

Dated: August 5, 1998.

Sadye Dunn,

Secretary to the Commission.

[FR Doc. 98-21387 Filed 8-10-98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 814

[Docket No. 98N-0168]

Medical Devices; 30-Day Notices and 135-Day PMA Supplement Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) published, in the **Federal Register** of April 27, 1998 (63 FR 20530), a direct final rule to implement the amendments to the premarket approval provisions of the Federal Food, Drug, and Cosmetic Act, as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). The comment period closed on July 13, 1998. FDA is withdrawing the direct final rule because the agency received significant adverse comment.

DATES: The direct final rule published at 63 FR 20530, April 27, 1998, is withdrawn on August 11, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2186.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on April 27, 1998, at 63 FR 20530 is withdrawn.

Dated: August 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-21470 Filed 8-10-98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 253

RIN 1010-AC33

Oil Spill Financial Responsibility for Offshore Facilities

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final regulation establishes new requirements for demonstrating oil spill financial responsibility (OSFR) for removal costs and damages caused by oil discharges and substantial threats of oil discharges from oil and gas exploration and production facilities and associated pipelines. This rule applies to the Outer Continental Shelf (OCS), State waters seaward of the line of ordinary low water along that portion of the coast that is in direct contact with the open sea, and certain coastal inland waters. This rule implements the authority of the Oil Pollution Act (OPA) of 1990.

DATES: This final regulation is effective October 13, 1998. However, the information collection aspects of this rule will not become effective until approved by the Office of Management and Budget (OMB). MMS will publish a document at that time in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Waddell, Adjudication Unit Supervisor, at (504) 736-1710.

SUPPLEMENTARY INFORMATION: Title I of OPA (33 U.S.C. 2701 *et seq.*), as amended by section 1125 of the Coast Guard Authorization Act of 1996 (Pub. L. 104-324), provides at section 1016 that parties responsible for offshore facilities must establish and maintain OSFR for those facilities according to methods determined acceptable to the President. Section 1016 supersedes the OSFR provisions of the Outer Continental Shelf Lands Act (OCSLA). The Executive Order (E.O.) implementing OPA (E.O. 12777; October 18, 1991) assigned the OSFR certification function to the Department of the Interior (DOI). The Secretary of the Interior, in turn, delegated this function to MMS.

This regulation replaces the current OSFR regulation at 33 CFR part 135, which was written to implement the OCSLA. The OCSLA regulation is limited to facilities located in the OCS and sets the amount of OSFR that must be demonstrated by responsible parties at \$35 million. The regulation published

today covers both the OCS and certain State waters. The regulation requires responsible parties to demonstrate as much as \$150 million in OSFR if MMS determines that it is justified by the risks from potential oil spills from covered offshore facilities (COFs).

The minimum amount of OSFR that must be demonstrated is \$35 million for COFs located in the OCS and \$10 million for COFs located in State waters. The regulation provides an exemption for persons responsible for facilities having a potential worst case oil-spill discharge of 1,000 barrels (bbls) or less, unless the risks posed by a facility justify a lower threshold volume.

Background

The existing OSFR program for offshore facilities was developed under Title III of the OCSLA and initially administered by the U.S. Coast Guard (USCG). OPA replaced and rescinded the OCSLA OSFR requirements. However, section 1016(h) of OPA provides that any regulation relating to OSFR remains in force until superseded by a new regulation issued under OPA. The OSFR regulations for offshore facilities in the OCS (33 CFR part 135) will be phased out according to the timetable specified in § 253.44.

The Secretary of Transportation has authority for vessel oil pollution financial responsibility, and the USCG regulates the oil-spill financial responsibility program for vessels. A mobile offshore drilling unit (MODU) is classified as a vessel. However, a well drilled from a MODU is classified as an offshore facility under this rule.

Upon request from the USCG, MMS will provide available information for any COF involved in an oil pollution incident (i.e., oil-spill discharge or a substantial threat of a discharge) including:

- (1) The lease, permit, or right-of-use and easement (RUE) for the area in which the COF is located;
- (2) The designated applicant and guarantors and their contacts for claims;
- (3) U.S. agents for service of process;
- (4) Amounts indemnified; and
- (5) List of all responsible parties.

Analysis of Comments on the Proposed Rule and Changes for the Final Rule

A Notice of Proposed Rulemaking (NPR) was published on March 25, 1997 (62 FR 14052-14079). We received 28 written comments. We also received oral comments during a public workshop on the proposed rule that MMS sponsored in New Orleans, Louisiana, on June 5, 1997. All of the comments were considered in developing this final regulation. The

rulemaking issues raised in the comments and the MMS responses are presented below.

General Applicability

For clarity and completeness, we have added in the final rule a definition of "oil spill financial responsibility," referred to by the acronym "OSFR," which is used throughout the rule. It refers to the requirements of section 1016 of OPA to evidence the capability to meet one's liabilities under Title I of OPA for removal costs and damages, as those terms are defined in OPA. The term was explained in the preamble to the proposed rule, but not expressly defined in the rule itself.

Types of Facilities—Several commenters asked us to clarify whether their facilities are covered by this OSFR regulation. The types of facilities that might be subject to MMS OSFR are specified in the 1996 amendments to OPA. They include offshore facilities used for exploring for, drilling for, or producing oil. They also include facilities other than vessels that are used to transport oil from drilling, exploration, or production facilities.

Several commenters asked us to verify that shore-based petroleum terminals, refineries, marinas, and appurtenances such as pipelines are not subject to this regulation. We agree. The only facilities that can be COFs under this rule are those used for exploring for, drilling for, or producing oil, and facilities used to transport oil from drilling, exploration, or production facilities. None of the facilities identified above fits these categories.

One commenter asked us to clarify that a pipeline cannot be a COF unless it is connected to a COF. We disagree. A pipeline can be a COF if it is used to transport oil from a facility engaged in oil exploration, drilling, or production. However, that facility does not need to be located within the geographic area covered by this rule or have a worst case oil-spill discharge volume greater than 1,000 bbls. Thus, your pipeline can be a COF, even if the exploration, drilling, or production facility to which it connects is not a COF. As noted in the previous paragraph, the terminal or other shore-based facility to which the pipeline connects would not be a COF.

One commenter asked us to clarify how this regulation applies to a MODU. The concern was that the wording of the proposed definition of a COF is confusing with respect to a MODU. We agree. It is important that we make clear the distinction between a MODU and a well drilled from a MODU. A MODU cannot be a COF under this regulation because it is a vessel. The OSFR for a

vessel is covered in the regulations administered by the USCG (see 33 CFR part 138). However, a well drilled from a MODU may be a COF if it meets all the COF criteria listed in § 253.3. The definition of COF has been revised for the final rule to clarify that a well drilled from a MODU may be a COF, but that a MODU is not a COF. The revision incorporates most of the language suggested by the commenter. However, the reference to MODU has been retained to emphasize that a well drilled from a MODU may be a COF.

Natural Gas Condensate—Several natural gas interests asserted that facilities producing or transporting natural gas condensate should not be subject to OSFR requirements because condensate is not oil. Further, one commenter stated that applicability of this rule to a facility should depend on whether the facility handles condensate that is "recoverable" (i.e., possible to remove from the water before it becomes highly dispersed or evaporates into the atmosphere).

We disagree with both comments. Condensate is petroleum, and petroleum is expressly included in OPA's statutory definition of oil. As such, facilities that handle condensate must be addressed by this regulation. This makes practical sense because condensates exhibit properties that could cause damages that are subject to claims under the OPA, even if the condensate discharge leading to the claim is difficult to "recover." Therefore, you must demonstrate OSFR for any facility that handles condensate if it meets the COF criteria included in § 253.3.

One commenter said that we should exclude gas condensate from our definition of oil because the Department of Transportation (DOT) did not include condensate in the oil definition used for its OPA-based regulation on response plans for onshore oil pipelines. We do not agree. The OSFR rule implements the OPA requirement that valid claims resulting from an oil-spill discharge are paid by the person(s) responsible for the discharge. As explained in the previous paragraph, we have determined that condensate is a form of petroleum that is covered under OPA. Further, there is ample evidence that condensate discharges can cause damages which are compensable under the Act. Thus, it is appropriate for MMS to apply OSFR requirements to a facility that handles condensate, if the facility satisfies the COF criteria specified in § 253.3. Whether it is either necessary or practical to require plans to respond to condensate discharges is a matter that is beyond the scope of this rulemaking.

Private Lands—One commenter offered that this rule should not apply to facilities located on private property. We disagree, because OPA's definition of a responsible party for an offshore facility applies to a person who holds a lease, permit, or RUE granted under applicable state law, regardless of the identity of the grantor.

Covered Offshore Facility

Facility—One commenter asked us to clarify what the term "facility" means. The proposed regulation characterized a facility as any structure or group of structures (including wells), etc. The commenter's question is whether a single facility can represent more than one COF. The commenter cited an example in which a production facility might have an oil storage capacity greater than 1,000 bbls, and one or more wells with a worst case oil-spill discharge of greater than 1,000 bbls.

A single facility cannot constitute more than one COF. Although an oil production facility may have several components each with a worst case oil-spill discharge potential of greater than 1,000 bbls, it is the facility, rather than its components, that is the COF. The components of a facility include a pipeline connected to the production structure, unless the pipeline is located on a RUE. However, a structure-related well that is completed at a remote location (e.g., satellite well completed at the seafloor) may be considered a discrete facility that could be a separate COF.

In determining the worst case oil-spill discharge for a COF, the extent that a pipeline connected to a production structure contributes to the worst case discharge will depend on the potential for a structure incident to cause a discharge from the pipeline. For example, the volume of the potential discharge from a connected pipeline should depend on the use and placement of flow-controlled shutoff devices in the pipeline. This approach is consistent with the MMS response planning regulation which requires you to sum the volumes of all the platform components that might discharge oil. If the rule allowed you to separately consider the COF potential of each platform component, it would ignore the potential for the failure of one component to lead to the failure of others. This would not be consistent with the purposes of OPA because the volume of a discharge from a facility caused by multiple component failures would be greater than the worst case oil-spill discharge volume calculated for any individual component. We have

revised the COF definition to clarify this issue (see § 253.3).

Geography—Another factor you must consider in determining whether your facility is a COF is its location.

According to the statute, the OSFR requirement applies to the OCS, State waters seaward of the coastline (see the definition at § 253.3), and coastal inland waters, like bays and estuaries, that lie seaward of the line of ordinary low water along that portion of the coast that is not in direct contact with the open sea. The proposed rule described the area covered by OSFR as an area along the coast, affected by the tides, and submerged even during low tide. To determine the landward limit of this area, we considered two options: include all submerged coastal areas subject to tidal influence; or those within a band 50 to 100 miles inland from the coast. We proposed the first option and asked for comments on both options.

Commenters expressed concerns that the proposed options arbitrarily and inappropriately included areas that lie too far inland from the coast and were not limited to bays and estuaries as suggested in OPA. Also, the commenters asked us to limit OSFR jurisdiction to inland waters that open to the sea. One commenter asked MMS to develop a map showing the inland jurisdictional limit because it would be difficult for you to determine whether a facility located in an inland area is covered by the rule.

In recognition of arguments presented in the comments, we reviewed our interpretations of the statutory language “along the coast” and “coastal inland waters.” Although we do not accept that OSFR jurisdiction should be limited to the extent suggested by some commenters, we agree that it is appropriate to limit the inland areas described in the proposed rule based on the following considerations.

There are no applicable statutory definitions for the phrases “along the coast” and “coastal inland waters.” As such, there is no specific guidance for identifying inland areas that should be subject to this rule. The only specific geographic alternative offered in the comments was to limit OSFR coverage to areas that share a common border with the “coastline,” as defined in the Submerged Lands Act. We did not accept this alternative because it does not include any inland waters that are *not* in direct contact with the open sea. Instead, we relied on our assessment of the intent of OPA to establish the geographic scope of the offshore facility OSFR program.

The common definition of coast is the land next to the sea, or seashore. Thus, it is reasonable for us to interpret “along the coast” to mean along the seashore, which forms the boundary between the land and the sea. The seaward extent of the seashore is depicted on maps as a line; the shoreline. We believe it is reasonable to interpret “coastal inland waters” to mean the submerged area that is located near the shoreline, but not considered part of the open sea. To help us more precisely define the types of submerged areas that should be covered, the statute includes the examples of “bays and estuaries.” Therefore, we believe that the intent of OPA is met by limiting the scope of this rule to bodies of water which, like bays and estuaries, are indentations of the coastline, and which connect with the open sea, either directly or through one or more other bays.

