

**CALIFORNIA CODE OF REGULATIONS**  
**TITLE 14. NATURAL RESOURCES**  
**DIVISION 1. FISH AND GAME COMMISSION - DEPARTMENT OF FISH & GAME**  
**SUBDIVISION 4. OFFICE OF SPILL PREVENTION AND RESPONSE**  
**CHAPTER 2. FINANCIAL RESPONSIBILITY**

**§ 791. Definitions.**

In addition to the definitions in section 790 the following definitions shall govern the construction of this chapter.

(a) "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 chapter.

(b) "Large Tank Barge" for the purposes of determining financial responsibility, means a tank barge with a cargo capacity of 150,000 or more barrels of oil.

(c) "Small Tank Barge" for the purposes of determining financial responsibility, means a tank barge with a cargo capacity of less than 150,000 barrels of oil.

Note: Authority cited: Sections 8670.7.5, 8670.37.53, 8670.37.54 and 8670.58, Government Code. Reference: Sections 8670.3, 8670.37.51, 8670.37.52, 8670.37.53, 8670.37.54, 8670.37.55, 8670.37.56, 8670.37.57 and 8670.37.58, Government Code.

**§ 791.6. Purpose and Scope.**

(a) The purpose of this chapter is to specify the procedures and timelines for obtaining and renewing a certificate of financial responsibility.

(b) An owner or operator of a facility, small marine fueling facility, mobile transfer unit, tank vessel, nontank vessel, or vessel carrying oil as secondary cargo required to have an oil spill contingency plan pursuant to subchapter 3 or subchapter 4 of chapter 3 of this subdivision, while operating in California, 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). The acceptable methods for providing financial responsibility are described in section 795 of this chapter.

(c) If at any time the Administrator determines this chapter shall be applicable to a vessel or facility that had been given an exemption or for which this chapter had been deemed inapplicable, the vessel or facility owner or operator shall submit an application, pursuant to section 791.7, within 120 calendar days from the date of receipt of a written determination of applicability. Applicability is based on the criteria and provisions described at sections 815.03, 817.01, 817.04, 818.01, and 827.01 of this subdivision. OSPR shall review the application within thirty (30) calendar days.

(d) 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.

(e) A certificate of financial responsibility is conclusive evidence that the person or entity holding the certificate is the party responsible for the specified vessel, facility, or oil for purposes of determining liability for an oil spill, pursuant to section 8670.37.52 of the Government Code.

Note: Authority cited: Sections 8670.7.5, 8670.37.53, 8670.37.54, 8670.37.56 and 8670.37.58, Government Code. Reference: Sections 8670.37.54, 8670.37.55 and 8670.37.56, Government Code.

### **§ 791.7. Procedures for Application for California Certificate of Financial Responsibility.**

(a) The following application forms shall be used to obtain a certificate:

(1) Application for Certificate of Financial Responsibility for Operators or Owners of Tank Vessels, form DFW 1925 (8/14). Vessels carrying oil as secondary cargo shall use DFW 1925 to obtain a certificate of financial responsibility.

(2) Application for Certificate of Financial Responsibility for Operators or Owners of Nontank Vessels, form DFW 1972 (8/14).

(3) Application for Certificate of Financial Responsibility for Marine Facilities, form DFW 1924 (8/14).

(4) Application for Certificate of Financial Responsibility for Owners of Oil, form DFW 1947 (8/14).

(5) Application for Certificate of Financial Responsibility for Mobile Transfer Units, form DFW 1946 (8/14).

(6) Application for Certificate of Financial Responsibility for Inland Facilities, form DFW 1932 (NEW 06/21/17).

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

The application forms may be obtained directly from the Administrator or the website of the Office of Spill Prevention and Response, and, upon completion, submitted to the following:

DEPARTMENT OF FISH AND WILDLIFE  
OFFICE OF SPILL PREVENTION AND RESPONSE (OSPR)  
1700 K STREET, SUITE 250  
SACRAMENTO, CA 95811  
<https://www.wildlife.ca.gov/OSPR>

*E-mail contacts:*

For facilities - [CaCOFR-Facilities@Wildlife.ca.gov](mailto:CaCOFR-Facilities@Wildlife.ca.gov)

For tank vessels or vessels with oil as cargo - [CaCOFR-Tank@Wildlife.ca.gov](mailto:CaCOFR-Tank@Wildlife.ca.gov)

For nontank vessels - [CaCOFR-Nontank@Wildlife.ca.gov](mailto:CaCOFR-Nontank@Wildlife.ca.gov)

(c) General Application Content and 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 an authorized representative of the owner or operator applicant, whose title shall be indicated in the space provided on the application.

