

five gallons of fuel capacity, that is neither integral to nor regularly stored aboard a non-self-propelled barge, is not equipment.

Guarantor means any person who provides evidence of financial responsibility, under the Acts, on behalf of a vessel owner, operator, and demise charterer. A vessel operator who can qualify as a self-insurer may act as both a self-insurer of vessels it operates and as a financial guarantor of other vessels, under §138.80(b)(4).

Hazardous material means a liquid material or substance that is—

- (1) Flammable or combustible;
- (2) Designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1221); or
- (3) Designated a hazardous material under section 104 of the Hazardous Material Transportation Act (49 App. U.S.C. 1803).

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone.

Insurer is a type of guarantor and means one or more insurance companies, associations of underwriters, shipowners' protection and indemnity associations, or other persons, each of which must be acceptable to the Coast Guard.

Master Certificate means a Certificate issued under this part to a person acting as vessel operator in its capacity as a builder, repairer, scrapper, or seller of vessels.

Offshore supply vessel has the same meaning as set forth in 46 U.S.C. 2101.

OPA 90 means title I of the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*).

Operator means a person who is an owner, a demise charterer, or other contractor, who conducts the operation of, or who is responsible for the operation of, a vessel. A builder, repairer, scrapper, lessor, or seller who is responsible, or who agrees by contract to become responsible, for a vessel is an operator.

Owner means any person holding legal or equitable title to a vessel. In a case where a Certificate of Documentation or equivalent document has been issued, the owner is considered to be the person or persons whose name or names appear thereon as owner. For purposes of CERCLA only, "owner" does not include a person who, without participating in the management of a vessel, holds indicia of ownership primarily to protect the owner's security interest in the vessel.

Public vessel means a vessel

Owned or bareboat chartered by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

Self-elevating lift vessel means a vessel with movable legs capable of raising its hull above the surface of the sea and that is an offshore work boat (such as a work barge) that does not engage in drilling operations.

Tank vessel means a vessel (other than an offshore supply vessel, a fishing or fish tender vessel of 750 gross tons or less that transfers fuel without charge to a fishing vessel owned by the same person, or a towing or pushing vessel (tug) simply because it has in its custody a tank barge) that is constructed or adapted to carry, or that carries, oil or liquid hazardous material in bulk as cargo or cargo residue, and that—

- (1) Is a vessel of the United States;
 - (2) Operates on the navigable waters;
- or
- (3) Transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

Total Applicable Amount means the amount determined under §138.80(f)(3).

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

[CGD 91-005, 59 FR 34227, July 1, 1994, as amended by CGD 91-005, 61 FR 9274, Mar. 7, 1996]

§ 138.30 General.

(a) The regulations in this part set forth the procedures whereby an operator of a vessel subject to this part can demonstrate that it and the owner and

demise charterer of the vessel are financially able to meet potential liability for costs and damages in the amounts established by this part. The owner, operator, and demise charterer are strictly, jointly, and severally liable for the costs and damages resulting from an incident or a release or threatened release, but together they need only establish and maintain an amount of financial responsibility equal to the single limit of liability per incident, release, or threatened release. Only that portion of the evidence of financial responsibility under this part with respect to—

(1) OPA 90 is required to be made available by a guarantor for the costs and damages related to an incident where there is not also a release or threatened release; and

(2) CERCLA is required to be made available by a guarantor for the costs and damages related to a release or threatened release where there is not also an incident. A guarantor (or a self-insurer for whom the exceptions to limitations of liability are not applicable), therefore, is not required to apply the entire amount of financial responsibility to an incident involving oil alone or a release or threatened release involving a hazardous substance alone.

(b) Where a vessel is operated by its owner, or the owner is responsible for its operation, the owner is considered to be the operator and shall submit the application for a Certificate. In all other cases, the vessel operator shall submit the application. A time or voyage charterer that does not assume responsibility for the operation of the vessel is not considered an operator for the purposes of this part.

(c) For a United States-flag vessel, the applicable gross tons or gross tonnage, as referred to in this part, is determined as follows:

(1) *For a documented U.S. vessel measured under both 46 U.S.C. Chapters 143 (Convention Measurement) and 145 (Regulatory Measurement).* The vessel's regulatory gross tonnage is used to determine whether the vessel exceeds 300 gross tons where that threshold applies under the Acts. If the vessel's regulatory tonnage is determined under the Dual Measurement System in 46 CFR part 69, subpart D, the higher gross

tonnage is the regulatory tonnage for the purposes of the 300 gross ton threshold. The vessel's gross tonnage as measured under the International Convention on Tonnage Measurement of Ships, 1969 ("Convention"), is used to determine the vessel's required amount of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA.

(2) *For all other United States vessels.* The vessel's gross tonnage under 46 CFR part 69 is used for determining both the 300 gross ton threshold, the required amount of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA. If the vessel is measured under the Dual Measurement System, the higher gross tonnage is used in all determinations.

(d) For a vessel of a foreign country that is a party to the Convention, gross tonnage, as referred to in this part, is determined as follows:

(1) *For a vessel assigned, or presently required to be assigned, gross tonnage under Annex I of the Convention.* The vessel's gross tonnage as measured under Annex I of the Convention 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.

(2) *For a vessel not presently required to be assigned gross tonnage under Annex I of the Convention.* The highest gross tonnage that appears on the vessel's certificate of documentation or equivalent document and that is acceptable to the Coast Guard under 46 U.S.C. chapter 143 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. If the vessel has no document or the gross tonnage appearing on the document is not acceptable under 46 U.S.C. chapter 143, the vessel's gross tonnage is determined by applying the Convention Measurement System under 46 CFR part 69, subpart B, or if applicable, the Simplified Measurement System under

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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.