It is also practical to use the U.S. Geological Survey (USGS) Geographic Names Information System (GNIS) to identify specific submerged areas that should be subject to the rule. The GNIS contains a submerged feature class, “bay,” that includes the types of features we think OPA intended for OSFR purposes. The GNIS is the federally recognized source of geographic names for all known places, features, and areas in the U.S. that are identified by a proper name. Each feature is located by State, county, and geographic coordinates; and referenced to the appropriate USGS topographic map on which it appears. The GNIS bay feature class is defined as an “indentation of a coastline or shoreline enclosing a part of a body of water; a body of water partly surrounded by land.” The features in the GNIS bay class include the bays and estuaries cited in OPA as examples of the types of water bodies that should be covered by this rule. Other features in the bay class include arm, bight, cove, gulf, inlet, and sound.

It is also practical to use USGS topographic maps to identify the shoreline and the submerged areas subject to OSFR because both are depicted on USGS maps, the USGS established and maintains the national mapping standards, and USGS maps are readily available to the public. Thus, we have defined the limits of the coastal inland areas subject to OSFR using specific USGS maps, and those maps are listed in the Appendix.

The USGS produces topographic maps of various scales for each State. We chose scales of 1:63,360 (15-minute quadrangle) for Alaska and 1:24,000 (7.5-minute quadrangle) for all other States because these are the map scales

used for the GNIS. The specific maps included in the Appendix were chosen because they depict areas proximate to the shoreline, where oil and gas facilities exist now or may be placed in the foreseeable future. The maps listed in the Appendix depict a narrow band along the coast that extends approximately 20 miles inland for Alaska and 10 miles inland for other States. We may need to add maps to the Appendix if we determine that additional areas along the coast contain facilities that should be subject to this rule. You will be allowed to comment on any changes before we add maps to the list.

For OSFR purposes, the area within the coastal band created by the listed maps is limited to the GNIS bays depicted on the maps. The data on GNIS bays are publicly available from USGS in formats ranging from hard copy reports to digital data on the Internet. For clarity we included definitions for bay and GNIS in the final rule. Your facility could be a COF if it is located in a GNIS bay depicted on a listed map that is connected to the sea either directly or through other bays. Where any portion of a bay is included on a listed map, this rule applies to the entire bay. Also, it is important to note that a feature's name does not necessarily indicate which GNIS feature class it represents.

Worst Case Oil-spill Discharge Calculations—Many commenters expressed concerns about our proposed method for calculating the worst case oil-spill discharge volume for a facility. The greatest concern is over the method we prescribed for calculating the worst case volume for a well located seaward of the coastline. The proposed rule requires you to use the formula included in the MMS regulation on Response Plans for Facilities Located Seaward of the Coast Line (see § 253.14). The commenters asked us to clarify the relationship between a planned 30-day response to uncontrolled flow from a well and the OSFR worst case volume for that well. The commenters assert that it would be inappropriate to calculate the worst case volume for a well by multiplying the estimated daily uncontrolled discharge rate times 30 days. The commenters reason that it does not account for the volume of oil that would be recovered during those 30 days as a result of cleanup efforts.

We reviewed the alternative method offered by one commenter for calculating the worst case discharge for a facility. That method subtracts the volume of oil assumed to be recovered from the total volume discharged from the facility, including the well. In effect,

it eliminates from the OSFR dollar amount calculation all of the oil that is recovered during cleanup. We disagree with this approach because it does not account for the cost associated with recovering the oil. The purpose of OSFR is to ensure that the designated applicant is able to pay for cleanup as well as damages. Also, the suggested alternative does not consider that some damage may occur before the oil is removed from the water. As such, it would be inappropriate to subtract the total volume of oil removed from the water from the volume used to determine an appropriate OSFR dollar amount. We believe that, for OSFR purposes, the worst case discharge for a well should account for a portion of oil that is removed from the water during the period of uncontrolled flow from a well.

In response to the comment that some allowance should be made for oil that is recovered during cleanup, the final rule incorporates a 4-day multiplier which is a discounting factor that you must use to calculate the worst case oil-spill discharge volume for a well located seaward of the coastline. It is based on a formula that fixes the daily volume of uncontrolled flow from a well at 75 percent of the volume calculated for the previous day. For example, if you determine that the initial daily volume of uncontrolled flow from your well is 1,000 bbls, the worst case volume attributed to the second day is 750 bbls, or 75 percent of the first-day volume. Similarly, the volume attributed to the third day is about 565 bbls, or 75 percent of the second-day volume. When this algorithm is extended to 30 days, the sum of the daily worst case volumes equals approximately 4 times the volume discharged on the first day. Rather than asking you to make a complex calculation for each well, the final rule only requires that you multiply the worst case volume for the first day of uncontrolled flow by 4, and use the product as the well's worst case oil-spill discharge volume. We believe this change clarifies how the worst case volume for a well must be calculated, and, in our judgment, establishes a reasonable credit for ongoing cleanup activities.

MMS also considered whether it would be appropriate to create credits for cleanup of discharges from sources other than a well (e.g., pipelines, oil storage vessels). We did not find it appropriate for the following reasons. Discharges from these sources tend to be pre-response and of short duration. The potential for the cleanup to reduce damages from these discharges is much smaller than for an ongoing discharge

because the response activity is least effective at the time of the initial discharge. As such, the potential for damages from initial discharges is greater because less of the oil is likely to be recovered, and the oil that is recovered later has had more time and opportunity to do damage. Also, for any given volume of oil, initial discharges tend to cost more to recover than sustained discharges because there is more time for initial discharges to spread.

One commenter said that OSFR should not be based on the worst case volumes calculated using the MMS response planning regulation, because that regulation discounts the capacity of spill response equipment by 80 percent. We disagree with this comment. The worst case oil-spill scenario in the oil-spill response regulation is calculated independently of the capacity of the oil-spill response equipment. Thus, no relation exists between the oil-spill response equipment and the determination of the worst case spill-volume for OSFR purposes.

Finally, one commenter questioned how a worst case can be calculated for a well that will not be drilled until after a COF determination must be made. For wells drilled seaward of the coastline, the method you must use to calculate a worst case discharge for an exploration well is included in the MMS response planning regulations. If the worst case volume that you calculate for an undrilled well is greater than 1,000 bbls, the well may be a COF (see additional COF criteria on facility type and location). It would be inconsistent with the purposes of OPA to allow you to defer the COF determination and OSFR demonstration (if needed) until after the well is completed, because an oil spill can occur during drilling.

Number of OSFR Layers

One commenter asked us to create more OSFR amount layers (see § 253.13(b)) in order to minimize insurance costs. For example, the commenter noted that a worst case oil-spill discharge volume of 35,000 bbls requires \$35 million in OSFR while a volume of 35,001 bbls requires \$70 million.

We did not create more OSFR amount layers for the final rule. We believe that very few designated applicants will use insurance to demonstrate OSFR for amounts over \$35 million. We expect that designated applicants with COFs that have worst case oil-spill discharge volumes of more than 35,000 bbls will probably use self-insurance or an indemnity. Also, if more OSFR amount layers were allowed, a small change in

the worst case volume might lead to additional expense and delay for the designated applicants who use insurance or surety bonds as OSFR to obtain the additional OSFR evidence needed.

Self-insurance as OSFR Evidence

Most of the comments we received on self-insurance fall into two categories. One category of concern is the recommendations presented in the MMS-funded review by Talley and Associates of the proposed self-insurance formulas. The other category includes commenters' suggestions for revising the proposed formulas.

Report of Talley and Associates—The report identified a need to define several terms that were used in the proposed self-insurance formulas. There also is general agreement among commenters that the terms we used should be defined in the final OSFR regulation. We disagree for the following reasons. All the terms used in the self-insurance formulas are commonly used in business and accounting. As such, the meanings of those terms should be well understood. Further, the self-insurance terms we used were taken from the types of financial statements that you normally prepare on an annual basis for other purposes. The meanings of the terms as applied to OSFR are the same as they are for purposes of reporting to the Securities and Exchange Commission (SEC) (e.g., Form 10-K and Form 20-F) or preparing other documents that must conform with U.S. Generally Accepted Accounting Principles (GAAP). For these reasons, it is unnecessary to define the OSFR self-insurance terms in the regulation.

The report makes several recommendations for developing self-insurance formulas that better reflect the future financial stability of a designated applicant. Commenters opposed these changes, including the suggested multiple regression analysis, because they are unnecessarily complex and would lead to higher OSFR compliance costs. We agree with the commenters, and this final rule does not incorporate any changes to the self-insurance formulas that are recommended in the Talley and Associates report.

Self-insurance Formulas

Commenters made several recommendations for modifying the self-insurance formulas in the proposed rule. All of the recommendations have the net effect of making a greater self-insurance allowance than the formulas we proposed. Specific recommendations included using values of 2 or 6 rather than 10 as a net worth divisor, using the greater rather than the lesser of the 2 net

worth amounts calculated, allowing a portion of paid up pollution insurance to be added to identifiable assets, and factoring the designated applicant's most recent bond rating into the self-insurance calculation (see § 253.25). We did not adopt any of these recommendations. MMS performed an analysis to test divisors from one through 20 using 72 recent self-insurance applications received over a 1-year period. The divisor of 10 created self-insurance indemnity opportunities for all the companies that we think would be able to cover incident liabilities that might arise over a 6-year period after the incident. Using Standard & Poors Compustat, we analyzed 338 publicly traded companies for the past 6 years to ensure that potentially insolvent companies could be identified. The results indicated that the self-insurance formulas we proposed provide the needed consistency and reliability, while remaining simple for you to use.

One commenter suggested that we replace the term "value" in the net worth and net assets formulas with either "amount" or "figure," because it might be confused with another, more subjective, use of the term (e.g., fair market value). We agree, and the term "amount" replaces "value" in the final rule in §§ 253.23 to 253.28. Also, the basis for determining the net unencumbered asset value you submit must be the same basis you use to prepare your audited annual financial statements. For example, if historical book value minus accumulated depreciation and amortization is used for your audited annual financial statements, then you must use historical book value minus accumulated depreciation and amortization for unencumbered and unimpaired U.S. assets. This requirement is in § 253.27(b).

One commenter asked us to clarify whether the value of the unencumbered net assets you must reserve for self-insurance must be twice the dollar amount of self-insurance you want to demonstrate. The proposed rule requires you to identify the assets you want to reserve and promise that they won't be encumbered during the period covered by the self-insurance (see §§ 253.26(a) and (c)). Although the proposed rule did not indicate explicitly, you must reserve to MMS \$2.00 in unencumbered assets for every dollar of self-insurance you want to demonstrate. For example, if you want to qualify for \$35 million in self-insurance, then you must reserve for possible future claims unencumbered and unimpaired plant, property, or equipment (i.e., long-term

assets held for use) that has a value of \$70 million. Also, the amount of net unencumbered assets shown on your audited financial statements must be at least \$70 million and the amount shown for stockholder's/owner's equity must be at least \$140 million. Section 253.26 of the rule makes this requirement clear.

One commenter suggested that a financial instrument is a better form of collateral to use in unencumbered assets calculations because it is more portable and liquid than property, plant, and equipment. We disagree. The unencumbered assets formulas are intended to focus more on fiscal stability than financial liquidity. We believe that property, plant and equipment are good long-term indicators of financial stability. This is important from the OSFR perspective because you qualify for self-insurance or indemnity based on financial information that is historical, rather than real-time. Also, you might be liable for a claim made as long as 6 years after an incident occurs at a COF that you self-insured or indemnified. Thus, it is desirable that property, plant, and equipment are not readily liquidated or compromised because it helps insure that those assets will be available to meet OSFR obligations over an extended time period.

One commenter asked us to include the "SEC-10" measure of discounted estimated future net cash inflows from proved oil and gas reserves in the formulas for calculating the allowable self-insurance amount. The commenter offered that this measure could be made more conservative by subtracting the designated applicant's long-term debt from the SEC-10 value and dividing the difference by 2. We think the commenter may not fully understand what is included in the self-insurance formulas. This item is a component of stockholder's/owner's equity, so it is already considered in both the net worth test (§ 253.25) and the unencumbered net assets test (§ 253.28). Therefore, no change to the formulas was needed.

One commenter asked that we include an additional "working capital" test to the suite of self-insurance formulas included in the rule. The formula suggested for this test is: Working capital equals current U.S. assets minus current worldwide liabilities. A working capital test would be used in the same manner that the USCG applies it in the regulations on OSFR for vessels. We reviewed the working assets test used by the USCG and find it unsuited to this OSFR regulation because it unduly penalizes companies that have worldwide operations, and it does not provide

adequate assurance that claims for cleanup and damages would be paid. As such, we did not include a working assets test in the rule.

