

**§ 138.150**

**33 CFR Ch. I (7-1-05 Edition)**

subject to a civil penalty. In addition, under section 4303(b) of that Act (33 U.S.C. 2716a(b)), the Attorney General may secure such relief as may be necessary to compel compliance with this part including termination of operations. Further, any person who fails to comply with this part with respect to evidence of financial responsibility under section 108(a)(1) of CERCLA (42 U.S.C. 9608(a)(1)), is subject to a Class I administrative civil penalty and a Class II administrative civil penalty or judicial penalty.

(b) The Secretary of the Treasury shall withhold or revoke the clearance required by 46 U.S.C. App. 91 to any vessel subject to this part that does not produce evidence of financial responsibility required by this part.

(c) The Coast Guard may deny entry to any port or place in the United States or the navigable waters of the United States, and may detain at a port or place in the United States in which it is located, any vessel subject to this part, which, upon request, does not produce evidence of financial responsibility required by this part.

(d) Any vessel subject to this part which is found in the navigable waters without the necessary evidence of financial responsibility is subject to seizure by and forfeiture to the United States.

(e) Knowingly and willfully using an invalid Certificate, or any copy thereof, is fraud.

[CGD 91-005, 59 FR 34227, July 1, 1994, as amended by CGD 96-052, 62 FR 16703, Apr. 8, 1997]

**§ 138.150 Service of process.**

(a) When executing the forms required by this part, each applicant and guarantor shall designate thereon a person located in the United States as its agent for service of process for purposes of this part and for receipt of notices of designations and presentations of claims under the Acts (collectively referred to as "service of process"). Each designated agent shall acknowledge the designation in writing unless

the agent has already furnished the Director, NPFC, with a "master" (*i.e.*, blanket) concurrence showing that it has agreed in advance to act as the United States agent for service of process for the applicant, certificant, or guarantor in question.

(b) If any applicant, certificant, or guarantor desires, for any reason, to change any designated agent, the applicant, certificant, or guarantor shall notify the Director, NPFC, of the change and furnish the relevant information, including the new agent's acknowledgment in accordance with paragraph (a) of this section, if a "master" concurrence is not applicable. In the event of death, disability, or unavailability of a designated agent, the applicant, certificant, or guarantor shall designate another agent in accordance with paragraph (a) of this section within 10 days of knowledge of any such event. The applicant, certificant, or guarantor shall submit the new designation to the Director, NPFC. The Director, NPFC, may revoke a certificate if an applicant, certificant, or guarantor fails to designate and maintain an agent for service of process.

(c) If a designated agent can not be served because of death, disability, unavailability, or similar event and another agent has not been designated under this section, then service of process on the Director, NPFC, will constitute valid service of process. Service of process on the Director, NPFC, will not be effective unless the server—

(1) Sends the applicant, certificant, or guarantor (by registered mail, at its last known address on file with the Director, NPFC), a copy of each document served on the Director, NPFC; and

(2) Attests to this registered mailing, at the time process is served upon the Director, NPFC, indicating that the intent of the mailing is to effect service of process on the applicant, certificant, or guarantor and that service on the designated agent is not possible, stating the reason why.

APPENDIX A TO PART 138—APPLICATION FORM

(30 min. per respondent)  
Approved OMB No. 2115-0545

DEPARTMENT OF TRANSPORTATION U. S. COAST GUARD CG-5585  <b>APPLICATION FOR VESSEL CERTIFICATE OF FINANCIAL RESPONSIBILITY (WATER POLLUTION)</b>		GENERAL (PART 1 OF 4 PARTS)
		<b>INSTRUCTIONS</b> Please type or print and submit this application to Director, Coast Guard National Pollution Funds Center (cv), 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203-1804. The application is in four parts: Part I - General; Part II - Evidence of Financial Responsibility; Part III - Declaration; Part IV - Concurrence of Agent. Applicants must answer all applicable questions. If a question does not apply, answer "not applicable." Incomplete applications will be returned. If additional space is required, supplemental sheets may be attached. All information must be provided in the English language.
1. (a) Legal name of applicant (name of responsible operator of all vessels listed in Part II):		THIS SPACE FOR USE BY USCG ONLY
(b) English equivalent of legal name if customarily written in language other than English:		
(c) Trade name, if any:		
2. Is this the first time the above-named applicant is submitting application Form CG-5585? <input type="checkbox"/> YES <input type="checkbox"/> NO  If "NO", what Coast Guard control number was assigned to the first application Form CG-5585? _____		
3. State applicant's legal form of organization, i.e., whether operating as an individual, corporation, partnership, association, joint stock company, business trust, or other organized group of persons (whether incorporated or not) or as a receiver, trustee, or other liquidating agent and briefly describe current business activities and length of time engaged therein.		
(a) If a corporation, association, or other organization, indicate: State in the United States, or foreign country, in which incorporated or organized: _____ Date of incorporation or organization: _____		
(b) If a partnership, provide name and address of each partner:		
4. Name and address of applicant's United States agent or other person authorized by applicant to accept service of process and receipt of notices of designations and presentations of claims in the United States (collectively referred to as "service of process"). (See Part IV) (U. S. applicants may appoint themselves as agent, eliminating the need to complete Part IV.)		

