

§ 253.15

(3) 49 CFR Part 194—Response Plans for Onshore Oil Pipelines.

(b) If you are a designated applicant and you choose to demonstrate \$150 million in OSFR, you are not required to determine any worst case oil-spill discharge volumes, since that is the maximum amount of OSFR required under this part.

§ 253.15 What are my general OSFR compliance responsibilities?

(a) You must maintain continuous OSFR coverage for all your leases, permits, and RUEs with COFs for which you are the designated applicant.

(b) You must ensure that new OSFR evidence is submitted before your current evidence lapses or is canceled and that coverage for your new COF is submitted before the COF goes into operation.

(c) If you use self-insurance to demonstrate OSFR and find that you no longer qualify to self-insure the required OSFR amount based upon your latest audited annual financial statements, then you must demonstrate OSFR using other methods acceptable to MMS by whichever of the following dates comes first:

(1) Sixty calendar days after you receive your latest audited annual financial statement; or

(2) The first calendar day of the 5th month after the close of your fiscal year.

(d) You may use a surety bond to demonstrate OSFR. If you find that your bonding company has lost its state license or has had its U.S. Treasury Department certification revoked, then you must replace the surety bond within 15 calendar days using a method of OSFR that is acceptable to MMS.

(e) You must notify MMS in writing within 15 calendar days after a change occurs that would prevent you from meeting your OSFR obligations (e.g., if you or your indemnitor petition for bankruptcy under Chapters 7 or 11 of Title 11, U.S.C.). You must take any action MMS directs to ensure an acceptable OSFR demonstration.

(f) If you deny payment of a claim presented to you under § 253.60, then

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you must give the claimant a written explanation for your denial.

[63 FR 42711, Aug. 11, 1998; 63 FR 48578, Sept. 11, 1998]

Subpart C—Methods for Demonstrating OSFR

§ 253.20 What methods may I use to demonstrate OSFR?

As the designated applicant, you may satisfy your OSFR requirements by using one or a combination of the following methods to demonstrate OSFR:

(a) Self-insurance under §§ 253.21 through 253.28;

(b) Insurance under § 253.29;

(c) An indemnity under § 253.30;

(d) A surety bond under § 253.31; or

(e) An alternative method the Director approves under § 253.32.

§ 253.21 How can I use self-insurance as OSFR evidence?

(a) If you use self-insurance to satisfy all or part of your obligation to demonstrate OSFR, you must annually pass either a net worth test under § 253.25 or an unencumbered net asset test under § 253.28.

(b) To establish the amount of self-insurance allowed, you must submit evidence of your net worth under § 253.23 or evidence of your unencumbered assets under § 253.26.

(c) You must identify a U.S. agent for service of process.

§ 253.22 How do I apply to use self-insurance as OSFR evidence?

(a) You must submit a complete Form MMS-1018 with each application to demonstrate OSFR using self-insurance.

(b) You must submit your application to renew OSFR using self-insurance by the first calendar day of the 5th month after the close of your fiscal year. You may submit to MMS your initial application to demonstrate OSFR using self-insurance at any time.

§ 253.23 What information must I submit to support my net worth demonstration?

You must support your net worth evaluation with information contained in your previous fiscal year's audited annual financial statement.

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(a) Audited annual financial statements must be in the form of:

(1) An annual report, prepared in accordance with the generally accepted accounting practices (GAAP) of the United States or other international accounting practices determined to be equivalent by MMS; or

(2) A Form 10-K or Form 20-F, prepared in accordance with Securities and Exchange Commission regulations.

(b) Audited annual financial statements must be submitted together with a letter signed by your treasurer highlighting:

(1) The State or the country of incorporation;

(2) The total amount of the stockholders' equity as shown on the balance sheet;

(3) The net amount of the plant, property, and equipment shown on the balance sheet; and

(4) The net amount of the identifiable U.S. assets and the identifiable total assets in the auditor's notes to the financial statement (i.e., a geographic segmented business note).

§ 253.24 When I submit audited annual financial statements to verify my net worth, what standards must they meet?

(a) Your audited annual financial statements must be bound.

(b) Your audited annual financial statements must include the unqualified opinion of an independent accountant that states:

(1) The financial statements are free from material misstatement, and

(2) The audit was conducted in accordance with the generally accepted auditing standards (GAAS) of the United States, or other international auditing standards that MMS determines to be equivalent.

(c) The financial information you submit must be expressed in U.S. dollars. If this information was originally reported in another form of currency, you must convert it to U.S. dollars using the conversion factor that was effective on the last day of the fiscal year pertinent to your financial statements. You also must identify the source of the currency exchange rate.

§ 253.25 What financial test procedures must I use to determine the amount of self-insurance allowed as OSFR evidence based on net worth?

(a) Divide the total amount of the stockholders'/owners' equity listed on the balance sheet by ten.

(b) Divide the net amount of the identifiable U.S. assets by the net amount of the identifiable total assets.

(c) Multiply the net amount of plant, property, and equipment shown on the balance sheet by the number calculated under paragraph (b) of this section and divide the resultant product by ten.

(d) The smaller of the numbers calculated under paragraphs (a) or (c) of this section is the maximum allowable amount you may use to demonstrate OSFR under this method.

§ 253.26 What information must I submit to support my unencumbered assets demonstration?

You must support your unencumbered assets evaluation with the information required by § 253.23(a) and a list of reserved, unencumbered, and unimpaired U.S. assets whose value will not be affected by an oil discharge from a COF. The assets must be plant, property, or equipment held for use. You must submit a letter signed by your treasurer:

(a) Identifying which assets are reserved;

(b) Certifying that the assets are unencumbered, including contingent encumbrances;

(c) Promising that the identified assets will not be sold, subjected to a security interest, or otherwise encumbered throughout the specified fiscal year; and

(d) Specifying:

(1) The State or the country of incorporation;

(2) The total amount of the stockholders'/owners' equity listed on the balance sheet;

(3) The identification and location of the reserved U.S. assets; and

(4) The value of the reserved U.S. assets less accumulated depreciation and amortization, using the same valuation method used in your audited annual financial statement and expressed in U.S. dollars. The net value of the reserved assets must be at least two