(4) If the application is submitted by an agent on behalf of the owner or operator (e.g. a consultant), the Administrator may request a written delegation of authority authorizing the agent to submit the application on behalf of the owner or operator.

(5) 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. The agent shall be located in California. If the applicant contracts for this service, the Administrator may request documentation that the agent for service of process acknowledges this capacity.

(6) An owner or operator of a nontank vessel shall submit a nonrefundable fee for each nontank vessel with each new or renewal application, as set by section 870.17 of this subdivision. Processing charges shall not be deducted from the fee. The fee is due with each nontank vessel application renewal. The fee amounts are as follows:

(A) For a nontank vessel that has a carrying capacity of over 6,500 barrels of oil, or capacity over 7,500 barrels of oil if the vessel is owned and operated by California or a federal agency, a fee of \$3,250 per vessel, or;

(B) For a nontank vessel that has a carrying capacity greater than 500 barrels of oil but less than or equal to 6,500 barrels of oil, or a carrying capacity greater than 500 barrels of oil but less than or equal to 7,500 barrels of oil if owned and operated by California or a federal agency, a fee of \$1,950 per vessel, or;

(C) For a nontank vessel that has a carrying capacity of 500 barrels of oil or less, a fee of \$650 per vessel.

(7) 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 seven calendar days of becoming aware of any change, notify the Administrator in writing of the change.

(d) For new or renewal applications for vessels only, any evidence submitted to demonstrate financial responsibility, and any applicable nontank vessel fees, shall be received by the Office of Spill Prevention and Response at least 10 calendar days prior to operating where a spill may impact waters of the state. After expiration of any of the methods of evidence used to demonstrate financial responsibility, documentation of the financial responsibility renewal shall be provided at least 10 calendar days before operating where a spill may impact waters of the state.

(e)(1) Applications and evidence of financial responsibility submitted by applicants will be reviewed within 30 calendar days of receipt by the Office of Spill Prevention and Response. Certificates will be issued within that period provided that the following has been received: (1) adequate information was furnished in the application, (2) acceptable evidence of financial responsibility, and (3) receipt of the nontank vessel fee if applicable.

(2) 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 the insufficiency, and the applicant shall then have 30 calendar days from the date of notification to provide the missing information or additional evidence.

(3) Certificates will be issued within 15 calendar days of receipt of sufficient additional evidence or supplemental information. 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.

(f) Each certificate issued by the Administrator shall be valid for two years except for the following:

(1) The Administrator may issue a certificate for a facility for a period of no longer than three years if the Administrator finds that:

(A) Continued operation is necessary to finance abandonment of the facility; and

(B) The financial resources the applicant is able to demonstrate are reasonably sufficient to cover any spill-related damages from the facility.

(2) A certificate for a mobile transfer unit shall be valid for one year.

(g) Financial Responsibility Amounts for Tankers, Nontank Vessels, Large Tank Barges, and Owners of Oil.

(1) The amounts of financial responsibility that must be demonstrated are as follows:

(A) Owners or operators of tankers, large tank barges, or owners of, or persons accepting responsibility for the oil, shall demonstrate their current financial ability to pay at least \$1 billion (\$1,000,000,000).

(B) Except as provided in (C) of this section below, owners or operators of nontank vessels shall demonstrate their current financial ability to pay at least \$300 million (\$300,000,000).

1. Certificates of financial responsibility are not required for non-self propelled nontank vessels that do not carry any oil.

(C) Owners or operators 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 amount of financial responsibility:

1. \$2 million (\$2,000,000) for those that have a carrying capacity from less than 1 to not more than 10 barrels;

2. \$5 million (\$5,000,000) for those that have a carrying capacity greater than 10 to not more than 50 barrels;

3. \$10 million (\$10,000,000) for those that have a carrying capacity greater than 50 to not more than 500 barrels;

4. \$18.9 million (\$18,900,000) for those that have a carrying capacity greater than 500 to not more than 1,000 barrels.