PREVIOUS EDITION IS OBSOLETE

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Reverse of CG-5585

EVIDENCE OF FINANCIAL RESPONSIBILITY (PART II OF 4 PARTS)								
5. List all applicant's vessels which require Certificates of Financial Responsibility under 33 CFR 138.12. In column (f) indicate the number "1" if the operator is also the registered owner. Indicate "2" in column (f) if the operator is not the registered owner.								
NAME OF VESSEL  (a)	TYPE OF VESSEL (See note below)  (b)	COUNTRY OF REGISTRY  (c)	US VESSELS: Documentation Number FOREIGN VESSELS: International Maritime Organization (IMO) Number or Country of Registration Number if no IMO number has been assigned.  (d)	GROSS TONS  (e)	"1" or "2"  (f)			
<p>NOTE: Designate the type of vessel by using a number from one of the following categories:</p> <table style="width: 100%; border: none;"> <tr> <td style="vertical-align: top;"> <p><b>CARGO VESSELS, SELF-PROPELLED</b></p> <p>Breakbulk freighter 10                      Containership * 11                      Roll on-roll off 12                      Barge carrier (e.g., lash, seabee) 13                      Combination breakbulk containership * 14                      Combination roll on-roll off containership * 15                      Combination barge carrier containership * 16                      Tanker 17                      Dry bulk carrier 18                      All other self-propelled cargo vessels 19                      Oil/bulk/ore carrier (OBO) 20</p> </td> <td style="vertical-align: top;"> <p><b>PASSENGER VESSELS</b></p> <p>Passenger vessel ** 30                      Combination passenger/cargo vessel * 31                      Ferry ** 32</p> <p><b>RECREATIONAL VESSELS</b></p> <p>All types of pleasure craft 40</p> </td> <td style="vertical-align: top;"> <p><b>UTILITY CRAFT</b></p> <p>Tank barge 50                      Tug and towboat 51                      Barge and scow 52                      Mobile offshore drilling unit 53                      Fishing vessel 54                      Factory vessel 55                      Research vessel 56                      All other utility craft *** 57</p> <p><b>MISCELLANEOUS</b>                      Vessels not otherwise specified 60</p> </td> </tr> </table> <p>* Containership categories should be assigned only to vessels having fixed container cells or regularly carrying multi-tier container deckloads.                      ** Passenger categories should be assigned only to vessels carrying more than 12 passengers for hire.                      *** Includes floating cranes, dredges, docks, etc.</p>						<p><b>CARGO VESSELS, SELF-PROPELLED</b></p> <p>Breakbulk freighter 10                      Containership * 11                      Roll on-roll off 12                      Barge carrier (e.g., lash, seabee) 13                      Combination breakbulk containership * 14                      Combination roll on-roll off containership * 15                      Combination barge carrier containership * 16                      Tanker 17                      Dry bulk carrier 18                      All other self-propelled cargo vessels 19                      Oil/bulk/ore carrier (OBO) 20</p>	<p><b>PASSENGER VESSELS</b></p> <p>Passenger vessel ** 30                      Combination passenger/cargo vessel * 31                      Ferry ** 32</p> <p><b>RECREATIONAL VESSELS</b></p> <p>All types of pleasure craft 40</p>	<p><b>UTILITY CRAFT</b></p> <p>Tank barge 50                      Tug and towboat 51                      Barge and scow 52                      Mobile offshore drilling unit 53                      Fishing vessel 54                      Factory vessel 55                      Research vessel 56                      All other utility craft *** 57</p> <p><b>MISCELLANEOUS</b>                      Vessels not otherwise specified 60</p>
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5. (g) If applicant indicated "2" for any vessel listed above in column 5(f), indicate:								
NAME OF VESSEL	OWNER	OWNER'S MAILING ADDRESS						

PART II (CONT'D)				
6. Items 7 through 11 are methods of establishing financial responsibility. Check the appropriate box(es) below and answer only the item(s) which apply applicable to this application:				
<input type="checkbox"/> Insurance <i>(Answer item 7)</i>	<input type="checkbox"/> Surety Bond <i>(Answer item 8)</i>	<input type="checkbox"/> Financial Guaranty <i>(Answer item 9)</i>	<input type="checkbox"/> Self-Insurance <i>(Answer item 10)</i>	<input type="checkbox"/> Other evidence <i>(Answer item 11)</i>
7. Name and address of applicant's insurance guarantor (evidence of insurance acceptable to the Director, Coast Guard National Pollution Funds Center, on Insurance Guaranty Form CG-5586 or Master Insurance Guaranty Form CG-5586-1, must be filed before a Certificate will be issued):				
8. Total amount of surety bond guaranty. \$ _____				
Name and address of applicant's surety bond guarantor (Surety Bond Guaranty Form CG-5586-2 must be filed before a Certificate will be issued):				
9. Name and address of applicant's financial guarantor (Financial Guaranty Form CG-5586-3, or Master Financial Guaranty Form CG-5586-4, and all required financial data must be filed before a Certificate will be issued):				
Financial Guarantor's fiscal year: _____ to _____ (Month) (Day) (Month) (Day)				
10. If applicant intends to qualify as a self-insurer, attach all required financial data and indicate fiscal year: _____ to _____ (Month) (Day) (Month) (Day)				
11. If applicant intends to qualify through other evidence, supply all information required by 33 CFR 138.80(b)(5).				