One commenter asked why we did not include insurance proceeds in the net worth calculation. We did not include insurance proceeds in the net worth calculation because the test uses the results of audited annual financial statements produced in accordance with U.S. GAAP, or equivalent, and their adequacy is attested to by an independent auditor using U.S. generally accepted auditing standards (GAAS), or equivalent. Since neither GAAP nor GAAS recognizes insurance proceeds until they are actually paid, we do not believe that it is justified to incorporate these potential future payments. Once insurance payments are made, they are incorporated in the receiving company's audited annual financial statements and will then be considered in the MMS net worth test.

We did not adopt the suggestion to establish a self-insurance allowance based on a combination of bond ratings and net worth because the information used in the MMS net worth test is the basis for the ratings given for corporate bonds. If consideration of corporate bond ratings were included in the MMS net worth test, it would be similar to considering the same financial information twice.

One commenter said we should eliminate the requirement for an independent auditor's assessment of the value of unencumbered assets because the auditor may not know the value of the assets. MMS disagrees with this comment. Section 253.27(b) specifies that an independent auditor certify that:

"(1) The value of the unencumbered assets is reasonable and uses the same valuation method used in your audited annual financial statements;

(2) Any existing encumbrances are noted;

(3) The assets are long-term assets held for use; and

(4) The valuation method in the audited annual financial statements is for long-term assets held for use."

This is exactly the type of information that the independent auditor is required to address during the audit of a company's financial statements by the generally accepted auditing standards of the United States of America (GAAP) and that are required to be addressed by the SEC. Therefore, no change has been made to the regulation relative to this comment.

Finally, one commenter asked how MMS would secure or monitor reserved assets to ensure they remain unencumbered. The regulation requires

you to submit to MMS a written promise that you will not compromise the availability of assets that you reserve for OSFR purposes (see § 253.26(c)). This promise is the only form of security MMS requires. We recognize the potential for impropriety regarding the maintenance of reserved assets, such as selling them. However, an OSFR demonstration based on self-insurance is valid for no more than 1-year, so the asset profiles are reviewed frequently by MMS and your auditor during the process of preparing the audited financial statements for your next fiscal year. Finally, the regulation requires you to report any change in your financial condition, including a change in unencumbered assets, that would adversely affect a valid OSFR demonstration (see § 253.15(c)). The potential imposition of a civil penalty for not complying with this requirement, and possibly other operational restrictions for failing to maintain acceptable OSFR evidence, should provide sufficient incentive for you to make alternative OSFR arrangements before compromising reserved assets. For these reasons the rule does not require you to formally pledge any of your assets to MMS, and we will not take possession of any assets. To clarify, the word "pledged" was replaced by "reserved" in the final rule.

Insurance as OSFR Evidence

Insurer Liability—Some commenters questioned the willingness of the insurance industry to participate as guarantors in this OSFR program because there are broader guarantor liabilities under OPA than there were under the OCSLA. Although the responsible party's oil-spill liabilities are greater under OPA than under the OCSLA, you should not infer that the OPA OSFR provisions or this rule extend guarantor liabilities beyond the amount of OSFR that is provided. OPA states that "nothing in the Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceed, in the aggregate, the amount of financial responsibility required under this Act which that guarantor has provided for a responsible party." (See OPA, section 1016 (g)). This protection went into effect when OPA was signed into law in 1990, and it does not change because of this rule.

One commenter asked us to clarify how OPA's joint and several liability provision applies to a guarantor that shares the risk covered by an insurance guaranty. The concern is that an individual insurer might be subject to

liability beyond its specified quota share of the guaranty. Our intent is to limit an insurer's liability to the quota share of risk indicated on an insurance certificate that we accept as OSFR evidence. This limit to guarantor liability is now specified in § 253.61(b) of the rule.

Insurance Layers—The proposed rule allowed you to use insurance as OSFR evidence if it is packaged in four or fewer insurance certificates, and a certificate covers one of the allowed amounts. Several commenters asked us to remove the proposed restrictions on both the number of layers allowed and amount covered by each layer. The commenters argued that restrictions on insurance layers may result in higher insurance costs because the limits we proposed may not be the most economical way to allocate insurance risk. Also, the commenters said that the insurance industry has no technical limitations related to the number of layers that can be developed or the amount included in a particular layer.

We have not removed any of these restrictions on the number of layers allowed or the amounts within a layer. The reason we placed a limit on the number of insurance certificates and the amounts in the OSFR layers is that in the past we received insurance certificates that did not add up to the total amount of coverage indicated. We found that insurance certificate problems likely would increase with the number of certificates. Many times the problem was associated with "horizontal" layering, which is the allocation of risk within an insurance sub-layer. Verifying that the total amount of the certificate was properly allocated among participating insurers is a burdensome process that can delay our acceptance of OSFR evidence. Also, submission of an inaccurate certificate might result in a civil penalty. Therefore, to minimize insurance certificate problems, we decided to limit the number of insurance layers by establishing a minimum size for each layer and requiring that the certificate indicate each participant's quota share in the total amount covered by the certificate.

Insurer Qualifications—The proposed rule provided that you could use insurers that are syndicates of Lloyds of London (Lloyds), members of the Institute of London Underwriters (ILU), or other insurers that have achieved a rating of "secure" by an insurer rating service acceptable to MMS. One commenter recommended that we make all insurers subject to the same qualifying standards. That is, if any insurer must be rated secure in order to

participate in MMS OSFR, then all must be rated secure to participate. The commenter argued that the double standard in the proposed rule puts insurers that must pass a ratings test at an unfair competitive advantage.

In the past, insurance rating services did not assess the claims paying ability of some insurers that industry typically has used to demonstrate OSFR. We did not want to exclude Lloyds or the ILU from participating as guarantors under this regulation because both insurance syndicates have been the main insurers of current OCSLA OSFR Certificates. They also have internal processes that prevent loss of OSFR coverage if one of their member companies fails. However, there is no longer any need to give these syndicates special dispensation because both are now rated for claims paying ability. In the ILU case, all members must maintain a "secure" rating from Standard & Poors. Lloyds has been rated by Standard & Poors since October 1997. Section 253.29(a) of the final regulation has been revised so that the same rating standard is applied to all insurers.

Insurance Deductible—One commenter asked us to clarify that self-insurance may be used as an insurance deductible in the OSFR base layer. We allow you to apply any of the approved non-insurance forms of OSFR evidence (e.g., indemnity, self-insurance, surety bond) toward an insurance deductible, provided that it is applied to the insurance certificate that covers your base OSFR amount layer. See § 253.29(c)(5) of the rule.

Corporate Captive Insurance—One commenter asked us to allow you to use corporate captive insurance as OSFR evidence. The rule allows you to use any insurance company as an OSFR guarantor, provided that the company has achieved the required "secure" rating for claims paying ability.

Insurance Expiration—The proposed regulation requires you to submit an insurance certificate specifying that termination of an insurance policy will not affect liability for claims arising from an incident (i.e., oil-spill discharge or substantial threat of the discharge of oil) that occurs on or before the termination date (see § 253.41(a)). One commenter asked us to delete this requirement because insurance companies probably will not accept the condition.

Except for "quit claim" insurance policies, it is standard practice for insurance companies to pay claims after the policy term ends, as indicated by payments made for damage claims for exposure to asbestos and other hazardous materials several years before. OPA makes guarantors subject to

liability for claims made up to 6 years after an oil-spill discharge occurs. Thus, this final rule retains the post-termination liability requirement.

Fax Binder—One commenter asked us to continue to allow you to use a fax “binder” as temporary evidence of insurance. We agree, and a fax binder provision is included in § 253.29(d) of the final rule.

Insurance Certificate (Form MMS-1019)—One commenter objected to the insurance certificate because it appears to permit an agent or broker to bind the participating insurers by signing the certificate. The commenter offered that brokers and agents generally are not representatives of the participating insurers and, thus, cannot commit them to any OSFR risk. We agree that an insurance agent or broker may not have the authority to bind an insurer. We do not agree that the signature of the agent or broker has the effect of binding any of the participating insurers. That is why § 253.29(b)(2) of the rule requires you to submit to MMS an authorized signature for each participating insurer. The broker or agent signature merely attests that the certificate was prepared according to the rules and that changes will be reported, upon demand, to you and MMS. Therefore, no revision of the proposed rule was needed to respond to the comment.

One commenter misinterpreted the facility coverage option check boxes on the certificate to extend the insurance coverage from COFs to all of the designated applicant's facilities. It is not our intent to have an insurance certificate apply to a facility that is not a COF, and Form MMS-1019 was revised to eliminate any ambiguity.

One commenter expressed concerns that insurers may not be willing to participate in a certificate by checking the box on Form MMS-1019 that established coverage for all COFs on a lease, permit, or RUE. We disagree. MMS has received an increasing number of insurance certificates with the “general option” box checked. Therefore, we made no change to the form.

Direct Purchase of Insurance—Several commenters asked that this rule and associated insurance certificate (Form MMS-1019) provide for the case where the designated applicant purchases insurance directly from the insurer, rather than using an insurance agent or broker. The commenters suggested that in this case it would be appropriate for each insurer to sign the insurance certificate. However, the commenters believe it would be inappropriate for MMS to require a signature from an agent or broker.

You may purchase OSFR coverage directly from insurance companies. If you do, you act as your own insurance agent or broker. Therefore, you must sign Form MMS-1019 in the space provided for the agent or broker's signature. By signing, you certify that the information contained in the insurance certificate is accurate and the named insurers comply with the requirement of § 253.29. The insurance underwriters must sign the Form MMS-1019 in every case.

Guarantee as OSFR Evidence

In order to avoid possible confusion between the meanings and applications of the terms “guarantee” and “guaranty,” we have changed “guarantee” to “indemnity” for the final rule.

One commenter asked why we allow only one indemnitor to provide a guarantee (i.e., indemnity) for a designated applicant (see § 253.30(a)). The proposed limit on indemnitors appeared to be inconsistent with § 253.32 which would allow pools of guarantors. The commenter asked us to allow more than one indemnitor as long as all the appropriate self-insurance tests are passed and one indemnitor is designated as the primary guarantor.

We understand how the commenter might be confused by the apparent inconsistency between the two sections of the rule that were cited. Section 253.32 of the proposed rule should have listed “pooling” instead of “pools of guarantors” as a possible alternative method for demonstrating OSFR. Pooling is a method that might be proposed by some designated applicants to share the cost of demonstrating OSFR. For example, two or more designated applicants might form a partnership (i.e., pool) that provides an OSFR indemnity for all of the partners who are also its corporate affiliates or subsidiaries. The amount of the indemnity would be determined using the procedures in § 253.30. The partnership's financial resources would come from commitments of property, plant and equipment made by the pool members. Each pool member would use the indemnity as a basis for demonstrating OSFR. For this final rule the term “pooling” has replaced “pools of guarantors” in § 253.32. As specified in the rule, the specific terms of a pooling arrangement, or any alternative method for demonstrating OSFR, must be acceptable to MMS.

MMS will allow only one indemnitor to provide an indemnity as OSFR evidence under either § 253.30(a) or § 253.32. This approach is consistent with the OCSLA OSFR program

operated under 33 CFR part 135, first by the USCG and then, after October 1992, by MMS. When the USCG first started operating the OCSLA OSFR program in the late 1970's, more than one indemnitor was allowed for any one OSFR demonstration. However, this proved to be unworkable because the failure of any one of the indemnitors could and did cause the failure of the whole package of OSFR evidence. Once the USCG began allowing only one indemnitor per OSFR application, there was a significantly greater amount of stability in OSFR demonstrations. We believe that it is necessary to maintain this stability, and thus this limitation on indemnities, to provide the necessary protection for potential claimants under OPA.

One commenter correctly observed that the indemnitor provisions of § 253.30 are structured so that only a corporate relative of the designated applicant may provide an OSFR indemnity. To clarify, we made this limitation explicit in § 253.30(b) of the final rule. This rule prevents an indemnitor from assuming an unacceptable amount of OSFR risk. Without this restriction on who may provide an indemnity, it would be possible for a single indemnitor to provide an indemnity for all the designated applicants and all the offshore facilities subject to this regulation. We believe a single indemnitor scenario would threaten the security of the entire OSFR program because there would be no reasonable assurance that the obligations attendant to all the indemnities could be met. We also believe that the corporate affiliate requirement fosters the OPA objective to ensure that claims are resolved in an orderly and expeditious manner. If the designated applicant and the indemnitor share non-OSFR business objectives, then the potential for disputes over who will pay a claim should be minimized. Likewise, the corporate affiliate requirement should maximize the potential for timely settlement of valid claims without resorting to the Oil Spill Liability Trust Fund.