5. For nontank vessels that have a carrying capacity greater than 1,000 barrels to not more than 6,500 barrels, or 7,500 barrels for nontank vessels owned and operated by California or a federal agency, the amount of financial responsibility shall be calculated 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 percent of the per barrel clean-up and damage cost of spilled oil of \$18,900); then add \$18.9 million (\$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 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) The amounts in this subsection are in effect unless amended by section 8670.37.53, 8670.37.58, or 8670.41 of the Government Code.

(h) Financial Responsibility Amounts for Marine Facilities, Inland Facilities, Small Marine Fueling Facilities, Mobile Transfer Units, Small Tank Barges, and Vessels Carrying Oil As Secondary Cargo.

(1) The Administrator shall determine the amount of financial responsibility that must be demonstrated as follows:

(A) For small tank barges:

1. The product derived by multiplying the maximum per barrel clean-up and damage cost of spilled oil (\$12,500) times 30 percent of the maximum cargo capacity, as measured in barrels, of the small tank barge.

2. The amount of financial responsibility shall not exceed the minimum amount required for tankers as set forth in section 8670.37.53 of the Government Code. Currently this is \$1 billion (\$1,000,000,000).

3. The amount of financial responsibility required for small tank 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 (j) of this section. If a reduced financial responsibility amount is allowed, it shall be based on: \$12,500 times 30 percent of the maximum concentration of oil found in the oily waste water, as measured in barrels.

4. In no case will the amount of financial responsibility be reduced below the minimum of \$1 million (\$1,000,000).

(B) For marine facilities (except for offshore marine facilities, small marine fueling facilities, and mobile transfer units addressed under subsections (C), (D), and (E), respectively):

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 subsections 817.02(d)(1)(A), (B), (C), and (E) of this subdivision.

2. The amount determined pursuant to paragraph (1) above shall not be less than \$1 million (\$1,000,000) or in excess of \$300 million (\$300,000,000), unless otherwise determined by the Administrator following reconsideration pursuant to subsection (j) of this section.

(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 applicant's oil spill contingency plan, in accordance with subsection 817.02(d)(1)(C) or (D) of this subdivision, plus:

2. The amount determined pursuant to paragraph (1) above shall not be less than \$10 million (\$10,000,000) or in excess of \$300 million (\$300,000,000), unless otherwise determined by the Administrator following reconsideration pursuant to subsection (j) of this section.

(D) For small marine fueling facilities (except 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 the reasonable worst case spill volume, as measured in barrels, calculated in the applicant's oil spill contingency plan, in accordance with subsection 817.03(d)(1)(A).

(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 30 percent of the maximum cargo capacity, as measured in barrels, of the mobile transfer 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 (j) of this section. If a reduced financial responsibility amount is allowed, it shall be based on \$12,500 times 30 percent 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 30 percent of the maximum oil cargo capacity, as measured in barrels, of the vessel.

2. The amount of financial responsibility shall not exceed the minimum amount required for tankers as set forth in section 8670.37.53 of the Government Code.

3. The amount of financial responsibility shall at least be a minimum of \$1 million (\$1,000,000).

(G) For Inland Facilities (including railroads):

1. If the applicant only poses a risk to inland waters designated as intermittent or ephemeral in the National Hydrography Dataset and the statewide quarter mile buffer data layer (as depicted in the Southwest Environmental Response Management Application, on the National Oceanic and Atmospheric Administration's website, the required financial responsibility is the product of the reasonable worst case spill volume in barrels (as determined in the applicant's oil spill contingency plan pursuant to subsection 817.04(k)(3) of this subdivision) multiplied by \$6,000.

2. If the applicant poses a risk to inland waters designated as perennial in the National Hydrography Dataset, the required financial responsibility is the product of the reasonable worst case spill volume in barrels (as determined in the applicant's oil spill contingency plan pursuant to subsection 817.04(k)(3) of this subdivision) multiplied by \$10,000.

3. The maximum financial responsibility that may be required for an inland facility is \$100 million (\$100,000,000).

(i) Application renewals.

(1) Certificate renewal applications are sent by the Administrator to the certificant approximately 45 calendar days prior to the expiration of the existing certificate. However, failure to receive this renewal notice does not relieve the certificant of the obligation to timely renew the 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, or that the method of demonstrating financial responsibility will be terminated, or any coverage thereunder will cease, then the certificant shall notify the Administrator, in writing, within seven calendar 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 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 subsection 795(a) Insurance, (b) Self-insurance, (c) Surety Bond, (d) Letter of Credit, (e) Guaranty, or (f) Protection and Indemnity Clubs; these sections describe the expiration and renewal process, and time frame for submission of renewal information.