Reverse of CG-5585

DECLARATION (PART III OF 4 PARTS)	
12. Applicant's mailing address (street, number, post office box, city, state or country. Indicate ZIP code if in the United States):	14. Type or print in this space the name and title of the official who is signing this application:
	15. Address of principal office in the United States (if any):
13. Telefax number and/or telex number and answerback:	16. Telephone no. (area code and number):
<p>I declare that I have examined this application, including any accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Furthermore, the applicant named in item 1(e) of Part I above is the responsible operator of all vessels now listed in or later added to this application. I agree that in the event the agent designated in item 4 of Part I above, or that agent's replacement as may be designated later with the approval of the Director, Coast Guard National Pollution Funds Center, cannot be served due to death, disability, unavailability, or similar event, the Director, Coast Guard National Pollution Funds Center, is considered the agent for service of process. I have signed this application in my capacity as an authorized official of the applicant, or, if acting under a power of attorney, pursuant to the power vested in me by the applicant as evidenced by the attached power of attorney.</p> <p style="text-align: center;"><b>IMPORTANT</b></p>	
DATE	SIGNATURE OF AUTHORIZED OFFICIAL
<p><b>NOTE:</b> Please be sure that Parts I, II, and III have been completed in full and that Part III has been dated and signed. Then proceed to Part IV, attached.</p> <p style="text-align: center;"><b>NO CERTIFICATE WILL BE ISSUED UNLESS A COMPLETED APPLICATION FORM HAS BEEN RECEIVED, PROCESSED AND APPROVED.</b></p>	
COMMENTS:	
<p style="text-align: center;"><small>Any person who knowingly and willfully makes a false statement in this application is subject to the sanctions prescribed in 18 U.S.C. 1001.</small></p>	

CONCURRENCE OF AGENT (PART IV OF 4 PARTS)	
<p><small>PART IV-A must be completed by the person designated in item 4 of Part I to serve as applicant's United States agent for service of process. Part IV-B must be completed by the applicant. After Parts IV-A and IV-B are completed, Part IV should be submitted to the Director, Coast Guard National Pollution Funds Center, by the applicant or by the agent, either separately or together with Parts I, II, and III. (Part IV need not be completed if the agent designated in item IV of Part I already has submitted to the U.S. Coast Guard an acceptable blanket Concurrence of Agent, agreeing to serve on behalf of certain applicants who designate that agent. Part IV also need not be completed if the applicant is a United States entity and has appointed itself as agent in item 4 of Part I.)</small></p>	
PART IV - A	
<p>It is hereby agreed that _____</p> <p>shall serve as the applicant's United States agent for service of process for purposes of 33 CFR part 138. This designation and agreement shall cease immediately in the event the applicant designates a new agent acceptable to the Director, National Pollution Funds Center.</p> <p>Date: _____</p> <p>Signature of person signing on behalf of agent: _____</p> <p>Title: _____</p> <p>Business address: _____</p> <p>_____</p>	
PART IV - B (TO BE COMPLETED BY APPLICANT)	
<p>Name of applicant (from item I(a)): _____</p> <p>Signature of authorized official signing on behalf of applicant: _____ <small>(Person signing here should also sign in appropriate place on Part III)</small></p> <p>Date: _____</p> <p>Type or Print Name and Title: _____</p>	

APPENDIX B TO PART 138—INSURANCE GUARANTY FORM

Insurance Co. Form No. \_\_\_\_\_

DEPARTMENT OF TRANSPORTATION  
U.S. COAST GUARD  
CG-5586

INSURANCE GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL  
RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990 AND THE  
COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND  
LIABILITY ACT, AS AMENDED

The undersigned insurer or insurers ("Insurer") hereby certifies that for purposes of complying with the financial responsibility provisions of the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), (referred to collectively as the "Acts"), the vessel owners, operators, and demise charterers ("Assured" or "Assurees") of each respective vessel named in the schedules below ("covered vessel") are insured by it against liability for costs and damages to which the Assurees may be subject under either section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below, respecting each covered vessel.

The amount and scope of insurance coverage hereby provided by the Insurer is not conditioned or dependent in any way upon any contract, agreement, or understanding between an Assured and the Insurer. Coverage hereunder is for purposes of evidencing financial responsibility under each of the Acts, separately, at the levels in effect at the time of the incident(s), release(s) or threatened release(s) giving rise to claims.

\_\_\_\_\_  
(Name of Agent)

with offices at \_\_\_\_\_

\_\_\_\_\_

is designated as the Insurer's agent in the United States for service of process for the purposes of this guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National Pollution Funds Center ("Center"), is the agent for these purposes.

The Insurer consents to be sued directly with respect to any claim, including any claim by right of subrogation, for costs and damages arising under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, against any Assured. However, in any direct action under OPA 90 the Insurer's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA,

the Insurer's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Insurer's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Assured under OPA 90 or CERCLA or both, as applicable, for which the Assured is liable. The Insurer shall be entitled to invoke only the following rights and defenses in any direct action:

- (1) The incident, release, or threatened release was caused by the willful misconduct of the Assured.
- (2) Any defense that the Assured may raise under the Acts.
- (3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this guaranty with respect to an incident or with respect to a release or threatened release.
- (4) A defense relating to the amount of a claim or claims that exceeds the amount of this guaranty, which amount is based on the gross tonnage of a covered vessel as entered on the vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable tonnage certificate was incorrect.
- (5) The claim is not one made under either of the Acts.

No more than four Insurers (including lead underwriters) may execute this guaranty. If more than one Insurer executes this guaranty, each Insurer binds itself jointly and severally for the purpose of allowing joint action or actions against any or all of the Insurers, and for all other purposes each Insurer is bound for the payment of sums only in accordance with the percentage of participation set forth opposite the name of the Insurer below. If no percentage of participation is indicated for an Insurer or Insurers, the liability of such Insurer or Insurers shall be joint and several for the total of the unspecified portions.

\_\_\_\_\_  
(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Insurer executes this guaranty).

