter 3 of this subdivision where the term is used at: Marine Facility – Section 817.02(d)(4); Small Marine Fueling Facility – Section 817.03(d)(4); Tank Vessel – Section 818.02(e)(4); Vessels Carrying Oil As Secondary Cargo – Section 818.03 (e)(4); Inland Facility – Section 817.04(k) and Nontank Vessel – 827.02(h)(4).

Subsection (g): No Change.

Authority: Sections 8670.7.5, 8670.37.53 and 8670.37.54, 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 ~~managing~~ 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) Before operating in California, all operators or owners of tank vessels or the owners of the oil contained therein, nontank vessels, and marine facilities~~ 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 have been being issued a valid Certificate of Financial Responsibility (hereafter referred to as a certificate).

(2) The For any new or renewal applications for vessels only, new or renewal application, applicable fees and any evidence offered to demonstrate of financial responsibility, and fee if applicable shall be received by OSPR at least ten (10) calendar days prior to operating or entering marine waters 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 of this subchapter, documentation of the financial responsibility renewal shall be provided at least 10 ten (10) calendar days before operating in California waters 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.

Subsections (a)(1) through (a) (6): No Change.

(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).

(7 9) These forms shall collectively be referred to as applications and incorporated by reference herein.

(8 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 ~~marine waters~~ 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 ~~marine waters~~ Waters of the State.

Subsections (b)(3) through (d): No Change.

(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 ~~twenty-one (21)~~ thirty (30) calendar days of receipt by the OSPR.
- (2) The OSPR shall determine the amount of financial responsibility as follows:

Subsections (e)(2)(A) through (e)(2)(F): No Change.

(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 ~~for small barges, marine facilities, small marine fueling facilities, mobile transfer units, and vessels carrying oil as secondary cargo~~ 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.

Subsections (e)(5): No Change.

(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 ~~tanker, barge, nontank vessel, or marine facility, 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.

Subsections (f)(3) through (g): No Change.

Authority: Sections 8670.7.5, 8670.37.54, 8670.37.58 and 8670.41 Government Code.
Reference: Sections 8670.37.53, 8670.37.54, 8670.37.58 and 8670.41, 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 ~~California marine waters~~ 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 ~~entering the marine- operating in w~~ Waters of the sState, shall ~~obtain~~ apply for a certificate issued by the Administrator prior to operating in ~~California marine waters~~ Waters of the State.

Subsections (b) through (d): No Change.

- (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 ~~transporting the oil across California marine waters~~ operating in Waters of the State, provide the Administrator with the following:
- (1) A a copy or copies of the certificate(s) applicable to all of the oil at all times during the transport; and
 - (2) A a copy of a written statement by the holder(s) of the applicable certificate(s) authorizing its (their) application to the vessel.

Subsections (f) through (g): No Change.

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 ~~the~~ their operations, ~~of the small barge, marine facility, small marine fueling facility, mobile transfer unit, or vessel~~

~~carrying oil as secondary cargo.~~

- (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.

Subsections (c) through (g): No Change.

- (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.

Subsections (i) through (k): No Change.

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.

Subsections (a) and (b): No Change.

- (c) An oil spill or spills occurring from one or more tankers, barges, ~~or~~ nontank vessels, ~~or~~ marine facilities, or inland facilities within or outside of ~~California marine waters~~ 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) ~~i~~ Immediately review the certificate holder's 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 ~~tanker, barge or nontank~~ vessel or ~~marine~~ facility not associated with the spill; ~~and~~
 - ~~(2) where a determination is made that the certificate is inapplicable, provide the certificate holder reasonable time to cease necessary operations; and~~
 - ~~(3)~~ e Consider the certificate inapplicable to any tanker, barge or nontank vessel or marine 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 ~~tanker, barge or nontank~~ vessel or ~~marine~~ facility not associated with the spill(s), pursuant to Subsection (c) above, shall reapply for a certificate for any or all ~~tanker(s), barge(s) or nontank~~ vessel(s) or ~~marine~~ 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) ~~T~~he operator(s) or owner(s) has (have) the amount of financial ability required pursuant to this subchapter; and
- (2) ~~T~~he 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:

Subsections (a)(1)(A): No Change.

- (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 (~~2/08~~ 3/16/15) for endorsements to ~~policies for marine facilities (other than mobile transfer units)~~; 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.

Subsections (a)(1)(C) through (a)(2): No Change.

- (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 ~~California waters~~ 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 (~~2/08~~ 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 ~~California waters~~ Waters of the State, may result in a revocation of the certificate as outlined in section 796 of this subsection.

Subsections (a)(4) through (c)(4): No Change.

- (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 (~~3/97~~ 3/15/15) for ~~marine~~ 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.

Subsections (d)(1) and (d)(2) No Change.

- (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 (~~3/97~~ 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.

Subsections (e)(1) through (5): No Change.

- (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 (~~3/97~~ 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.

Subsections (f) though (i): No Change.

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) ~~M~~making a false material statement in connection with an application for or renewal of a certificate;
 - (2) ~~F~~failure to establish or maintain evidence of financial responsibility as required by this Subchapter;
 - (3) ~~W~~when the holder of the certificate is no longer the owner or operator of the ~~tanker, barge or nontank~~ vessel or ~~marine~~ facility; or owner of the oil in question; or
 - (4) ~~W~~when the certificant did not provide their evidence of financial responsibility within the time frames specified by this Subchapter.

Subsections (b) through (d): No Change.

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 ~~California marine waters~~ Waters of the State from one or more tankers, barges or nontank vessels, ~~or~~ 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.

Subsections (b) through (e): No Change.

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.