(4) Owners or operators of nontank vessels renewing a certificate shall submit the nonrefundable fee per vessel, as set forth in subsection (b)(6).

(j) Requests for Reconsideration.

(1) Applicants and certificants may submit a written request to the Administrator requesting reconsideration of the amount of financial responsibility that the owner or operator must demonstrate to obtain a certificate, or any decision by the Administrator to deny issuance of a certificate or a renewal certificate. Requests must be submitted within 15 business days from the date that the applicant or certificant receives notice of denial or of the amount of financial responsibility to be demonstrated. The Administrator may waive the 15 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 financial responsibility determination, the denial of the application, or the denial of a renewal application.

(3) Within 15 business days following receipt of the request for reconsideration, the Administrator will send the applicant or certificant either 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.

Note: Authority cited: Sections 8670.7.5, 8670.37.53, and 8670.41, Government Code. Reference: Sections 8670.37.53, 8670.37.54, 8670.37.58 and 8670.41, Government Code.

**§ 792. In Lieu Of Reliance On The Certificate: Tankers, Nontank Vessels, Tank Barges, and Owners Of Oil.**

(a) When the owner of all of the oil contained in the tanker, tank barge, or nontank vessel, or the person accepting responsibility for the oil, holds the certificate in lieu of the tanker, tank barge, or nontank vessel owner or operator, then the owner or person accepting responsibility for the oil shall provide the following: 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 to the tanker, tank barge or nontank vessel, and a copy of the certificate to the tanker, tank barge or nontank vessel owner or operator.

(b) If the owner or operator of a vessel intends to rely on a certificate issued to the owner of the oil or person accepting responsibility for the oil, then the vessel owner or operator shall, at least twenty-four hours prior to operating in waters of the state, provide the Administrator with the following:

(1) By way of phone call, notice of the intent to operate and the certificate numbers 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.

(c) An operator who is not also the owner of the certificated tanker, tank barge, or nontank vessel, shall carry on board such tanker, tank barge, or nontank vessel a copy of the charter-party or any other written document which demonstrates that the operator is the operator designated on the certificate.

(d) An owner or operator of a tanker, tank barge, or nontank vessel 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.

Note: Authority cited: Sections 8670.7.5, 8670.37.51, 8670.37.53, 8670.37.54, 8670.37.56 and 8670.37.58, Government Code. Reference: Sections 8670.37.51, 8670.37.52, 8670.37.53, 8670.37.54, 8670.37.55, 8670.37.56, 8670.37.57, 8670.37.58 and 8670.56.6, Government Code.

**§ 793. Certificate Requirements For Oil Transfers At Marine Terminals And Active Offshore Marine Facilities.**

(a) Each owner or operator of a marine terminal within the state may only transfer oil to or from a tank vessel or vessel carrying oil as secondary cargo following receipt and verification of a copy of the certificate of financial responsibility issued by the

Administrator to the owner or operator of the vessel, or from the owner of or person accepting responsibility for all of the oil contained in the vessel, as well as all the oil to be transferred to or from the vessel.

(b) Each marine terminal owner or operator may only transfer oil to or from a vessel which is used for, or is intended to be used for, transferring oil as cargo to or from a second vessel located within twelve miles of the California shoreline, following receipt and verification of a copy of the certificates issued for both vessels or all of the oil contained in both vessels, as well as all the oil to be transferred to or from both vessels.

(c) Each marine terminal owner or operator shall be determined to have met the verification requirements set forth in subsections (a) and (b) of this section, when, at the time of oil transfer, the marine terminal owner or operator has:

(1) Obtained verbal verification that all certificates are current and applicable to the vessels and, if applicable, to all of the oil contained in or to be transferred to or from the vessels from the persons responsible for the vessels, or from the persons responsible for the oil to be transferred to or from the affected vessels, or from persons 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 (1); and

(3) Assured that the information contained in the certificates of financial responsibility is consistent with the information acquired pursuant to (1) and (2) above.

(d) The owner or operator of the marine terminal must retain a copy of the certificates obtained in accordance with (b) and (c) for a period of not less than one year.

(e) 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.

(f) Special procedures for owners or operators of offshore marine facilities engaged in drilling operations:

(1) The owner or operator 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(d)(1)(D) of this chapter.

(2) At such time as an offshore marine facility owner or operator 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 owner or operator shall apply for and obtain from the Administrator a new or amended certificate of financial responsibility to comply with the requirements of this chapter. The certificate shall no longer be required once the drilling operations are completed and any risk of spill abated.