One commenter noted that § 253.30 bases the amount of an indemnitor's indemnity solely on financial strength requirements. Further, the commenter asserts that no security would be lost if we allowed an insurer to be an indemnitor provided that we find the insurer acceptable based on the insurer's rating of claims paying ability. We do not believe it would be in the best interest of potential claimants to allow an insurer to act as an indemnitor based on its rating or status. This rating

or status typically considers the following financial, operating, and market issues:

- Leverage and capitalization;
- Holding companies and their associated capital structures;
- Reinsurance;
- Adequacy of loss reserves policy;
- Quality and diversification of assets;
- Liquidity;
- Profitability of insurance operations;
- Revenue composition, diversification, and volatility;
- Management experience and objectives in the insurance business;
- Market risk;
- Competitive market position;
- Spread of risk; and
- Event risk.

Although some of these issues are common financial considerations for any company, most are specific to the insurance industry. In addition, they are quite different than the self-insurance considerations and tests described or referred to in § 253.30. There are instances where insurance companies are partial lessees of OCS offshore facilities, and there may be instances where they are partial lessees of State offshore facilities. In this capacity, an insurance company can be identified as a designated applicant and may submit financial information in accordance with §§ 253.21 thru 253.28 to evidence self-insurance capability. Likewise, if an insurance company is a corporate parent or affiliate of a designated applicant, it may submit financial information in accordance with § 253.30 to evidence indemnitor capability.

Designated Applicant

Many oil and gas industry interests expressed dissatisfaction with the proposed requirement that a single "designated applicant" demonstrate OSFR for all the COFs on a lease, permit, or RUE. The principal objections are that the designated applicant concept is inconsistent with the way MMS approaches management of lease operations, and it fails to recognize that the COFs on a lease, permit, or RUE might be operated by different parties. The commenters are concerned that the proposed, area-based approach to demonstrating OSFR will result in needless paperwork and confusion, and force one responsible party to assume liability for another's operations. As a result, the commenters consider an area-based OSFR demonstration unworkable.

We do not accept the argument that demonstrating OSFR on an area-specific basis will result in improper assignment of liability for a COF. It is OPA, not this

regulation, that defines who is liable for cleanup and damages related to a COF incident. The OPA prescribes that all parties with an ownership or working interest in a lease, permit, or RUE are jointly and severally liable for oil-spill discharges from facilities on that lease, permit, or RUE. Thus, the rule on who demonstrates OSFR for a COF on a lease, permit, or RUE cannot excuse from liability anyone whom the statute makes liable.

The main reason the proposed rule required one designated applicant to demonstrate OSFR on a permit or area-specific basis is that it would make it easier for us to accurately track COFs and ensure continuous OSFR coverage for all COFs. However, we share the concerns that the proposed area-based OSFR demonstration may cause confusion for responsible parties and possibly result in unneeded duplication of effort. In response, this final regulation does not require you to demonstrate OSFR on a lease, permit, or RUE basis. Instead, you must demonstrate OSFR on a COF-specific basis. The designated applicant concept is retained in the final rule in the sense that any responsible party or other party approved by MMS may demonstrate OSFR for a COF. This means that a lessee, operator, or other approved person may be a designated applicant. This change between proposed and final rule affected many sections of the regulation.

Although this final rule allows you to demonstrate OSFR on a COF-specific basis, it retains the requirement for one OSFR demonstration per COF. As discussed above in the preamble section on *Facility*, it would be inconsistent with the purposes of OPA to allow OSFR coverage for a single facility to be sub-divided, because it tends to understate the worst case oil-spill discharge volume for a facility and would frustrate the claims process should a discharge occur. This means that if there is more than one operator for a COF, you must decide who will demonstrate OSFR for the COF.

The final rule also requires you to submit and maintain a single OSFR demonstration for all your COFs. We believe this is essential in order to track OSFR coverage for COFs and to ensure continuous OSFR coverage.

One commenter recommended that we require the owner or operator of a COF to be the designated applicant because it is consistent with OPA's polluter-pays premise, eliminates involvement of lessees with no knowledge of COF operations, and creates compatibility with the spill response planning regulations. We did

not adopt this recommendation because OPA provides that any responsible party for a COF may demonstrate OSFR for the COF, and all responsible parties are jointly and severally liable for cleanup and damages resulting from a COF incident.

Amending an OSFR Demonstration

The comments we received on the proposed procedures for amending an existing OSFR demonstration focused on timing and methods. Some commenters are confused about the meaning of the terms "add" and "drop." Some commenters believe that we should not require you to submit to us any information about adds or drops because we already get that information at the time we consider your request for approval of an assignment of lease ownership or working interest. If the COF is not on the OCS, the commenters suggested that we should obtain information about adds and drops from the appropriate State officials.

We have considered the comments we received on *Amending an OSFR Demonstration* and we find that the proposed requirements are necessary for the following reasons. First, we are not sure that we can obtain the necessary information about non-OCS COFs from the States. Therefore, you must provide information about changes in responsibility for non-OCS COFs. If the States accept the responsibility for providing that information in the future, then we will revisit the requirement that you must provide it to us.

Also, for OCS COFs, you may decide to transfer designated applicant responsibilities to another person without requesting MMS to approve an assignment of lease ownership or operating rights. In these cases, we would not have the information needed to accurately track OSFR coverage. Again, you must provide the information we need to monitor compliance with this regulation, to ensure that there is an OSFR demonstration for each COF, and to clearly establish to whom a claim should be presented.

Implementation Schedule

The proposed regulation required you to submit OSFR evidence that covers all your COFs to MMS within 60 days after the effective date of the regulation. Commenters from both the oil and gas and insurance industries objected to this compliance schedule. One objection is based on concerns that the rule would go into effect before some of you are required to prepare facility response plans under the MMS response planning regulations. The methods you

must use to calculate worst case oil-spill discharge volumes for facilities located seaward of the coastline are in those regulations. Some commenters believe it would be an unnecessary burden to require worst case discharge calculations under the OSFR rule unless it is coordinated with the requirement for oil-spill response planning purposes. The commenters recommended that the effective date of this regulation be deferred until after you must comply with the MMS response plan rule. Insurance industry interests expressed concerns that a 60-day compliance window will generate an overwhelming administrative burden on insurance providers because a large number of designated applicants will request insurance coverage over a short period of time. One commenter suggested that this problem could be mitigated if a designated applicant were allowed to defer submittal of OSFR evidence under this rule until the OSFR demonstrations they made under the current rule covering OCS facilities expire.

We do not find the arguments for linking OSFR demonstrations and MMS response plan compliance compelling. It is not necessary for you to prepare an MMS response plan in order to do worst case oil-spill discharge calculations for your facilities. Likewise, we do not accept that requiring you to do these calculations is burdensome. If you do not have to prepare an MMS response plan before you must submit your OSFR demonstration, the worst case data that is generated to support the demonstration can later be used to prepare a response plan. Also, the MMS response plan regulations do not prohibit you from developing a response plan at the time you must submit an OSFR demonstration under this regulation. Finally, we believe that OSFR for COFs not covered under the current OCS OSFR program should be established as soon as practicable. For these reasons, we find that the benefits of implementing this new OSFR program in a timely fashion outweigh the potential burdens cited in the comments.

We share the concerns expressed by commenters that you must be given sufficient time to assemble acceptable OSFR evidence. This is especially important if you rely primarily on insurance to demonstrate OSFR, or if you are not currently subject to the OCS OSFR program that this regulation replaces. Therefore, we have revised the language in § 253.44 so that submissions of OSFR demonstrations will be staged over the 180-day period following the effective date of the regulation. If you are demonstrating OSFR for any OCS

facility on the effective date, you must submit OSFR evidence for all your COFs before any of your existing OSFR coverage expires, or within 180 days after the effective date of the rule, whichever is earlier. If you are not demonstrating OSFR for an OCS facility, you must submit OSFR evidence for all your COFs within 180 days after the effective date of this regulation. We expect this implementation schedule to spread OSFR submissions out over a period of months, and give insurers and designated applicants with no prior OSFR experience sufficient time to prepare acceptable evidence.

Claims for Cleanup and Damages

Direct Action—One commenter stated that the proposed rule, in § 253.41(d), should mirror the statutory language word-for-word regarding the circumstances under which a guarantor is subject to direct action. The concern is that insurance companies will hesitate to participate if they believe the regulation broadens the statutory language.

This section merely provides that OSFR evidence submitted by a designated applicant must include a statement by the instrument insurer agreeing to the direct action terms and conditions established by OPA. The terms and conditions cited in the section are entirely consistent with those in OPA. The rule does not "broaden" the statutory language. Thus, no change to § 253.41(d) is necessary.

Defenses Against Direct Action—OPA provides that MMS may, by regulation, designate defenses available to guarantors in addition to the two categories of defenses specifically established by OPA, (1) defenses that are available to the responsible party, or (2) the defense that the incident (oil-spill discharge or substantial threat of the discharge of oil) was caused by the willful misconduct of the assured. MMS did not establish additional defenses in the proposed regulation. One commenter said that MMS should, at the very least, allow insurance companies a defense whenever the insured commits fraud or makes misrepresentations in the course of procuring the underlying OSFR policy.

Allowing such a defense is inconsistent with two objectives of the OSFR program: Ensure that claims for oil-spill damages and cleanup costs are paid promptly; and make responsible parties or their guarantors pay claims rather than the Oil Spill Liability Trust Fund (Fund).

Limiting the types of defenses guarantors may use to avoid payment of claims is consistent with and furthers

the achievement of these objectives. Furthermore, there is no evidence that fraud and misrepresentation have been a problem in the current OSFR program. We will monitor this situation.

Insolvency as a Condition for Direct Action—One commenter said that MMS had incorrectly suggested in § 253.61(a)(1) that the mere assertion of insolvency is sufficient to allow a claimant to present a claim directly to the guarantor. The commenter stated that the responsible party must actually be insolvent as a condition for direct action.

The section cited is meant to state, not merely suggest, that a responsible party's claim of insolvency is sufficient to permit claimants to proceed with direct action against guarantors. Our interpretation is that if a responsible party denies or fails to pay a claim *asserting* that he or she is insolvent and further *asserts* that the conditions of his or her insolvency are equivalent to the insolvency criteria set forth at OPA section 1016(f)(2), then claimants may proceed against the responsible party's guarantor. The phrase, "as defined under section 101(31) of Title 11, United States Code and applying generally accepted accounting principles," simply defines the word "insolvent" and does not establish a requirement that MMS or others actually verify the responsible party's financial status. The commenter also seems to suggest that claimants might make self-serving assertions that the designated applicant was insolvent. The statute and the proposed regulation both state that a claimant may proceed against a guarantor when a responsible party denies or fails to pay a claim because of insolvency. We do not believe it is unreasonable to expect that the guarantor contact the designated applicant to verify that the designated applicant, in fact, has denied or failed to pay a claim because of insolvency.

The commenter, consistent with the above comments, stated that MMS should establish through regulations a process whereby MMS would make an official determination of insolvency. Again, all that is required in order for claimants to present claims to a guarantor is for the designated applicant to deny or fail to pay a claim citing insolvency. One of the principal objectives of OPA is to ensure that people who suffer damage from an oil spill are compensated quickly to minimize their economic loss and hardship. Establishing a regulatory process that might require a lengthy insolvency determination procedure before compensation could begin would

be totally inconsistent with that objective.

Accordingly, we are not changing the regulation in response to comments about requiring MMS to determine insolvency as a condition for direct action.

Bankruptcy/Insolvency of All Responsible Parties—One commenter said that *ALL* responsible parties, not just the designated applicant, must be bankrupt or insolvent before a claim may be presented directly to a guarantor.

The 1996 OPA amendments provide that “a responsible party,” rather than all responsible parties, will provide evidence of financial responsibility. Thus, the statute allows one party (i.e., the designated applicant) to make the demonstration on behalf of all responsible parties, rather than requiring a demonstration by each responsible party. The designated applicant is, in effect, an agent for the other parties. Since all parties are not required to obtain evidence of financial responsibility, it is not reasonable to require that all responsible parties be bankrupt or insolvent before claims can be presented to the guarantor. Furthermore, such a requirement would slow the processing and payment of claims contrary to OPA’s objective of ensuring that people who suffer damage as a result of a spill are compensated expeditiously to minimize their economic loss and hardship.

We will not change the regulation to require that all responsible parties be bankrupt or insolvent before a claim may be presented to a guarantor. We revised § 253.60 of the final rule to clarify that, in accordance with the statute, a claimant may present a claim first to the guarantor if the designated applicant (i.e., responsible party) has filed a petition for bankruptcy. (See § 253.60(a)).