The insurance evidenced by this guaranty shall be applicable only in relation to each incident, release, and threatened release occurring on or after the effective date and before the termination date of this guaranty and shall be applicable only in relation to each incident, release and threatened release giving rise to claims



under section 1002 of OPA 90 or section 107(a)(1) of CERCLA, or both, with respect to any of the covered vessels.

The effective date of this guaranty for each covered vessel is the date the vessel is named in or added to the schedules below. For each covered vessel, the termination date of this guaranty is 30 days after the date of receipt by the Center of written notice that the Insurer has elected to terminate the insurance evidenced by this guaranty and has so notified the vessel operator identified on the schedule below.

Termination of this guaranty as to any covered vessel shall not affect the liability of the Insurer in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

If, during the currency of this guaranty, an Assured requests that an additional vessel be made subject to this guaranty and if the Insurer accedes to that request and so notifies the Center, then that vessel is considered included in the schedules below as a covered vessel.

Title 33 CFR part 138 governs this guaranty.

Effective date of coverage for vessels originally named in this guaranty:

\_\_\_\_\_  
(day/month/year)

\_\_\_\_\_  
(Name of Insurer)

\_\_\_\_\_  
(Percentage of Participation)

\_\_\_\_\_  
(Mailing Address)

By:

\_\_\_\_\_  
(Signature of Official Signing  
On Behalf of Insurer)

\_\_\_\_\_  
(Typed Name and Title of Signer)

[NOTE: For each additional Insurer, provide information in the same manner as for Insurer above.]

## APPLICABLE AMOUNT TABLE

## (I) Applicable Amount Under the Oil Pollution Act of 1990

<u>VESSEL TYPE</u>	<u>VESSEL'S GROSS TONS</u>	<u>APPLICABLE AMOUNT</u>
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of \$2,000,000 or \$1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of \$10,000,000 or \$1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons.*	The greater of \$500,000 or \$600 per gross ton.

\* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighten oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

<u>VESSEL TYPE</u>	<u>APPLICABLE AMOUNT</u>
Vessel over 300 gross tons carrying hazardous substance as cargo -----	The greater of \$5,000,000 or \$300 per gross ton. -----
Any other vessel over 300 gross tons	The greater of \$500,000 or \$300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

Coast Guard, DHS

Pt. 138, App. B

SCHEDULE OF VESSELS

VESSEL

GROSS TONS

ASSURED  
OPERATOR

Insurance Guaranty Form CG-5586 No. \_\_\_\_\_

**SCHEDULE OF VESSELS  
ADDED TO ABOVE VESSELS**

<u>VESSEL</u>	<u>GROSS TONS</u>	<u>ASSURED OPERATOR</u>	<u>DATE ADDED</u>
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Insurance Guaranty Form CG-5586 No. \_\_\_\_\_

APPENDIX C TO PART 138—MASTER INSURANCE GUARANTY FORM

Insurance Co. Form No. \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION  
U.S. COAST GUARD  
CG-5586-1**

**MASTER INSURANCE GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL  
RESPONSIBILITY FOR BUILDERS, REPAIRERS, SCRAPPERS, LESSORS, OR  
SELLERS OF VESSELS UNDER THE OIL POLLUTION ACT OF 1990 AND THE  
COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND  
LIABILITY ACT, AS AMENDED**

The undersigned insurer or insurers ("Insurer") hereby certifies that for purposes of complying with the financial responsibility provisions of the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), (referred to collectively as the "Acts"),

\_\_\_\_\_  
(Name of Assured Operator)

and any owner (collectively referred to as "Assured") of each vessel covered hereunder are insured by it against liability for costs and damages to which the Assured may be subject under either section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below, respecting each covered vessel. This guaranty is applicable in relation to any vessel for which either or both Acts require financial responsibility and which the Assured holds for purposes of construction, repair, scrapping, lease, or sale.

The amount and scope of insurance coverage hereby provided by the Insurer is not conditioned or dependent in any way upon any contract, agreement, or understanding between the Assured and the Insurer. Coverage hereunder is for purposes of evidencing financial responsibility under each of the Acts, separately, at the levels in effect at the time of the incident(s), release(s), or threatened release(s) giving rise to claims.

\_\_\_\_\_  
(Name of Agent)

with offices at \_\_\_\_\_

\_\_\_\_\_  
is designated as the Insurer's agent in the United States for service of process for purposes of this guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National

Pollution Funds Center ("Center"), is the agent for these purposes.

The Insurer consents to be sued directly with respect to any claim, including any claim by right of subrogation, for costs and damages arising under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, against the Assured. However, in any direct action under OPA 90, the Insurer's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA, the Insurer's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Insurer's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Assured under OPA 90 or CERCLA or both, as applicable, for which the Assured is liable. The Insurer shall be entitled to invoke only the following rights and defenses in any direct action:

- (1) The incident, release, or threatened release was caused by the willful misconduct of the Assured.
- (2) Any defense that the Assured may raise under the Acts.
- (3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this guaranty with respect to an incident or with respect to a release or threatened release.
- (4) A defense relating to the amount of a claim or claims that exceeds the amount of this guaranty, which amount is based on the gross tonnage of a covered vessel as entered on the vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable tonnage certificate was incorrect.
- (5) The claim is not one made under either of the Acts.

No more than four Insurers (including lead underwriters) may execute this guaranty. If more than one Insurer executes this guaranty, each Insurer binds itself jointly and severally for the purpose of allowing joint action or actions against any or all of the Insurers, and for all other purposes each Insurer is bound for the payment of sums only in accordance with the percentage of participation set forth opposite the name of the Insurer below. If no percentage of participation is indicated for an Insurer or Insurers, the liability of such Insurer or Insurers shall be joint and several for the total of the unspecified portions.