Note: Authority cited: Sections 8670.7.5, 8670.37.51, 8670.37.53, 8670.37.54, 8670.37.56 and 8670.37.58, Government Code. Reference: Sections 8670.37.51, 8670.37.52, 8670.37.53, 8670.37.54, 8670.37.55, 8670.37.56, 8670.37.57 and 8670.56.6, Government Code.

#### **§ 794. Multiple Vessels Or Facilities Certifications.**

(a) A certificate shall be issued to the applicant for multiple tankers, tank barges, nontank vessels, or facilities listed on the completed application, following approval of the application by the Administrator.

(b) The total financial responsibility that must be demonstrated by an owner or operator with multiple small tank barges, marine facilities, inland facilities, small marine fueling facilities, mobile transfer units, nontank vessels, or vessels carrying oil as secondary cargo shall be based on the vessel or facility which poses the greatest financial risk during a spill as determined pursuant to section 791.7 of this chapter.

(c) If an oil spill occurs from one or more tanker, tank barge, nontank vessel, marine facility, or inland facility within or outside of California, which may cause the certificant to be liable for damages exceeding five percent of the total financial resources reflected by the certificate, then the Administrator shall:

(1) Immediately review the certificant's financial resources to determine the applicability of the certificate to the certificant's other vessels and facilities not associated with the spill, and notify the certificant 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; and

(2) Where a determination is made that the certificate is inapplicable, provide the certificant reasonable time to modify affected operations; and

(3) Consider the certificate inapplicable to the certificant's other vessels or facilities not associated with the spill.

(d) An owner or operator with a certificate deemed inapplicable to the other vessels or facilities not associated with the spill, shall reapply for a certificate for any tanker, tank barge, nontank vessel, vessel carrying oil as secondary cargo, marine facility, or inland facility not associated with the spill. Upon reapplication, the owner or operator shall demonstrate to the satisfaction of the Administrator that:

(1) The owner or operator has the amount of financial ability required pursuant to this chapter; and

(2) The owner or operator has the financial ability to pay all damages which arise or have arisen from the spill or spills which have occurred within the state.

Note: Authority cited: Sections 8670.7.5, 8670.37.53, 8670.37.54, 8670.37.55, 8670.37.56 and 8670.37.58, Government Code. Reference: Sections 8670.37.54, 8670.37.55 and 8670.37.56, 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 methods described below:

(a) Insurance.

(1) Applicants may demonstrate financial responsibility by submitting 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 must include the following information:

1. Name and address of insured;
2. Name and principal characteristics of tankers, tank barges, nontank vessels, or facilities 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 a spill of oil;
7. Language that the policy covers damages as specified in Government Code section 8670.56.5, except as provided in subsection (a)(1)(D) of this section:
8. Evidence of dollar amounts of the insurance policy or certificate of insurance;
9. Amount of deductibles and/or self-insured retention; 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 calendar days after a notice of termination or cancellation has been submitted to the Administrator. However, this policy shall only remain in effect for 10 calendar 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 Administrator, 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 California Endorsement for Oil Spill Liabilities, form DFW 1962 (06/21/17) for endorsements to policies for facilities, incorporated by reference herein.

(C) Similar or comparable evidence of insurance acceptable to the Administrator.

(D) If an insurance policy is being submitted as evidence for excess coverage over and above a Protection and Indemnity 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; 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 Protection and Indemnity Club policy; or

(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 which is greater than \$250,000, is only acceptable if:

(A) The applicant shows supplemental coverage for the amount of the deductible or self-insured retention 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 30 calendar days following the expiration of the current policy period, a certificant 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 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 chapter.

(B) No later than 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 (Refer to California Endorsement for Oil Spill Liabilities, form DFW 1962 (06/21/17)); other documentation which contains the minimum information set forth in subsection (a)(1) of this section; 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 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 chapter.

(4) If an insurance policy is submitted which states for any reason 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) of this section.

(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 California Insurance Code. The insurer providing coverage must also have a current AM Best rating of at least A-.

(b) Qualification as a Self-Insurer.

