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USCG raises COFR amounts

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On September 17, the US Coast Guard issued a final rule increasing the levels of financial responsibility that must be demonstrated by owners and operators of certain vessels operating on waters subject to the jurisdiction of the United States. The applicable amounts of the Certificates of Financial Responsibility (COFRs) are being increased to be consistent with recent statutory increases in the limits of liability. The regulatory amendment is worded so as to account for future mandated increases in liability limits. The amendments also implement changes in the Coast Guard's administration of the COFR program and clarify the current rule. Among other things, this amendment eliminates the requirement that the original of the COFR be carried onboard the vessel and increases the fees for obtaining COFRs. The changes come into effect on October 17 and vessels subject to the COFR requirement must have COFRs in the new appropriate amount not later than January 15, 2009.

Following the 2004 oil spill from the tanker ATHOS I in the Delaware River, Congress re-examined the limits of liability for oil spills. It concluded that the limits established in the Oil Pollution Act of 1990 (OPA 90) were too low for today's environment. Thus, as part of the Coast Guard and Maritime Transportation Act of 2006, it raised those limits, particularly for single-hull tankers. The higher liability limits came into effect on October 9, 2006 for tank vessels and on July 11, 2006 for all other vessels.

The increase in liability limits did not, though, automatically change the financial responsibility requirements, which are addressed in a separate section of OPA 90 and have their own set of regulations. It is those COFR regulations that were changed by this recent rulemaking.

Prior to 2006, there were three sets of liability limits: (1) tank vessels greater than 3,000 gross tons; (2) tank vessels of 3,000 gross tons or less; and (3) any other vessel. The owner or operator of any vessel over 300 gross tons (except for a non-self-propelled vessel that does not carry oil as cargo or fuel) using any place subject to the jurisdiction of the United States was required to establish and maintain with the Coast Guard evidence of financial responsibility sufficient to meet the maximum amount of liability under OPA 90.

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The 2006 statutory change divided tank vessels into four groups, rather than two, and raised the limits of liability for all vessels. In an effort to encourage the accelerated phase-out of single hull tank vessels, the amendment established relatively low limits of liability for double-hull tank vessels and higher limits of liability for tank vessels without qualifying double-hulls.

The table below summarizes the original and amended limits.

If the vessel is a . . .	The original limit of liability limit was the greater of . . .	And the amended limits of liability are the greater of . . .
Tank vessel greater than 3,000 gross tons with a single hull, double sides only, or double bottom only	\$1,200 per gross ton or \$10,000,000	\$3,000 per gross ton or \$22,000,000.
Tank vessel less than or equal to 3,000 gross tons with a single hull, double sides only, or double bottom only	\$1,200 per gross ton or \$2,000,000	\$3,000 per gross ton or \$6,000,000.
Tank vessel greater than 3,000 gross tons with a double hull	\$1,200 per gross ton or \$10,000,000	\$1,900 per gross ton or \$16,000,000.
Tank vessel less than or equal to 3,000 gross tons with a double hull	\$1,200 per gross ton or \$2,000,000	\$1,900 per gross ton or \$4,000,000.
Any vessel other than a tank vessel	\$600 per gross ton or \$500,000	\$950 per gross ton or \$800,000.

The majority of vessel owners and operators obtained oil spill liability insurance coverage at the new, higher level shortly after the 2006 amendment was enacted. Because the COFR regulation was not changed, the old COFRs remained in effect and those owners and operators who only obtained insurance coverage at the old COFR amount were personally at risk for the difference if there had been an oil spill with cost and damages exceeding the old COFR amount. That potential gap between coverage and liability is being eliminated by this rulemaking.

The change in limits of liability (and now the COFR amount) is intended in large measure to account for inflation in the period between 1990 and today. To prevent such effective erosion of liability and coverage from occurring in the future, the 2006 amendment provides for periodic adjustments of the limits of liability. This rulemaking provides that the COFR amounts will henceforth keep pace with adjustments in the limits of liability.

Speaking of inflation, the rulemaking also provides for an increase in the cost of obtaining a COFR. The cost per application is being increased from \$150 to \$200. The cost per certification is being increased from \$80 to \$100.

In order to account for a separate statutory amendment that eliminated certain passive owners from personal liability for oil spills, the rulemaking also changes the definition of owner. Henceforth, the term owner, for purposes of the COFR requirement, will not include “a person, who, without participating in the management of the vessel, holds indicia of ownership primarily to protect the owner’s security interest in the vessel.”

Finally, in recognition of the information age, the Coast Guard is eliminating the requirement that the vessel have on board the original of the COFR certificate. Improved technology now allows each Coast Guard unit to view the vessel’s financial responsibility status electronically and its boarding officers will not be tasked with viewing the COFR upon boarding the vessel. Likewise, it is one less record that the vessel will have to retain and preserve.