90-day Trigger for Court Action—One commenter said that the 90-day trigger for taking court action against the guarantor (see § 253.60(b)(5)) was inappropriate and could result in needless litigation. Since the 90-day time period begins when the claim is filed with the *designated applicant*, there is no assurance that the guarantor will have a reasonable time to examine the claim before being sued.

We recognize the validity of the comment. However, it is beyond our authority to rectify the situation because the OPA provisions are quite explicit on this issue, and they are implemented by the courts, not MMS. OPA section 1013(c) clearly states that if a claim is not settled by payment within 90 days by the person to whom the claim was

submitted, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

We do require, however, that designated applicants notify their guarantor(s) within 15 calendar days of a receipt of a claim. Moreover, once a facility has been designated a source of a spill under OPA section 1014, we would expect the designated applicant and the guarantor to work closely together in the review of claims.

During the course of our review of proposed § 253.60 that was prompted by this comment, we discovered that it did not explicitly identify the relationship between advertising a claim and the 90-day trigger for direct action. The statute provides that, absent denial by the responsible party (i.e., designated applicant) or guarantor, a claimant must wait at least 90 days after the date that the incident source and claims procedures are advertised before a claim may be presented to the Fund. This limitation is now covered in paragraph § 253.60(b), and the term “source of the incident” was added to the list of terms in § 253.3.

Advertising Requirements—One commenter said that USCG regulations (33 CFR 136.301) must be modified to make the responsible party do the initial advertising of claims procedures.

Without addressing the merits of the comment, such a change cannot be made in this rule because advertising of claims was neither a subject of the proposed rule nor a matter within our jurisdiction. Any change in USCG regulations would have to be made by that agency, not MMS. To clarify that procedures for advertising claims is within USCG jurisdiction, rather than MMS jurisdiction, we added the term “advertise” to the list of terms in § 253.3.

OSFR Forms—This final regulation does not include the MMS forms that you must use to submit information supporting your OSFR demonstration. They will be published in a separate **Federal Register** document announcing that they have been approved by OMB. These forms will reflect our consideration of comments we received on their format and content.

Civil Penalty Regulations—MMS is amending the regulations at 30 CFR 250.1404 to include violations of the OSFR requirements (reference § 253.51 of the OSFR rule). MMS will process OSFR penalties under 30 CFR 250.1400 using the penalty assessment matrix presented in the proposed OSFR rule (62 FR 14056). To obtain a copy of the OSFR penalty matrix, send your request to the address listed in § 253.45.

Regulatory Flexibility Act—Several commenters said we did not properly assess the effects of this rule on small businesses. In particular, the commenters disagreed with our estimates of the number of small businesses that will be affected and the costs of compliance. We agree. In response, we revised our analysis using data provided by the commenters, our reassessment of the likely cost of OSFR insurance, the decreased geographic area covered by the final rule, and the estimates of information collection costs. In general, we increased our estimate of the number of small businesses that would be affected and decreased the estimated per-business cost of compliance. We do not agree with the comment that the costs of complying with this regulation threaten the viability of many small businesses, because our estimated annual compliance cost is only \$14,000 per business (e.g., designated applicant). See the analysis presented later in this notice of final rulemaking on the Regulatory Flexibility Act.

Paperwork Reduction Act—We received numerous comments on the information collection associated with this regulation. In general, the commenters asserted that we underestimated the paperwork burden, or that we asked for information we already have or don’t need.

One commenter said that the frequency of responses from designated applicants will be monthly or perhaps weekly, rather than annually, as stated in the NPR. To clarify, we stated in the NPR that a designated applicant will submit information *at least* once per year. Although we do not agree that response frequency will be monthly or weekly for most designated applicants, we have reviewed and raised our estimates of reporting frequency for this final regulation. The principal bases for these estimates are historical data on the OCSLA OSFR program, requests for OCS drilling permits, and OCS assignment or transfer requests. These data are good indicators of possible COF changes that would require you to submit OSFR information under this rule.

The commenters also said that the underestimate of reporting frequency leads to a significant underestimate of reporting costs. We have revised the costs to account for the revised estimates of the reporting frequency and the associated reporting burden hours.

Some commenters said we should not require any data on COF changes because MMS or the States already require you to submit the information for other purposes (e.g., request for

approval of drilling plan, production plan, or drilling permit). Further, the commenters believe we should make arrangements with the States to obtain data you submit to them about non-OCS COFs. We disagree for the reasons presented above in the discussion on *Amending an OSFR Demonstration*.

One commenter suggested that it is unnecessary for us to require any information about a designated applicant's COFs, if the designated applicant is the designated operator and demonstrates the maximum OSFR amount (i.e., \$150 million). We disagree, except for information about worst case oil-spill discharge volumes (see § 253.14(b)). Our reasons are the same as those presented above in the discussion on *Amending an OSFR Demonstration*. Thus, you must specify the COFs covered by your OSFR demonstration even if the amount of OSFR you demonstrate is \$150 million.

Takings Implication Assessment—Several commenters suggested that the owners of some small companies that must comply with this rule will not be able to pay the associated costs. Also, if we award a \$25,000 civil penalty for each day of non-compliance, the penalty would amount to nearly \$10,000,000 per year. On those bases the commenters believe we must prepare a Takings Implications Assessment because the net effect of the rule could be a taking.

We disagree. Based on information we received from commenters about the number of small companies affected by the proposed rule, information we gathered about the likely cost of OSFR insurance, and the reduced area along the coast that is covered by the final rule, we re-evaluated the compliance costs. We now estimate that the companies that will be affected most significantly by this rule will spend about \$14,000 per year to comply. We could find no evidence that any company with a COF will be subject to a taking because of this incremental economic burden. Moreover, we do not agree that penalties for non-compliance with this rule should be considered in assessing a possible taking.

Author: Raymond L. Beittel, Performance and Safety Branch, MMS, prepared this document.

E.O. 12886

This final rule is not a significant rule requiring review by the OMB under E.O. 12866.

All of the oil and gas companies currently operating in the OCS, including those considered to be small businesses, had to comply with the existing OSFR regulations (i.e., 33 CFR part 135). MMS does not expect that

these companies will incur any significant operating cost increases from complying with this rule. Also, of the estimated 45 oil and gas companies operating in State coastal waters that would be affected by the rule, about half hold, have applied for, or have held a Certificate of Financial Responsibility under 33 CFR part 135. If 25 companies operating in State coastal waters are subject to OSFR for the first time and each company uses only insurance to demonstrate OSFR, the estimated annual cost of the insurance is \$10,000 per company. Also, we estimate that the annual administrative cost to each of these 25 companies will be approximately \$4,000. Overall, the annual, incremental, industry-wide cost of compliance is estimated to be \$350,000.

This rule does not generate any adverse effects on competition, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, OMB review of this final rule under E.O. 12866 is unnecessary.

Regulatory Flexibility Act

Approximately 200 businesses will pay the costs of complying with this regulation. These 200 businesses will demonstrate OSFR to MMS on behalf of themselves and approximately 400 other holders of oil and gas leases, permits and RUEs that are subject to the rule. Although some other businesses, such as insurance brokers, also may be affected because they have OSFR-related agreements with designated applicants, none are expected to incur any compliance costs. See the discussion below for Paperwork Reduction Act for more information on estimates of the total number of affected businesses.

We estimate that the total annual cost of compliance with this new regulation will be \$7.1 million. This estimate represents the sum of the estimated annual administrative costs (i.e., \$800,000) and the estimated cost of OSFR evidence using insurance or a surety (i.e., \$6.3 million). See the discussion below on Reporting and Recordkeeping "Hour" Burden for more information administrative cost estimates. The figure for annual cost of OSFR evidence was derived using the assumptions that 90 percent of the 200 designated applicants will demonstrate an average of \$35 million in financial responsibility using insurance or a surety that costs \$35,000.

Most of the estimated 200 businesses affected by this new regulation demonstrated OSFR under the previous regulation. We estimate that the annual

cost of compliance with the previous OSFR rule was \$5.9 million. This figure represents the sum of the estimated annual administrative costs (i.e., \$1.1 million) and estimated annual cost of OSFR evidence using insurance or a surety (i.e., \$4.8 million). The figure for the annual cost of OSFR evidence under the previous program was derived using the assumptions that insurance-or surety-based demonstrations were made for 1,200 OCS facilities at an average cost of \$4,000 per facility. Although the cost of compliance for this new rule is estimated to be higher than for the previous OSFR rule, we expect that the *de minimis* provision in the rule will exclude some small businesses from the requirement to demonstrate OSFR.

Approximately 45 of the estimated 200 businesses that we expect to be affected by this regulation have oil and gas facilities located in State waters where Federal OSFR requirements did not previously apply. Of these 45 businesses, about 35 could be considered small businesses under Small Business Administration criteria. Each of the remaining 10 businesses employs more than 500 people, so none of them meet the Small Business Administration small business criteria. Based, in part, on data received in comments on the proposed rule, we estimate that 25 of the 35 small businesses with State oil and gas facilities will be required to demonstrate OSFR for the first time. The remaining 10 affected small businesses demonstrated OSFR for facilities located in the OCS under the previous regulation. Based on our knowledge of the types of oil and gas facilities that are owned or operated by the estimated 25 newly-regulated small businesses, we expect that each business will be required to demonstrate \$10 million in OSFR.

It is reasonable to assume that each of the estimated 25 newly-regulated small businesses will use OSFR evidence that costs no more than insurance, and that the annual premium for a \$10 million OSFR insurance policy will be about \$10,000. Further, it is conservative to assume that, in addition to insurance costs, each small business will incur approximately \$4,000 in annual administrative costs. This \$4,000 figure represents the total estimated annual administrative cost (i.e., approximately \$800,000) divided by the total number of affected businesses (i.e., 200). See the discussion below on Reporting and Recordkeeping "Hour" Burden for more information on administrative cost estimates. When the estimated annual administrative cost (i.e., \$4,000) is added to the estimated annual cost of

OSFR insurance (i.e., \$10,000), the total estimated annual cost of compliance for each of the 25 newly-regulated small businesses equals \$14,000. Further, when the estimated annual newly-affected small business compliance cost (i.e., \$14,000) is multiplied by the total number of newly-affected small businesses (i.e., 25), the total incremental annual economic impact on small businesses equals \$350,000. We do not believe this amount represents a substantial economic effect on small business.

The amount of oil a company produces and the volumes of the associated worst case oil-spill discharges are generally proportional to the company's size. We do not expect smaller companies to be the designated applicants for any COFs that have a worst case oil-spill discharge volume of greater than 35,000 bbls. If a smaller company acquires an interest in a COF with a very large worst case oil-spill discharge volume, such as a deepwater facility in the Gulf of Mexico, we expect the company will do so in partnership with a larger company that can demonstrate OSFR using self-insurance. We further expect that the larger company will be selected as the designated applicant and demonstrate OSFR on behalf of the smaller partner. Therefore, we do not expect that implementing this regulation will require small businesses to demonstrate OSFR for amounts greater than \$35 million.

This OSFR regulation will have no adverse effect on oil company service industries, such as the supply vessel and service vessel industries. The persons responsible for these vessels are not governed by this regulation but must comply with separate Coast Guard OSFR requirements under 33 CFR part 138.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734-3247.

Paperwork Reduction Act (PRA) of 1995

As part of the proposed rulemaking process, we submitted the information collection requirements in 30 CFR part 253 and the related forms to OMB for approval. A discussion of the comments

received on the information collection aspects of the proposed rule is included earlier in the preamble. Based on changes made in this rule and to the forms, we have submitted a revised information collection package to OMB for approval under section 3507(d) of the PRA. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection aspects of this final rule will not take effect until approved by OMB. We will publish a document in the **Federal Register** announcing the OMB approval of the revised collection of information and forms associated with 30 CFR part 253. The title of this collection of information is "30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities."

We invite the public and other Federal agencies to comment on this collection of information. Send comments regarding any aspect of the collection to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior (OMB control number 1010-0106), 725 17th Street, NW., Washington, DC 20503. Send a copy of your comments to the Minerals Management Service; Mail Stop 4230; 1849 C Street, NW., Washington, DC 20240. OMB is required to make a decision concerning the collection of information contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, your comments are best assured of being considered by OMB if OMB receives them by September 10, 1998.

Section 3506(c)(2)(a) of the PRA requires each agency to specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The final rule for 30 CFR part 253 makes very few changes to the information collection requirements approved for the proposed rulemaking. We have modified several of the proposed forms for minor editorial corrections and to more clearly title the forms and some of the headings within

the forms. In addition, we proposed separate reporting forms for the two categories of covered offshore facilities: (1) Lease listing, and (2) permit or RUE listing. Separate report forms for changes to these listings were also proposed. We have collapsed those four forms into two. This will enable respondents to report any covered offshore facility on the same form (MMS-1021) and submit subsequent changes on the same form (MMS-1022), regardless of the type of covered offshore facility.