(1) Applicants may demonstrate financial responsibility by meeting the self-insurance requirements specified in this subsection. If another entity, such as a parent corporation, is assuming financial responsibility for the applicant by self-insurance, then that other entity must meet the self-insurance requirements. To qualify as a self-insurer, the applicant or other entity must meet the criteria of either of the following two tests – (A) Test I, or (B) Test II:

(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; or

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 (\$20,000,000) 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 (\$20,000,000) plus two times the amount of self-insurance to be established as set forth in section 791.7 of this chapter; and

3. Assets in the United States amounting to at least 90 percent of total assets or at least two times the amount of self-insurance to be established as set forth in section 791.7 of this chapter.

(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 Poor's or, Aaa, Aa, A, or Baa or better 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 (\$20,000,000) plus two times the amount of self-insurance to be established; and
3. Assets in the United States amounting to at least 90 percent of total assets or at least two times the amount of self-insurance to be established as set forth in section 791.7 of this chapter.

(2) Applicants or entities assuming financial responsibility for the applicant that are relying upon self-insurance as evidence of financial responsibility shall submit the following additional documentation:

(A) A letter signed by a financial officer, a general partner, the proprietor of a sole proprietorship, or an authorized representative of the aforementioned, stating:

1. He or she is a financial officer, general partner, proprietor, or authorized representative of the organization or business entity; and
2. That the letter supports the use of a financial test to demonstrate financial responsibility by self-insurance pursuant to this section; and
3. State whether the applicant, parent entity of the applicant, or a subsidiary of the applicant is the owner or operator of the vessels or facilities described in the applications or is the owner of the oil.

(B) If another entity will assume financial responsibility for the applicant, then the other entity must provide the Guaranty form DFW 1928 (06/21/17) as referenced in this subsection, upon the request of the Administrator. The Guaranty shall include the signature of an authorized representative of the other entity.

(C) The applicant or other entity agrees to notify the Administrator by certified mail within seven calendar days if, at any time, the applicant fails to meet the self-insurance test criteria.

(D) 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 calendar days prior to the close of the certificant's fiscal year.

(E) 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 or other entity may submit, in lieu of audited financial statements, copies of the most recent Form 10-K and any subsequent Form 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 90 calendar days after the close of certificant's fiscal year. However, alternatively the Administrator may agree to accept these documents at the earliest date that the independent certified public accountant declares in writing that the audited financial statements will be issued. The certificant must submit to the Administrator a written request for an alternate date within 60 calendar days after the close of the certificant's fiscal year. The Administrator will respond to this request within 15 calendar days of receipt. If agreed to, it is the certificant's responsibility to ensure the documents are submitted by that date.

(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 chapter. The surety bond form shall be in the form prescribed by this section. Refer to Surety Bond for Oil Spill Response and Damages, form DFW 1948 (06/21/17), incorporated by reference herein. 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 30 calendar day notice period for terminations prior to the bond's expiration date pursuant to item 10 of the form DFW 1948 with respect to any unloaded tanker(s), tank barge(s) or nontank vessel(s), covered by the surety bond.

(3) The bond shall not contain 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) An applicant utilizing a surety bond to demonstrate evidence of financial responsibility shall establish a standby trust fund. The trust agreement shall be in the form prescribed by this chapter. Refer to Trust Agreement, form DFW 1961 (06/21/17), incorporated by reference herein. 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 demonstrate financial responsibility by obtaining and submitting to the Administrator an Irrevocable Letter of Credit in favor of the State of California, and which conforms to the requirements of this chapter. 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 the Irrevocable Letter of Credit, form DFW 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 subject to and governed by the laws of the State of California.

(2) The letter of credit shall not contain additional terms or conditions which limit the issuing institution's obligation to make funds available to pay 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 chapter. Refer to Trust Agreement, form DFW 1961 (06/21/17), incorporated by reference herein. Under the terms of the letter of credit, all payments made thereunder 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 demonstrate financial responsibility by obtaining and submitting to the Administrator a written guaranty which conforms to the requirements of this chapter. The guaranty shall be in the form prescribed by this section. Refer to Guaranty of Financial Responsibility for Oil Spill Response and Damages, form DFW 1928 (06/21/17), incorporated by reference herein. The Guaranty shall:

(A) Indicate the expiration date of the guaranty or that it is a 'continuing' guaranty;

(B) Have a designated agent for service of process by the guarantor. The agent for service of process must be located in California; and

(C) Be subject to and governed by the laws of the State of California.

(2) Upon written request, the Administrator may waive the 30 calendar day notice period for terminations prior to the guaranty's expiration date pursuant to item nine of the form DFW 1928 with respect to any unloaded tanker(s), tank barge(s) or nontank vessel(s) covered by the guaranty.