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(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Insurer executes this guaranty).

The insurance evidenced by this guaranty shall be applicable only in relation to each incident, release, or threatened release occurring on or after the effective date of this guaranty and before the termination date of this guaranty and shall be applicable only in relation to each incident, release and threatened release giving rise to claims under section 1002 of OPA 90 or section 107(a)(1) of CERCLA, or both, with respect to any covered vessel. The termination date is 30 days after the date of receipt by the Center of written notice that the Insurer has elected to terminate the insurance evidenced by this guaranty and has so notified the above named Assured operator.

Termination of this guaranty does not affect the liability of the Insurer in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

Title 33 CFR part 138 governs this guaranty.

Effective Date: \_\_\_\_\_  
(day/month/year)

\_\_\_\_\_  
(Name of Insurer)

\_\_\_\_\_  
(Percentage of Participation)

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Official Signing  
On Behalf of Insurer)

\_\_\_\_\_  
(Typed Name and Title of Signer)

[NOTE: For each additional Insurer, provide information in the same manner as for Insurer above.]



## APPLICABLE AMOUNT TABLE

## (I) Applicable Amount Under the Oil Pollution Act of 1990

<u>VESSEL TYPE</u>	<u>VESSEL'S GROSS TONS</u>	<u>APPLICABLE AMOUNT</u>
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of \$2,000,000 or \$1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of \$10,000,000 or \$1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons.*	The greater of \$500,000 or \$600 per gross ton.
* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(e)(1)).		

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

<u>VESSEL TYPE</u>	<u>APPLICABLE AMOUNT</u>
Vessel over 300 gross tons carrying hazardous substance as cargo -----	The greater of \$5,000,000 or \$300 per gross ton. -----
Any other vessel over 300 gross tons	The greater of \$500,000 or \$300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

APPENDIX D TO PART 138—SURETY BOND GUARANTY FORM

SURETY CO. BOND NO. \_\_\_\_\_

DEPARTMENT OF TRANSPORTATION  
U.S. COAST GUARD  
CG-5586-2

SURETY BOND GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL  
RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990  
AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND LIABILITY ACT, AS AMENDED

\_\_\_\_\_  
(Name of Vessel Operator)

of \_\_\_\_\_  
(City, State and Country)

("Principal"), and the undersigned surety company or companies ("Surety" or "Sureties"), each authorized by the United States Department of the Treasury to do business in the United States as an approved surety, are held and firmly bound unto the United States of America and other claimants in the penal sum of

\$ \_\_\_\_\_

for costs and damages for which the Principal is liable under the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") (referred to collectively as the "Acts"). "Principal" includes, in addition to the vessel operator, the owner and demise charterer of each vessel covered by this guaranty ("covered vessel").

The Principal has elected to file with the Director, Coast Guard National Pollution Funds Center ("Center") this surety bond guaranty as evidence of financial responsibility to obtain from the Coast Guard a Certificate, or Certificates, of Financial Responsibility (Water Pollution) under 33 CFR part 138, to meet any liability for costs and damages incurred in connection with a covered vessel under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both.

The Surety agrees that the penal sum of this surety bond guaranty shall be available to pay to the United States of America or other claimants under the Acts any sum or sums for which the Principal may be held liable under the Acts. The penal sum shall be the total applicable amount, determined in accordance with the Applicable Amount Table below, for which payment we, the undersigned, bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally.

No more than four Sureties (including lead Sureties) may execute this guaranty. If there is more than one surety company executing this guaranty, we, the Sureties, bind ourselves in the penal sum jointly and severally for the purpose of allowing a joint action or actions against any or all of us, and for all

joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of the percentage of the penal sum only as is set forth opposite the name of each Surety.

If no percentage is indicated for a Surety or Sureties, the liability of such Surety or Sureties shall be joint and several for the total of the unspecified portions.

\_\_\_\_\_  
(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Surety executes this guaranty).

Principal and the Surety or Sureties agree that if all or a portion of the penal sum is paid, the penal sum is considered reinstated to its full amount until 30 days after receipt from the Surety of written notice to the Director, NPFC, that the penal sum has not been reinstated. Principal and the Surety or Sureties further agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the penal sum of this surety bond guaranty automatically increases, if necessary, to the total applicable amount appropriate for such vessel as determined in accordance with the Applicable Amount Table below. In no case, however, shall the penal sum be increased to an amount greater than the total applicable amount.

The penal sum is not further conditioned or dependent in any way upon any contract, agreement or understanding between the Principal and Surety. If the Principal is responsible for more than one vessel covered by this guaranty, then the penal sum is the total applicable amount for the vessel having the greatest liability under the Acts.

The liability of the Surety as guarantor under OPA or CERCLA, or both, shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments amount in the aggregate to the penal sum of this bond guaranty.

Any claim, including any claim by right of subrogation, against the Principal for costs and damages arising under either section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, may be brought directly against the Surety, and the Surety consents to suit with respect to these claims. However, in any direct action under OPA 90 the Surety's liability shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA the Surety's liability shall not exceed the amount determined under part II of the Applicable Amount Table below. The Surety's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Principal under OPA 90 or CERCLA or both, as applicable, for which the Principal is liable. In the event of a direct claim, the Surety may invoke only the following rights and defenses:

- (1) The incident, release, or threatened release was caused by the willful misconduct of the Principal.

(2) Any defense that the Principal may raise under the Acts.

(3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this guaranty with respect to an incident or with respect to a release or threatened release.