In addition, Form MMS-1017, Designation of Applicant, was changed. In the proposed rule, respondents would submit a separate form for each covered offshore facility. In the final rule, respondents will submit one form for all covered offshore facilities for which they are the Designated Applicant. The new page 2 for Form MMS-1017 will be used to provide a description of the applicable facilities. The hour burden of preparing this form does not change as the same time will be necessary to research and gather the information. However, the information will now be included on the form submitted to MMS.

Some of the respondents will be the approximately 600 holders of leases, permits, and RUEs in the OCS and in certain State coastal waters who will appoint approximately 200 designated applicants to submit OSFR evidence to MMS under this regulation. Other respondents will be the designated applicants' insurance agents and brokers, bonding companies, and indemnitors. MMS receives approximately 2,600 responses each year under the OSFR regulation that this final regulation replaces. The frequency of submission under the new regulation will vary, but most will respond at least once per year.

Reporting and Recordkeeping "Hour" Burden: We estimate the total annual burden of this collection of information to be 22,181 reporting hours and zero recordkeeping hours. Based on \$35 per hour, the total burden hour cost to respondents is estimated to be \$776,335. The public reporting burden for this information will vary by form and collection, as shown below. The burden per response is averaged to be 5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The information collected consists of the following, and the estimated burden for each is shown in parentheses:

- Form MMS-1016, Designated Applicant Information Certification (1 hour).
- Form MMS-1017, Designation of Applicant (9 hours).
- Form MMS-1018, Self-insurance or Indemnity Information (1 hour).
- Form MMS-1019, Insurance Certificate (120 hours).
- Form MMS-1020, Surety Bond (24 hours).
- Form MMS-1021, Covered Offshore Facilities (3 hours).
- Form MMS-1022, Covered Offshore Facility Changes (1 hour).
- Letter requesting a determination of applicability of the regulation (2 hours).
- Proposal to accept an alternative method to demonstrate OSFR (no burden—we anticipate no requests but have provided the option in the rule).
- Written notice to MMS of change in ability to comply (1 hour).
- Claims (assessment of the burden associated with claims is the responsibility of the USCG as part of its rulemaking on claims against the Oil Spill Liability Trust Fund. See 33 CFR parts 135, 136, and 137).

Reporting and Recordkeeping “Cost” Burden: In submitting the collection of information in the proposed rule to OMB for approval, we included an estimate of the costs for demonstrating OSFR as a reporting and recordkeeping cost burden. It has since been determined that this is considered a “regulatory” burden rather than a “paperwork” burden as defined by the PRA. Therefore, there are no reporting or recordkeeping cost burdens contained in this final rule.

Takings Implication Assessment

DOI has determined that this rule does not represent a governmental action capable of interfering with constitutionally protected property rights. The annual, incremental cost of complying with this regulation for approximately 25 businesses will be limited to about \$14,000 per business per year. We do not believe that paying this cost will result in any takings. Thus, DOI does not need to prepare a Takings Implication Assessment under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

E.O. 12988

DOI has certified to OMB that this rule meets the applicable reform standards provided in section 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies under the Unfunded Mandates Reform

Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of \$100 million or more in any given year on State, local, and tribal governments or the private sector.

National Environmental Policy Act

The DOI Manual (Part 516 DM 5, Appendix 10.4) specifies that issuing or modifying regulations normally does not have a significant effect on the environment, either individually or cumulatively. As such, this rulemaking is categorically excluded from the requirement to prepare either an environmental assessment or an environmental impact statement. MMS reviewed the rule according to agency procedures and verified that none of the exceptions to the categorical exclusion apply.

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Minerals Management Service, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, and Sulfur.

30 CFR Part 253

Continental shelf, Environmental protection, Insurance, Oil and gas exploration, Oil pollution, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, and Surety bonds.

Dated: July 17, 1998.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends part 250 and adds a new part 253 to Chapter II of Title 30 of the CFR as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS ON THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

Subpart N—Outer Continental Shelf (OCS) Civil Penalties

2. In § 250.1404, paragraph (d) is added to read as follows:

§ 250.1404 Which violations will MMS review for potential civil penalties?

* * * * *

(d) Violations of the oil spill financial responsibility requirements at 30 CFR part 253.

3. Part 253 is added to read as follows:

PART 253—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

Subpart A—General

Sec.

253.1 What is the purpose of this part?

253.3 How are the terms used in this regulation defined?

253.5 What is the authority for collecting Oil Spill Financial Responsibility (OSFR) information?

Subpart B—Applicability and Amount of OSFR

253.10 What facilities does this part cover?

253.11 Who must demonstrate OSFR?

253.12 May I ask MMS for a determination of whether I must demonstrate OSFR?

253.13 How much OSFR must I demonstrate?

253.14 How do I determine the worst case oil-spill discharge volume?

253.15 What are my general OSFR compliance responsibilities?

Subpart C—Methods for Demonstrating OSFR

253.20 What methods may I use to demonstrate OSFR?

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

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

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

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

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

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

253.27 When I submit audited annual financial statements to verify my unencumbered assets, what standards must they meet?

253.28 What financial test procedures must I use to evaluate the amount of self-insurance allowed as OSFR evidence based on unencumbered assets?

253.29 How can I use insurance as OSFR evidence?

253.30 How can I use an indemnity as OSFR evidence?

253.31 How can I use a surety bond as OSFR evidence?

253.32 Are there alternative methods to demonstrate OSFR?

Subpart D—Requirements for Submitting OSFR Information

- 253.40 What OSFR evidence must I submit to MMS?
- 253.41 What terms must I include in my OSFR evidence?
- 253.42 How can I amend my list of COFs?
- 253.43 When is my OSFR demonstration or the amendment to my OSFR demonstration effective?
- 253.44 When must I comply with this subpart?
- 253.45 Where do I send my OSFR evidence?

Subpart E—Revocation and Penalties

- 253.50 How can MMS refuse or invalidate my OSFR evidence?
- 253.51 What are the penalties for not complying with this part?

Subpart F—Claims for Oil-Spill Removal Costs and Damages

- 253.60 To whom may I present a claim?
- 253.61 When is a guarantor subject to direct action for claims?
- 253.62 What are the designated applicant's notification obligations regarding a claim?

Appendix—List of U.S. Geological Survey Topographic Maps

Authority: 33 U.S.C. 2701 *et seq.*

Subpart A—General**§ 253.1 What is the purpose of this part?**

This part establishes the requirements for demonstrating OSFR for covered offshore facilities (COFs) under Title I of the Oil Pollution Act of 1990 (OPA), as amended, 33 U.S.C. 2701 *et seq.*

§ 253.3 How are the terms used in this regulation defined?

Terms used in this part have the following meaning:

Advertise means publication of the notice of designation of the source of the incident and the procedures by which the claims may be presented, according to 33 CFR part 136, subpart D.

Bay means a body of water included in the Geographic Names Information System (GNIS) bay feature class. A GNIS bay includes an arm, bay, bight, cove, estuary, gulf, inlet, or sound.

Claim means a written request, for a specific sum, for compensation for damages or removal costs resulting from an oil-spill discharge or a substantial threat of the discharge of oil.

Claimant means any person or government who presents a claim for compensation under OPA.

Coastline means the line of ordinary low water along that portion of the coast that is in direct contact with the open sea which marks the seaward limit of inland waters.

Covered offshore facility (COF) means a facility:

(1) That includes any structure and all its components (including wells completed at the structure and the associated pipelines), equipment, pipeline, or device (other than a vessel or other than a pipeline or deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*)) used for exploring for, drilling for, or producing oil or for transporting oil from such facilities. This includes a well drilled from a mobile offshore drilling unit (MODU) and the associated riser and well control equipment from the moment a drill shaft or other device first touches the seabed for purposes of exploring for, drilling for, or producing oil, but it does not include the MODU; and

(2) That is located:

- (i) Seaward of the coastline; or
- (ii) In any portion of a bay that is:

(A) Connected to the sea, either directly or through one or more other bays; and

(B) Depicted in whole or in part on any USGS map listed in the Appendix to this part, or on any map published by the USGS that is a successor to and covers all or part of the same area as a listed map. Where any portion of a bay is included on a listed map, this rule applies to the entire bay; and

(3) That has a worst case oil-spill discharge potential of more than 1,000 bbls of oil, or a lesser volume if the Director determines in writing that the oil-spill discharge risk justifies the requirement to demonstrate OSFR.

Designated applicant means a person the responsible parties designate to demonstrate OSFR for a COF on a lease, permit, or right-of-use and easement.

Director means the Director of the Minerals Management Service.

Fund means the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986 as amended (26 U.S.C. 9509).

Geographic Names Information System (GNIS) means the database developed by the USGS in cooperation with the U.S. Board of Geographic Names which contains the federally-recognized geographic names for all known places, features, and areas in the United States that are identified by a proper name. Each feature is located by state, county, and geographic coordinates and is referenced to the appropriate 1:24,000-scale or 1:63,360-scale USGS topographic map on which it is shown.

Guarantor means a person other than a responsible party who provides OSFR evidence for a designated applicant.

Guaranty means any acceptable form of OSFR evidence provided by a

guarantor including an indemnity, insurance, or surety bond.

Incident means any occurrence or series of occurrences having the same origin that results in the discharge or substantial threat of the discharge of oil.

Indemnity means an agreement to indemnify a designated applicant upon its satisfaction of a claim.

Indemnitor means a person providing an indemnity for a designated applicant.

Independent accountant means a certified public accountant who is certified by a state, or a chartered accountant certified by the government of jurisdiction within the country of incorporation of the company proposing to use one of the self-insurance evidence methods specified in this subpart.

Insolvent has the meaning set forth in 11 U.S.C. 101, and generally refers to a financial condition in which the sum of a person's debts is greater than the value of the person's assets.

Lease means any form of authorization issued under the Outer Continental Shelf Lands Act or state law which allows oil and gas exploration and production in the area covered by the authorization.

Lessee means a person holding a leasehold interest in an oil or gas lease including an owner of record title or a holder of operating rights (working interest owner).

Oil means oil of any kind or in any form, except as excluded by paragraph (2) of this definition.

(1) Oil includes:

(i) Petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(ii) Hydrocarbons produced at the wellhead in liquid form;

(iii) Gas condensate that has been separated from gas before pipeline injection.

(2) Oil does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601).

Oil Spill Financial Responsibility (OSFR) means the capability and means by which a responsible party for a covered offshore facility will meet removal costs and damages for which it is liable under Title I of the Oil Pollution Act of 1990, as amended (33 CFR 2701 *et seq.*), with respect to both oil-spill discharges and substantial threats of the discharge of oil.

Outer Continental Shelf (OCS) has the same meaning as the term "Outer Continental Shelf" defined in section

2(a) of the OCS Lands Act (OCSLA) (43 U.S.C. 1331(a)).

Permit means an authorization, license, or permit for geological exploration issued under section 11 of the OCSLA (43 U.S.C. 1340) or applicable state law.

Person means an individual, corporation, partnership, association (including a trust or limited liability company), state, municipality, commission or political subdivision of a state, or any interstate body.

Pipeline means the pipeline segments and any associated equipment or appurtenances used or intended for use in the transportation of oil or natural gas.

Responsible party has the following meanings:

(1) For a COF that is a pipeline, responsible party means any person owning or operating the pipeline;

(2) For a COF that is not a pipeline, responsible party means either the lessee or permittee of the area in which the COF is located, or the holder of a right-of-use and easement granted under applicable state law or the OCSLA (43 U.S.C. 1301–1356) for the area in which the COF is located (if the holder is a different person than the lessee or permittee). A Federal agency, State, municipality, commission, or political subdivision of a state, or any interstate body that as owner transfers possession and right to use the property to another person by lease, assignment, or permit is not a responsible party; and

(3) For an abandoned COF, responsible party means any person who would have been a responsible party for the COF immediately before abandonment.

Right-of-use and easement (RUE) means any authorization to use the OCS or submerged land for purposes other than those authorized by a lease or permit, as defined herein. It includes pipeline rights-of-way.

Source of the incident means the facility from which oil was discharged or which poses a substantial threat of discharging oil, as designated by the Director, National Pollution Funds Center, according to 33 CFR part 136, subpart D.

State means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States.

§ 253.5 What is the authority for collecting Oil Spill Financial Responsibility (OSFR) information?

(a) The Office of Management and Budget (OMB) has approved the information collection requirements in this part 253 under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010–0106.