(3) The guaranty shall not contain additional terms or conditions which limit the guarantor's obligation to pay for costs and damages arising under Government Code section 8670.56.5.

(4) 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.

(5) An applicant utilizing a guarantee to demonstrate evidence of financial responsibility shall establish a standby trust fund.

(A) The trust agreement shall be in the form prescribed by this chapter. Refer to Trust Agreement, form DFW 1961 (06/21/17), incorporated by reference herein.

(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.

(1) Membership in a Protection and Indemnity Club is acceptable evidence of financial responsibility if the following documentation is provided:

(A) Proof of entry of each tank vessel or nontank vessel into a Protection and Indemnity 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 of this subchapter and which names the applicant as an assured or member; and

(B) All addenda which pertain to pollution risk and deductibles; and

(C) A copy of the applicable Protection and Indemnity Club rules.

(2) At the Administrator's discretion, an applicant submitting evidence of Protection and Indemnity 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 Protection and Indemnity 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.

(3) Renewal. No later than 45 calendar days following expiration of the Protection and Indemnity Club coverage, and at least 10 calendar days before operating in waters of the state, certificants using Protection and Indemnity 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) of this section, 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 chapter 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 chapter.

(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.

Note: Authority cited: 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 chapter;

(3) When the certificant is no longer the owner or operator of the vessel or facility, or the owner of the oil in question; or

(4) When the certificant did not provide evidence of financial responsibility within the time frames specified by this chapter.

(b) A certificate is invalid if the evidence of financial responsibility required under section 795 of this chapter lapses or is otherwise no longer in effect.

(c) Requests for Reconsideration.

(1) A certificant may submit a written request to the Administrator requesting reconsideration of any decision to revoke or suspend a certificate. Requests must be submitted within 15 business days from the date the applicant or certificant receives notice of revocation. The Administrator may waive the 15 business 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 or suspension of the certificate. The certificate shall remain valid while the request for reconsideration is being reviewed.

(3) If the Administrator grants the request for reconsideration, then no later than 15 business days following receipt of the request for reconsideration, the Administrator will issue the certificant a final notice of determination.

(4) If the Administrator denies reconsideration (i.e., revokes or suspends the certificate), a new application, and fee, if applicable, are required.

Note: Authority cited: Sections 8670.7.5, 8670.37.53, 8670.37.54, 8670.37.56 and 8670.37.58, Government Code. Reference: Sections 8670.37.54, 8670.37.55 and 8670.37.56, Government Code.

### **§ 797. Reporting And Suspension.**

(a) The certificant shall provide written notification to the Administrator of an event or situation which could produce a material change that affects the certificant's ability to comply with the financial responsibility requirements. Such events include, but are not limited to, a spill occurring within or outside of California for which the certificant may be liable for damages, bankruptcy or insolvency, or some other significant action against the certificant. Additionally, the certificant must notify the Administrator in writing of any other potential liability that could produce a material change that affects the certificant's ability to comply with the financial responsibility requirements. Written notification must be submitted within 10 calendar days of knowledge of the incident or knowledge of sufficient facts which would lead a reasonably prudent person to investigate the situation. 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 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 of the owners' equity.

(b) Upon notification to the Administrator of a spill or other situation or potential liability, as required by subsection (a) above, 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 also have adequate resources remaining available to meet the requirements of this chapter, the Administrator shall suspend the certificate following 10 calendar days written notice to the certificant.

(d) Suspension of the certificate shall continue until the certificant demonstrates, to the satisfaction of the Administrator, that the certificant has the financial resources needed to meet the requirements of this chapter.

(e) Request for Reconsideration.

Certificants may submit a request for reconsideration of the Administrator's decision to suspend the certificate, pursuant to the request for reconsideration process described in subsection 796(c) of this chapter.

Note: Authority cited: Sections 8670.7.5, 8670.37.53, 8670.37.54, 8670.37.56 and 8670.37.58, Government Code. Reference: Sections 8670.37.54, 8670.37.55 and 8670.37.56, Government Code.

### **§ 798. Severability.**

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

Note: Authority cited: Sections 8670.5.5 and 8670.7.5, Government Code. Reference: Sections 8670.37.51, 8670.37.52, 8670.37.53, 8670.37.54, 8670.37.55, 8670.37.56, 8670.37.57 and 8670.37.58, Government Code.