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this guaranty, which amount is based on the gross tonnage of the vessel as entered on the vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the surety knew or should have known that the applicable tonnage certificate was incorrect.

(5) The claim is not one made under either of the Acts.

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 12:01 a.m., standard time at the address of the Surety first named herein, and shall continue in force until discharged or terminated as herein provided. The above named Vessel Operator or the Surety may at any time terminate this bond guaranty by written notice sent by certified mail, registered mail, overnight delivery, or other comparable service to the other party, with a copy (showing that the original notice was sent to the other party by certified mail, registered mail, overnight delivery, or other comparable service) to the Center. The termination is effective thirty (30) days after the Center receives the written notice of termination. The Surety shall not be liable hereunder in connection with an incident, release, or threatened release occurring after the termination of this bond guaranty as herein provided, but the termination shall not affect the liability of the Surety in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective. Nor shall the Surety be liable hereunder in connection with a non-covered vessel, which is a vessel specifically named in other evidence of financial responsibility, which is applicable to that vessel on behalf of the above named Vessel Operator, and which is accepted by and on file with the Center during an incident, release, or threatened release giving rise to a claim against the Surety or Principal.

The Surety designates \_\_\_\_\_ (Name of Agent)

with offices at \_\_\_\_\_

as the Surety's agent in the United States for service of process for the purposes of this surety bond guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National Pollution Funds Center, is the agent for these purposes.

Title 33 CFR part 138 governs this bond guaranty.

In witness whereof, the Vessel Operator, for itself and owners, and Surety have executed this instrument on the day of \_\_\_\_\_, \_\_\_\_\_.

VESSEL OPERATOR

\_\_\_\_\_  
(Signature of Sole Proprietor or Partner)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Typed)

\_\_\_\_\_

-----

\_\_\_\_\_  
(Signature of Sole Proprietor or Partner)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Typed)

\_\_\_\_\_

-----

\_\_\_\_\_  
(Signature of Sole Proprietor or Partner)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Typed)

\_\_\_\_\_

-----

\_\_\_\_\_  
(Corporation)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_

(Affix Corporate Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name and Title)

-----

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SURETY

_____ (Name)	_____ (Percentage of Participation)
_____ (Address)	_____ (Affix Corporate Seal)
_____ (State of Incorporation)	_____ (Signature(s))
	_____ (Typed Name(s) and Title(s))

[NOTE: For every co-Surety, provide information in the same manner as for Surety above.]

## APPLICABLE AMOUNT TABLE

## (I) Applicable Amount Under the Oil Pollution Act of 1990

<u>VESSEL TYPE</u>	<u>VESSEL'S GROSS TONS</u>	<u>APPLICABLE AMOUNT</u>
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of \$2,000,000 or \$1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of \$10,000,000 or \$1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons. *	The greater of \$500,000 or \$600 per gross ton.
* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).		



(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

<u>VESSEL TYPE</u>	<u>APPLICABLE AMOUNT</u>
Vessel over 300 gross tons carrying hazardous substance as cargo -----	The greater of \$5,000,000 or \$300 per gross ton. -----
Any other vessel over 300 gross tons	The greater of \$500,000 or \$300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

## APPENDIX E TO PART 138—FINANCIAL GUARANTY FORM

FINANCIAL GUARANTY NO. \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION  
U.S. COAST GUARD  
CG-5586-3**

**FINANCIAL GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL  
RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990 AND THE  
COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,  
AND LIABILITY ACT, AS AMENDED**

1. \_\_\_\_\_  
(Name of Vessel Operator)

the operator of each vessel named in the annexed schedules ("covered vessel"), desires to establish evidence of financial responsibility for the owner, operator, and demise charterer (referred to collectively as "Operator") of each covered vessel in accordance with the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") (referred to collectively as the "Acts"). The undersigned Financial Guarantor or Guarantors ("Guarantor") hereby guarantees, subject to the provisions hereof, to discharge the Operator's liability with respect to each covered vessel for costs and damages under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(B) and (A), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below. The Operator and the Guarantor agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the limit of liability of the Guarantor hereunder shall be the total applicable amount appropriate for such a vessel determined in accordance with the Applicable Amount Table below. The amount and scope of the Guarantor's liability are not further conditioned or dependent in any way upon any contract, agreement, or understanding between the Operator and the Guarantor. The Guarantor shall furnish written notice to the Director, Coast Guard National Pollution Funds Center ("Center"), of all judgments rendered and payments made by the Guarantor under this Financial Guaranty.

2. Any claim, including any claim by right of subrogation, against the Operator for costs and damages arising under either section 1002 of OPA 90 as limited by section 1004(a), or section 107(a)(1) of CERCLA as limited by sections 107(c)(1)(A) and (B), or both, may be brought directly against the Guarantor and the Guarantor consents to suit with respect to these claims. However, in any direct action under OPA 90 the Guarantor's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA the Guarantor's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Guarantor shall be entitled to invoke only the

FINANCIAL GUARANTY NO. \_\_\_\_\_

amount determined under part II of the Applicable Amount Table below. The Guarantor's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Operator under OPA 90 or CERCLA or both, as applicable, for which the Operator is liable. The Guarantor shall be entitled to invoke only the following rights and defenses in any direct action:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Operator.

(2) Any defense that the Operator may raise under the Acts.

(3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this Guaranty with respect to an incident or with respect to a release or threatened release.

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this Guaranty, which amount is based on the gross tonnage of the covered vessel as entered on the Vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable certificate was incorrect.

(5) The claim is not one made under either of the Acts.