(b) MMS collects the information to ensure that the designated applicant for a COF has the financial resources necessary to pay for cleanup and damages that could be caused by oil discharges from the COF. MMS uses the information to ensure compliance of offshore lessees, owners, and operators of covered facilities with OPA; to establish eligibility of designated applicants for OSFR certification (OSFRC); and to establish a reference source of names, addresses, and telephone numbers of responsible parties for covered facilities and their designated agents, guarantors, and U.S. agents for service of process for claims associated with oil pollution from designated covered facilities. The requirement to provide the information is mandatory. No information submitted for OSFRC is confidential or proprietary.

(c) An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(d) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1010–0106), 725 17th Street NW., Washington, DC 20503.

Subpart B—Applicability and Amount of OSFR

§ 253.10 What facilities does this part cover?

(a) This part applies to any COF on any lease or permit issued or on any RUE granted under the OCSLA or applicable state law.

(b) For a pipeline COF that extends onto land, this part applies to that portion of the pipeline lying seaward of the first accessible flow shut-off device on land.

§ 253.11 Who must demonstrate OSFR?

(a) A designated applicant must demonstrate OSFR. A designated

applicant may be a responsible party or another person authorized under this section. Each COF must have a single designated applicant.

(1) If there is more than one responsible party, those responsible parties must use Form MMS–1017 to select a designated applicant. The designated applicant must submit Form MMS–1016 and agree to demonstrate OSFR on behalf of all the responsible parties.

(2) If you are a designated applicant who is not a responsible party, you must agree to be liable for claims made under OPA jointly and severally with the responsible parties.

(b) The designated applicant for a COF on a lease must be either:

(1) A lessee; or

(2) The designated operator for the OCS lease under 30 CFR 250.108 or the unit operator designated under a Federally approved unit including the OCS lease. For a lease or unit not in the OCS, the operator designated under the lease or unit operating agreement for the lease may be the designated applicant only if the operator has agreed to be responsible for compliance with all the laws and regulations applicable to the lease or unit.

(c) The designated applicant for a COF on a permit must be the permittee.

(d) The designated applicant for a COF on a RUE must be the holder of the RUE or, if there is a pipeline on the RUE, the owner or operator of the pipeline.

(e) MMS may require the designated applicant for a lease, permit, or RUE to be a person other than a person identified in paragraphs (b) through (d) of this section if MMS determines that a person identified in paragraphs (b) through (d) cannot adequately demonstrate OSFR.

(f) If you are a responsible party and you fail to designate an applicant, then you must demonstrate OSFR under the requirements of this part.

§ 253.12 May I ask MMS for a determination of whether I must demonstrate OSFR?

You may submit to MMS a request for a determination of OSFR applicability. Address the request to the office identified in § 253.45. You must include in your request any information that will assist MMS in making the determination. MMS may require you to submit other information before making a determination of OSFR applicability.

§ 253.13 How much OSFR must I demonstrate?

(a) The following general parameters apply to the amount of OSFR that you must demonstrate:

If you are the designated applicant for	Then you must demonstrate
Only one COF	The amount of OSFR that applies to the COF.
More than one COF	The highest amount of OSFR that applies to any one of the COFs.

(b) You must demonstrate OSFR in the amounts specified in this section:

(1) For a COF located wholly or partially in the OCS you must demonstrate OSFR in accordance with the following table:

COF worst case oil-spill discharge volume	Applicable amount of OSFR
Over 1,000 bbls but not more than 35,000 bbls	\$35,000,000
Over 35,000 but not more than 70,000 bbls	70,000,000
Over 70,000 but not more than 105,000 bbls	105,000,000
Over 105,000 bbls	150,000,000

(2) For a COF not located in the OCS you must demonstrate OSFR in accordance with the following table:

COF worst case oil-spill discharge volume	Applicable amount of OSFR
Over 1,000 bbls but not more than 10,000 bbls	\$10,000,000
Over 10,000 but not more than 35,000 bbls	35,000,000
Over 35,000 but not more than 70,000 bbls	70,000,000
Over 70,000 but not more than 105,000 bbls	105,000,000
Over 105,000 bbls	150,000,000

(3) The Director may determine that you must demonstrate an amount of OSFR greater than the amount in paragraphs (b)(1) and (2) of this section based on the relative operational, environmental, human health, and other risks that your COF poses. The Director may require an amount that is one or more levels higher than the amount indicated in paragraph (b)(1) or (2) of this section for your COF. The Director will not require an OSFR demonstration that exceeds \$150 million.

(4) You must demonstrate OSFR in the lowest amount specified in the applicable table in paragraph (b)(1) or (b)(2) for a facility with a potential worst case oil-spill discharge of 1,000 bbls or less if the Director notifies you in writing that the demonstration is justified by the risks of the potential oil-spill discharge.

§ 253.14 How do I determine the worst case oil-spill discharge volume?

(a) To calculate the amount of OSFR you must demonstrate for a facility under § 253.13(b), you must use the worst case oil-spill discharge volume that you determined under whichever of the following regulations applies:

(1) 30 CFR Part 254—Response Plans for Facilities Located Seaward of the

Coast Line, except that the volume of the worst case oil-spill discharge for a well must be four times the uncontrolled flow volume that you estimate for the first 24 hours.

(2) 40 CFR Part 112—Oil Pollution Prevention; or

(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(b) or (c)(4), then you must give the claimant a written explanation for your denial.

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.

(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 times the self-insurance amount requested for demonstration.

§ 253.27 When I submit audited annual financial statements to verify my unencumbered assets, what standards must they meet?

Any audited annual financial statements that you submit must:

(a) Meet the standards in § 253.24; and

(b) Include a certification by the independent accountant who audited the financial statements that states:

(1) The value of the unencumbered assets is reasonable and uses the same valuation method used in your audited annual financial statements;

(2) Any existing encumbrances are noted;

(3) The assets are long-term assets held for use; and

(4) The valuation method used in the audited annual financial statements is for long-term assets held for use.

§ 253.28 What financial test procedures must I use to evaluate the amount of self-insurance allowed as OSFR evidence based on unencumbered assets?

(a) Divide the total amount of the stockholders'/owners' equity listed on the balance sheet by 4.

(b) Divide the value of the unencumbered U.S. assets by 2.

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

§ 253.29 How can I use insurance as OSFR evidence?

(a) If you use insurance to satisfy all or part of your obligation to demonstrate OSFR, you may use only insurance certificates issued by insurers that have achieved a "Secure" rating for claims paying ability in their latest review by A.M. Best's Insurance Reports, Standard & Poor's Insurance Rating Services, or other equivalent rating made by a rating service acceptable to MMS.

(b) You must submit information about your insurers to MMS on a completed and unaltered Form MMS-1019. The information you submit must:

- (1) Include all the information required by § 253.41 and
- (2) Be executed on one original insurance certificate (i.e., Form MMS-1019) for each OSFR layer (see paragraph (c) of this section), showing all participating insurers and their proportion (quota share) of this risk. The certificate must bear the original signatures of each insurer's underwriter or of their lead underwriters, underwriting managers, or delegated brokers, depending on who is authorized to bind the underwriter.

(3) For each insurance company on the insurance certificate, indicate the insurer's claims-paying-ability rating and the rating service that issued the rating.

(c) The insurance evidence you provide to MMS as OSFR evidence may be divided into layers, subject to the following restrictions:

(1) The total amount of OSFR evidence must equal the total amount you must demonstrate under § 253.13;

(2) No more than one insurance certificate may be used to cover each OSFR layer specified in § 253.13(b) (i.e., four layers for an OCS COF, and five layers for a non-OCS COF);

(3) You may use one insurance certificate to cover any number of consecutive OSFR layers;

(4) Each insurer's participation in the covered insurance risk must be on a proportional (quota share) basis, must be expressed as a percentage of a whole layer, and the certificate must not contain intermediate, horizontal layers;

(5) You may use an insurance deductible. If you use more than one insurance certificate, the deductible amount must apply only to the certificate that covers the base OSFR amount layer. To satisfy an insurance deductible, you may use only those methods that are acceptable as evidence of OSFR under this part; and

(6) You must identify a U.S. agent for service of process on each insurance certificate you submit to MMS. The

agent may be different for each insurance certificate.

(d) You may submit to MMS a temporary insurance confirmation (fax binder) for each insurance certificate you use as OSFR evidence. Submit your fax binder on Form MMS-1019, and each form must include the signature of an underwriter for at least one of the participating insurers. MMS will accept your fax binder as OSFR evidence during a period that ends 90 days after the date that you need the insurance to demonstrate OSFR.

§ 253.30 How can I use an indemnity as OSFR evidence?

(a) You may use only one indemnity issued by only one indemnitor to satisfy all or part of your obligation to demonstrate OSFR.

(b) Your indemnitor must be your corporate parent or affiliate.

(c) Your indemnitor must complete a Form MMS-1018 and provide an indemnity that:

- (1) Includes all the information required by § 253.41; and
- (2) Does not exceed the amounts calculated using the net worth or unencumbered assets tests specified under §§ 253.21 through 253.28.

(d) You must submit your application to renew OSFR using an indemnity by the first calendar day of the 5th month after the close of your indemnitor's fiscal year. You may submit to MMS your initial application to demonstrate OSFR using an indemnity at any time.

(e) Your indemnitor must identify a U.S. agent for service of process.

§ 253.31 How can I use a surety bond as OSFR evidence?

(a) Each bonding company that issues a surety bond that you submit to MMS as OSFR evidence must:

(1) Be licensed to do business in the State in which the surety bond is executed;

(2) Be certified by the U.S. Treasury Department as an acceptable surety for Federal obligations and listed in the current Treasury Circular No. 570;

(3) Provide the surety bond on Form MMS-1020; and

(4) Be in compliance with applicable statutes regulating surety company participation in insurance-type risks.

(b) A surety bond that you submit as OSFR evidence must include all the information required by § 253.41.

§ 253.32 Are there alternative methods to demonstrate OSFR?

The Director may accept other methods to demonstrate OSFR that provide equivalent assurance of timely satisfaction of claims. This may include pooling, letters of credit, pledges of

treasury notes, or other comparable methods. Submit your proposal, together with all the supporting documents, to the Director at the address listed in § 253.45. The Director's decision whether to approve your alternative method to evidence OSFR is by this rule committed to the Director's sole discretion and is not subject to administrative appeal under 30 CFR part 290 or 43 CFR part 4.

Subpart D—Requirements for Submitting OSFR Information**§ 253.40 What OSFR evidence must I submit to MMS?**

(a) You must submit to MMS:

(1) A single demonstration of OSFR that covers all the COFs for which you are the designated applicant;

(2) A completed and unaltered Form MMS-1016;

(3) MMS forms that identify your COFs (Form MMS-1021, Form MMS-1022), and the methods you will use to demonstrate OSFR (Form MMS-1018, Form MMS-1019, Form MMS-1020). Forms are available from the address listed in § 253.45;

(4) Any insurance certificates, indemnities, and surety bonds used as OSFR evidence for the COFs for which you are the designated applicant;

(5) A completed Form MMS-1017 for each responsible party, unless you are the only responsible party for the COFs covered by your OSFR demonstration; and

(6) Other financial instruments and information the Director requires to support your OSFR demonstration under § 253.32.

(b) Each MMS form you submit to MMS as part of your OSFR demonstration must be signed. You also must attach to Form MMS-1016 proof of your authority to sign.

§ 253.41 What terms must I include in my OSFR evidence?

(a) Each instrument you submit as OSFR evidence must specify:

(1) The effective date, and except for a surety bond, the expiration date;

(2) That termination of the instrument will not affect the liability of the instrument issuer for claims arising from an incident (i.e., oil-spill discharge or substantial threat of the discharge of oil) that occurred on or before the effective date of termination;

(3) That the instrument will remain in force until the termination date or until the earlier of:

(i) Thirty calendar days after MMS and the designated applicant receive from the instrument issuer a notification of intent to cancel; or

(ii) MMS receives from the designated applicant other acceptable OSFR evidence; or

(iii) All the COFs to which the instrument applies are permanently abandoned in compliance with 30 CFR part 250 or equivalent State requirements;

(4) That the instrument issuer agrees to direct action for claims made under OPA up to the guaranty amount, subject to the defenses in paragraph (a)(6) of this section and following the procedures in § 253.60 of this part;

(5) An agent in the United States for service of process; and

(6) That the instrument issuer will not use any defenses against a claim made under OPA except:

(i) The rights and defenses that would be available to a designated applicant or responsible party for whom the guaranty was provided; and

(ii) The incident (i.e., oil-spill discharge or a substantial threat of the discharge of oil) leading to the claim for removal costs or damages was caused by willful misconduct of a responsible party for whom the designated applicant demonstrated OSFR.

