

46 CFR part 69, subpart E. The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(e) For a vessel of a foreign country that is not a party to the Convention, gross tonnage, as referred to in this part, is determined as follows:

(1) *For a vessel measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention.* The vessel's gross tonnage under the similar laws and regulations is used for determining the 300 gross ton threshold, if applicable, the required amount of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA. The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(2) *For a vessel not measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention.* The vessel's gross tonnage under 46 CFR part 69, subpart B, or, if applicable, subpart E, is used for determining the 300 gross ton threshold, if applicable, the required amount of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA. The measurement standards applied are subject to applicable international agreements to which the United States is a party.

(f) A person who agrees to act as a guarantor or a self-insurer is bound by the vessel's gross tonnage as determined under paragraphs (c), (d), or (e) of this section, regardless of what gross tonnage is specified in an application or guaranty form illustrated in the appendices to this part. Guarantors, however, may limit their liability under a guaranty of financial responsibility to the applicable gross tonnage appearing on a vessel's International Tonnage Certificate or other official, applicable certificate of measurement and shall not incur any greater liability with respect to that guaranty, except when the guarantors knew or should have known that the applicable tonnage certificate was incorrect.

**§ 138.40 Where to apply for and obtain forms.**

(a) An operator shall file an application for a Certificate and a renewal of a Certificate together with fees and evidence of financial responsibility, with the Coast Guard National Pollution Funds Center at the following address: U.S. Coast Guard, National Pollution Funds Center (cv), 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203-1804, telephone (202) 493-6780, Telefax (202) 493-6781.

(b) Forms may be obtained at the address in paragraph (a) of this section, and all requests for assistance, including telephone inquiries, in completing applications should be directed to the U.S. Coast Guard at that same address.

[CGD 91-005, 59 FR 34227, July 1, 1994, as amended by USCG-1999-5832, 64 FR 34714, June 29, 1999]

**§ 138.50 Time to apply.**

(a) A vessel operator who wishes to obtain a Certificate shall file a completed application form, evidence of financial responsibility and appropriate fees at least 21 days prior to the date the Certificate is required. The Director, NPFCC, may waive this 21-day requirement.

(b) The Director, NPFCC, generally processes applications in the order in which they are received at the National Pollution Funds Center.

**§ 138.60 Applications, general instructions.**

(a) The application for a Certificate (Form CG-5585) is illustrated in Appendix A of this part. An application and all supporting documents must be in English. All monetary terms must be expressed in United States dollars.

(b) An authorized official of the applicant shall sign the application. The title of the signer must be shown in the space provided on the application.

(c) The application must be accompanied by a written statement providing authority to sign, where the signer is not disclosed as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director, chief executive officer, or any other duly authorized officer of a corporate applicant.

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(d) If, before the issuance of a Certificate, the applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the applicant shall, within five business days of becoming aware of the change, notify the Director, NPFC, in writing, of the change.

**§ 138.65 Issuance and carriage of Certificates.**

Upon the satisfactory demonstration of financial responsibility and payment of fees, the Director, NPFC, issues a Vessel Certificate of Financial Responsibility (Water Pollution), the original of which (except as provided in §§ 138.90 (a) and (b) and 138.110(f)) is to be carried aboard the vessel covered by the Certificate. The carriage of a valid Certificate or authorized copy indicates compliance with these regulations. Failure to carry a valid Certificate or authorized copy subjects the vessel to enforcement action, except where a Certificate is removed temporarily from a vessel for inspection by a United States Government official.

**§ 138.70 Renewal of Certificates.**

(a) An operator shall file a written application for the renewal of a Certificate at least 21 days, but not earlier than 90 days, before the expiration date of the Certificate. Except as provided in paragraph (c) of this section, a letter may be used for this purpose. The Director, NPFC, may waive this 21-day requirement.

(b) The applicant shall identify in the renewal application any changes which have occurred since the original application for a Certificate was filed, and set forth the correct information in full.

(c) An applicant that applies for the first time for a Certificate issued under this part to replace a Certificate issued under part 130 of this chapter shall submit an application form illustrated in Appendix A of this part. An applicant is not required to pay an application fee under § 138.130(c) for this first-time application.

**§ 138.80 Financial responsibility, how established.**

(a) *General.* In addition to submitting an application and fees, an applicant

shall submit, or cause to be submitted, evidence of financial responsibility in an amount determined under § 138.80(f). A guarantor may submit directly to the Director, NPFC, the evidence of financial responsibility.

(b) *Methods.* An applicant shall establish evidence of financial responsibility by one or more of the following methods:

(1) *Insurance.* By filing with the Director, NPFC, an insurance guaranty form CG-5586, illustrated in Appendix B of this part (or, when applying for a Master Certificate, a master insurance guaranty form CG-5586-1, illustrated in Appendix C of this part), executed by not more than four insurers that have been found acceptable by and remain acceptable to the Director, NPFC, for purposes of this part.

(2) *Surety bond.* By filing with the Director, NPFC, a surety bond guaranty form CG-5586-2, illustrated in Appendix D of this part, executed by not more than 10 acceptable surety companies certified by the United States Department of the Treasury with respect to the issuance of Federal bonds in the maximum penal sum of each bond to be issued under this part.

(3) *Self-insurance.* By filing the financial statements specified in paragraph (b)(3)(i) of this section for the applicant's last fiscal year preceding the date of application and by demonstrating that the applicant maintains, in the United States, working capital and net worth each in amounts equal to or greater than the total applicable amount calculated in accordance with § 138.80(f), based on a vessel carrying hazardous substances as cargo. As used in this paragraph, *working capital* means the amount of current assets located in the United States, less all current liabilities anywhere in the world; and *net worth* means the amount of all assets located in the United States, less all liabilities anywhere in the world. After the initial submission, for each of the applicant's fiscal years, the applicant or certificant shall submit statements as follows:

(i) *Initial and annual submissions.* An applicant or certificant shall submit