3. The Guarantor's liability under this Guaranty shall attach only in relation to each incident, release, or threatened release occurring on or after the effective date and before the termination date of this Guaranty. The effective date of this Guaranty for each covered vessel listed below is the date the vessel is named in or added to the schedules below. For each covered vessel, the termination date of the Guaranty is 30 days after the date of receipt by the Center of written notice that the Guarantor has elected to terminate this Guaranty, with respect to any of the covered vessels, and has so notified the vessel Operator identified above on the schedule below. Termination of this Guaranty as to any vessel does not affect the liability of the Guarantor in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

4. If, during the currency of this Guaranty, the Operator requests that a vessel become subject to this Guaranty, and if the Guarantor accedes to that request and so notifies the Center in writing, then that vessel shall be considered included in Schedule B as a covered vessel and subject to this Guaranty.

CG-5586-3

FINANCIAL GUARANTY NO. \_\_\_\_\_

5. The Guarantor designates \_\_\_\_\_  
(Name of Agent)  
with offices at \_\_\_\_\_

as the Guarantor's agent in the United States for service of process for purposes of this Guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability or unavailability, the Director, Coast Guard National Pollution Funds Center, is the agent for service of process.

6. No more than four Financial Guarantors may execute this Guaranty. If more than one Guarantor executes this Guaranty, each Guarantor binds itself jointly and severally for the purpose of allowing a joint action or actions against any or all of the Guarantors, and for all other purposes each Guarantor binds itself, jointly and severally with the Operator, for the payment of the percentage of sums only as is set forth opposite the name of the Guarantor. If no limit is indicated for a Guarantor or Guarantors, the liability of such Guarantor or Guarantors shall be joint and several for the total of the unspecified portions.

\_\_\_\_\_  
(Name of Lead Guarantor)  
is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Financial Guarantor executes this Guaranty).

7. Title 33 CFR part 138 governs this Financial Guaranty.

EFFECTIVE DATE: \_\_\_\_\_  
(Month/Day/Year and Place of Execution)

\_\_\_\_\_  
(Typed Name of Guarantor)

\_\_\_\_\_  
(Address of Guarantor)

\_\_\_\_\_  
(Percentage of Participation)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type Name and Title of Person Signing Above)

[NOTE: For each co-Guarantor, provide information in the same manner as for Guarantor above.]

## APPLICABLE AMOUNT TABLE

## (I) Applicable Amount Under the Oil Pollution Act of 1990

<u>VESSEL TYPE</u>	<u>VESSEL'S GROSS TONS</u>	<u>APPLICABLE AMOUNT</u>
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of \$2,000,000 or \$1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of \$10,000,000 or \$1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons. *	The greater of \$500,000 or \$600 per gross ton.

\* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

<u>VESSEL TYPE</u>	<u>APPLICABLE AMOUNT</u>
Vessel over 300 gross tons carrying hazardous substance as cargo -----	The greater of \$5,000,000 or \$300 per gross ton. -----
Any other vessel over 300 gross tons	The greater of \$500,000 or \$300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

SCHEDULE A

VESSELS INITIALLY LISTED

VESSEL

GROSS TONS

OPERATOR

Coast Guard, DHS

Pt. 138, App. E

SCHEDULE B

VESSELS ADDED IN ACCORDANCE WITH CLAUSE 4

<u>VESSEL</u>	<u>GROSS TONS</u>	<u>OPERATOR</u>	<u>DATE ADDED</u>
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CG-5586-3

7

Financial Guaranty No. \_\_\_\_\_

[CGD 91-005, 61 FR 9296, Mar. 7, 1996]



## APPENDIX F TO PART 138—MASTER FINANCIAL GUARANTY FORM

FINANCIAL GUARANTY NO. \_\_\_\_\_

DEPARTMENT OF TRANSPORTATION  
U.S. COAST GUARD  
CG-5586-4

MASTER FINANCIAL GUARANTY FURNISHED AS EVIDENCE OF  
FINANCIAL RESPONSIBILITY FOR BUILDERS, REPAIRERS, SCRAPPERS  
OR SELLERS OF VESSELS UNDER THE OIL POLLUTION ACT OF  
1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND LIABILITY ACT, AS AMENDED

1. \_\_\_\_\_

(Name of Builder, Repairer, Scraper or Seller)

is in, or from time to time may come into, possession of a vessel or vessels ("Vessel" or "Vessels") held for purposes of construction, repair, scrapping, or sale, and desires to establish evidence of financial responsibility for itself and any owner and demise charterer (collectively referred to as "Operator") of each Vessel in accordance with the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") (referred to collectively as the "Acts"). The undersigned Financial Guarantor or Guarantors ("Guarantor") hereby guarantees, subject to the provisions hereof, to discharge the Operator's liability with respect to each Vessel for costs and damages under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below. The Operator and the Guarantor agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the limit of liability of the Guarantor hereunder shall be the total applicable amount appropriate for such vessel determined in accordance with the Applicable Amount Table below. The amount and scope of liability are not further conditioned or dependent in any way upon any contract, agreement or understanding between the Operator and the Guarantor. The Guarantor shall furnish written notice to the Director, Coast Guard National Pollution Funds Center ("Center"), of all judgments rendered and payments made by the Guarantor under this Financial Guaranty.

2. Any claim, including any claim by right of subrogation, against the Operator for costs and damages arising under either section 1002 of OPA 90 as limited by section 1004(a), or section 107(a)(1) of CERCLA as limited by sections 107(c)(1)(A) and (B), or both, may be brought directly against the Guarantor and the Guarantor consents to suit with respect to these claims. However, in any direct action under OPA 90 the Guarantor's

liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA the Guarantor's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Guarantor's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Operator under OPA 90 or CERCLA or both, as applicable, for which the Operator is liable. The Guarantor shall be entitled to invoke only the following rights and defenses in any direct action:

- (1) The incident, release, or threatened release was caused by the willful misconduct of the Operator.
- (2) Any defense that the Operator may raise under the Acts.
- (3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this Guaranty with respect to an incident or with respect to a release or threatened release.
- (4) A defense relating to the amount of a claim or claims that exceeds the amount of this Guaranty, which amount is based on the gross tonnage of the covered vessel as entered on the Vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable tonnage certificate was incorrect.
- (5) The claim is not one made under either of the Acts.

3. The Guarantor's liability under this Guaranty shall attach only in relation to each incident, release, or threatened release occurring on or after the effective date and before the termination date of this Guaranty. The termination date is 30 days after the date of receipt by the Center of written notice that the Guarantor has elected to terminate this Guaranty and has so notified the Operator. Termination of this Guaranty shall not affect the liability of the Guarantor in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

4. The Guarantor designates \_\_\_\_\_,  
(Name of Agent)

with offices at \_\_\_\_\_

\_\_\_\_\_

as the Guarantor's agent in the United States for service of process for purposes of this Guaranty and for receipt of notices

of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, National Pollution Funds Center, is the agent for these purposes.

5. No more than four Financial Guarantors may execute this Guaranty. If more than one Guarantor executes this Guaranty, each Guarantor binds itself jointly and severally for the purpose of allowing a joint action or actions against any or all of the Guarantors, and for all other purposes each Guarantor binds itself, jointly and severally with the Operator, for the payment of the percentage of sums only as is set forth opposite the name of the Guarantor. If no percentage is indicated for a Guarantor or Guarantors, the liability of such Guarantor or Guarantors shall be joint and several for the total of the unspecified portions.

\_\_\_\_\_  
(Name of lead guarantor)  
is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Financial Guarantor executes this Guaranty).

6. Title 33 CFR part 138 governs this Financial Guaranty.

EFFECTIVE DATE: \_\_\_\_\_  
(Month/Day/Year and Place of Execution)

\_\_\_\_\_  
(Typed Name of Guarantor)

\_\_\_\_\_  
(Address of Guarantor)  
\_\_\_\_\_

\_\_\_\_\_  
(Percentage of Participation)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type Name and Title of Person Signing Above)

[NOTE: For each co-Guarantor, provide information in the same manner as for Guarantor above.]

## APPLICABLE AMOUNT TABLE

## (I) Applicable Amount Under the Oil Pollution Act of 1990

<u>VESSEL TYPE</u>	<u>VESSEL'S GROSS TONS</u>	<u>APPLICABLE AMOUNT</u>
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of \$2,000,000 or \$1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of \$10,000,000 or \$1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons.*	The greater of \$500,000 or \$600 per gross ton.

\* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

<u>VESSEL TYPE</u>	<u>APPLICABLE AMOUNT</u>
Vessel over 300 gross tons carrying hazardous substance as cargo -----	The greater of \$5,000,000 or \$300 per gross ton. -----
Any other vessel over 300 gross tons	The greater of \$500,000 or \$300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

# INDEX

## SUBCHAPTER M—MARINE POLLUTION FINANCIAL RESPONSIBILITY AND COMPENSATION

EDITORIAL NOTE: This listing is provided for informational purposes only. It is compiled and kept up-to-date by the Coast Guard, Department of Homeland Security, and is revised through July 1, 2005.

Section

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## SUBCHAPTER N—OUTER CONTINENTAL SHELF ACTIVITIES

### PART 140—GENERAL

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AUTHORITY: 43 U.S.C. 1333, 1348, 1350, 1356; Department of Homeland Security Delegation No. 0170.1.

SOURCE: CGD 78-160, 47 FR 9376, Mar. 4, 1982, unless otherwise noted.

#### Subpart A—General

##### § 140.1 Purpose.

This subchapter is intended to promote safety of life and property on Outer Continental Shelf (OCS) facilities, vessels, and other units engaged in OCS activities, protect the marine environment, and implement the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), as amended by the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372, 92 Stat. 629).

##### § 140.3 Applicability.

Unless otherwise stated, this subchapter applies to OCS facilities, vessels, and other units engaged in OCS activities as the term “OCS activities”

is defined in §140.10. This subchapter does not apply to pipelines and deepwater ports (as the term “deepwater port” is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502)).

##### § 140.4 Relationship to other law.

(a) Design and equipment requirements of this subchapter for OCS facilities, including mobile offshore drilling units in contact with the seabed of the OCS for exploration or exploitation of subsea resources, are in addition to the regulations and orders of the U.S. Geological Survey applicable to those facilities.

(b) Any apparent conflict between the application of any requirement of this subchapter and any regulation or order of the U.S. Geological Survey should immediately be brought to the attention of the Officer in Charge, Marine Inspection.

(c) This subchapter does not establish design requirements for fixed OCS facilities or regulate drilling or production equipment on any OCS facility or attending vessel, except for matters affecting navigation or workplace safety or health.

##### § 140.5 Exemptions during construction.

The Officer in Charge, Marine Inspection, may exempt any unit under construction from any requirements of this subchapter that would be impracticable or unreasonable to apply during construction or erection of the unit.

##### § 140.7 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the FEDERAL REGISTER and the material made available to the public. All approved material is available for inspection at U.S. Coast Guard, Office of Compliance (G-MOC), 2100 Second Street, SW., Washington, DC 20593-0001