(b) You may not change, omit, or add limitations or exceptions to the terms and conditions in an MMS form that you submit as part of your OSFR demonstration. If you attempt to do this, MMS will disregard the changes, omissions, additions, limitations, or exceptions and by operation of this rule MMS will consider the form to contain all the terms and conditions included on the original MMS form.

§ 253.42 How can I amend my list of COFs?

(a) If you want to add a COF that is not identified in your current OSFR demonstration, you must submit to MMS a completed Form MMS-1022. If applicable, you also must submit any additional indemnities, surety bonds, insurance certificates, or other instruments required to extend the coverage of your original OSFR demonstration to the COFs to be added. You do not need to resubmit previously accepted audited annual financial statements for the current fiscal year.

(b) If you want to drop a COF identified in your current OSFR demonstration, you must submit to MMS a completed Form MMS-1022. You must continue to demonstrate OSFR for the COF until MMS approves OSFR evidence for the COF from another designated applicant, or OSFR is no longer required (e.g., until a well that is a COF is properly plugged and abandoned).

§ 253.43 When is my OSFR demonstration or the amendment to my OSFR demonstration effective?

(a) MMS will notify you in writing when we approve your OSFR demonstration. If we find that you have not submitted all the information needed to demonstrate OSFR, we may require you to provide additional information before we determine whether your OSFR evidence is acceptable.

(b) Except in the case of self-insurance or an indemnity, MMS acceptance of OSFR evidence is valid until the surety bond, insurance certificate, or other accepted OSFR instrument expires or is canceled. In the case of self-insurance or indemnity, acceptance is valid until the first day of the 5th month after the close of your or your indemnitor's current fiscal year.

§ 253.44 When must I comply with this part?

If you are the designated applicant for one or more COFs covered by a Certificate of Financial Responsibility (CFR) issued under 33 CFR part 135 that expires after October 13, 1998, you must submit to MMS your evidence of OSFR for all your COFs no later than the earliest date that an existing CFR for any of your COFs expires. All other designated applicants must submit to MMS evidence of OSFR for their COFs no later than April 8, 1999.

§ 253.45 Where do I send my OSFR evidence?

Address all correspondence and required submissions related to this part to: U.S. Department of the Interior, Minerals Management Service, Gulf of Mexico Region, Oil Spill Financial Responsibility Program, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.

Subpart E—Revocation and Penalties

§ 253.50 How can MMS refuse or invalidate my OSFR evidence?

(a) If MMS determines that any OSFR evidence you submit fails to comply with the requirements of this part, we may not accept it. If we do not accept your OSFR evidence, then we will send you a written notification stating:

(1) That your evidence is not acceptable;

(2) Why your evidence is unacceptable; and

(3) The amount of time you are allowed to submit acceptable evidence without being subject to civil penalty under § 253.51.

(b) MMS may immediately and without prior notice invalidate your OSFR demonstration if you:

(1) Are no longer eligible to be the designated applicant for a COF included in your demonstration; or

(2) Permit the cancellation or termination of the insurance policy, surety bond, or indemnity upon which the continued validity of the demonstration is based.

(c) If MMS determines you are not complying with the requirements of this part for any reason other than paragraph (b) of this section, we will notify you of our intent to invalidate your OSFR demonstration and specify the corrective action needed. Unless you take the corrective action MMS specifies within 15 calendar days from the date you receive such a notice, we will invalidate your OSFR demonstration.

§ 253.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to \$25,000 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

(b) MMS will determine the date of a noncompliance. MMS will assess penalties in accordance with an OSFR penalty schedule using the procedures found at 30 CFR part 250, subpart N. You may obtain a copy of the penalty schedule from MMS at the address in § 253.45.

(c) MMS may assess a civil penalty against you that is greater or less than the amount in the penalty schedule after taking into account the factors in section 4303(a) of OPA (33 U.S.C. 2716a).

(d) If you fail to correct a deficiency in the OSFR evidence for a COF, then the Director may suspend operation of a COF in the OCS under 30 CFR 250.110 or seek judicial relief, including an order suspending the operation of any COF.

Subpart F—Claims for Oil-Spill Removal Costs and Damages

§ 253.60 To whom may I present a claim?

(a) If you are a claimant, you must present your claim first to the designated applicant for the COF that is the source of the incident resulting in your claim. If, however, the designated applicant has filed a petition for bankruptcy under 11 U.S.C. chapter 7 or 11, you may present your claim first to any of the designated applicant's guarantors.

(b) If the claim you present to the designated applicant or guarantor is denied or not paid within 90 days after you first present it or advertising begins,

whichever is later, then you may seek any of the following remedies that apply:

If the reason for denial or nonpayment is	then you may elect to
(1) <i>Not</i> an assertion of insolvency or petition in bankruptcy under 11 U.S.C. chapter 7 or 11.	(i) Present your claim to any of the responsible parties for the COF; or (ii) Initiate a lawsuit against the designated applicant and/or any of the responsible parties for the COF; or (iii) Present your claim to the Fund using the procedures at 33 CFR part 136.
(2) An assertion of insolvency or petition in bankruptcy under 11 U.S.C. chapter 7 or 11.	(i) Pursue any of the remedies in items (1)(i) through (iii) of this table; or (ii) Present your claim to any of the designated applicant's guarantors; or (iii) Initiate a lawsuit against any of the designated applicant's guarantors.

(c) If no one has resolved your claim to your satisfaction using the remedy that you elected under paragraph (b) of this section, then you may pursue another available remedy, unless the Fund has denied your claim or a court of competent jurisdiction has ruled against your claim. You may not pursue more than one remedy at a time.

(d) You may ask MMS to assist you in determining whether a guarantor may be liable for your claim. Send your request for assistance to the address listed in § 253.45. You must include any information you have regarding the existence or identity of possible guarantors.

§ 253.61 When is a guarantor subject to direct action for claims?

(a) If you are a guarantor, then you are subject to direct action for any claim asserted by:

(1) The United States for any compensation paid by the Fund under OPA, including compensation claim processing costs; and

(2) A claimant other than the United States if the designated applicant has:

(i) Denied or failed to pay a claim because of being insolvent; or

(ii) Filed a petition in bankruptcy under 11 U.S.C. chapters 7 or 11.

(b) If you participate in an insurance guaranty for a COF incident (i.e., oil-spill discharge or substantial threat of the discharge of oil) that is subject to claims under this part, then your maximum, aggregate liability for those claims is equal to your quota share of the insurance guaranty.

§ 253.62 What are the designated applicant's notification obligations regarding a claim?

If you are a designated applicant, and you receive a claim for removal costs and damages, then within 15 calendar days of receipt of a claim you must notify:

(a) Your guarantors; and

(b) The responsible parties for whom you are acting as the designated applicant.

Appendix—List of U.S. Geological Survey Topographic Maps

Alabama (1:24,000 scale): Bellefontaine; Bon Secour Bay; Bridgehead; Coden; Daphne; Fort Morgan; Fort Morgan NW; Grand Bay; Grand Bay SW; Gulf Shores; Heron Bay; Hollingers Island; Isle Aux Herbes; Kreole; Lillian; Little Dauphin Island; Little Point Clear; Magnolia Springs; Mobile; Orange Beach; Perdido Beach; Petit Bois Island; Petit Bois Pass; Pine Beach; Point Clear; Saint Andrews Bay; West Pensacola.

Alaska (1:63,360 scale): Afognak (A-1, A-2, A-3, A-4, A-5, A-6&B-0, B-1, B-2, B-3, C-1&2, C-2&3, C-5, C-6, D-1, D-4, D-5); Anchorage (A-1, A-2, A-3, A-4, A-8, B-7, B-8); Barrow (A-1, A-2, A-3, A-4, A-5, B-3, B-4); Baird Mts. (A-6); Barter Island (A-3, A-4, A-5); Beechy Point (A-1, A-2, B-1, B-2, B-3, B-4, B-5, C-4, C-5); Bering Glacier (A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8); Black (A-1, A-2, B-1, C-1); Blying Sound (C-7, C-8, D-1&2, D-3, D-4, D-5, D-6, D-7, D-8); Candle (D-6); Cordova (A-1, A-2, A-3, A-4, A-7&8, B-2, B-3, B-4, B-5, B-6, B-7, B-8, C-5, C-6, C-7, C-8, D-6, D-7, D-8); De Long Mts. (D-4, D-5); Demarcation Point (C-1, C-2, D-2, D-3); Flaxman Island (A-1, A-3, A-4, A-5, B-5); Harrison Bay (B-1, B-2, B-3, B-4, C-1, C-3, C-4, C-5, D-4, D-5); Icy Bay (D1, D-2&3); Iliamna (A-2, A-3, A-4, B-2, B-3, C-1, C-2, D-1); Karluk (A-1, A-2, B-2, B-3, C-1, C-2, C-4&5, C-6); Kenai (A-4, A-5, A-7, A-8, B-4, B-6, B-7, B-8, C-4, C-5, C-6, C-7, D-1, D-2, D-3, D-4, D-5); Kodiak (A-3, A-4, A-5, A-6, B-1&2, B-3, B-4, B-6, C-1, C-2, C-3, C-5, C-6, D-1, D-2, D-3, D-4, D-5, D-6); Kotzebue (A-1, A-2, A-3, A-4, B-4, B-6, C-1, C-4, C-5, C-6, D-1, D-2); Kwiguk (C-6, D-6); Meade River (D-1, D-3, D-4, D-5); Middleton Island (B-7, D-1&2); Mt. Katmai (A-1, A-2, A-3; B-1); Mt. Michelson (D-1, D-2, D-3); Mt. St. Elias (A-5); Noatak (A-1, A-2, A-3, A-4, B-4, C-4, C-5, D-6, D-7); Nome (B-1, C-1, C-2, C-3, D-3, D-4, D-7); Norton Bay (A-4, B-4, B-5, B-6, C-4, C-5, C-6, D-4, D-5, D-6); Point Hope (A-1, A-2, B-2, B-3, C-2, C-3, D-1, D-2); Point Lay (A-3&4, B-2&3, C-2, D-1, D-2); Selawik (A-5, A-6, B-5, B-6, C-5, C-6, D-6); Seldovia (A-3, A-4, A-5, A-6, B-1, B-2, B-3, B-4, B-5, B-6, C-1, C-2, C-3, C-4, C-5, D-1, D-3, D-4, D-5, D-8); Seward (A-1, A-2, A-3, A-4, A-5, A-6, A-7, B-1, B-2, B-3, B-4, B-5, C-1, C-2, C-3, C-4, C-5, D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8); Shishmaref (A-2, A-3, A-4, B-1, B-2, B-3); Solomon (B-2, B-3, B-6, C-1, C-2, C-3, C-4, C-5, C-6); St. Michael (A-2, A-3, A-4, A-

5, A-6, B-1, B-2, C-1, C-2); Teller (A-2, A-3, A-4, B-3, B-4, B-5, B-6, C-6, C-7, D-4, D-5, D-6, D-8); Teshekpuk (D-1, D-2, D-3, D-4, D-5); Tyonek (A-1, A-2, A-3, A-4, B-1, B-2); Unalakleet (B-5, B-6, C-4, C-5, D-4); Valdez (A-7, A-8); Wainwright (A-5, A-6&7, B-2, B-3, B-4, B-5&6, C-2, C-3, D-1, D-2); Yakutat (A-1, A-2, A-2, B-3, B-4, B-5, C-4, C-5, C-6, C-7, C-8, D-3, D-4, D-5, D-6, D-8).

California (1:24,000 scale): Arroyo Grande NE; Beverly Hills; Carpinteria; Casimolia; Dana Point; Del Mar; Dos Pueblos Canyon; Encinitas; Gaviota; Goleta; Guadalupe; Imperial Beach; Laguna Beach; La Jolla; Las Pulgas Canyon; Lompoc Hills; Long Beach; Los Alamitos; Malibu Beach; Morro Bay South; National City; Newport Beach; Oceano; Oceanside; Oxnard; Pismo Beach; Pitas Point; Point Arguello; Point Conception; Point Dune; Point Loma; Point Mugu; Point Sal; Port San Luis; Rancho Santa Fe; Redondo Beach; Sacate; San Clemente; San Juan Capistrano; San Luis Rey; San Onofre Bluff; San Pedro; Santa Barbara; Saticoy; Seal Beach; Surf; Tajiguas; Topanga; Torrance; Tranquillon Mountain; Triunfo Pass; Tustin; Venice; Ventura; White Ledge Peak.

Florida (1:24,000 scale): Allanton; Alligator Bay; Anna Maria; Apalachicola; Aripaka; Bayport; Beacon Beach; Beacon Hill; Bee Ridge; Belle Meade; Belle Meade NW; Beverly; Big Lostmans Bay; Bird Keys; Bokeelia; Bonita Springs; Bradenton; Bradenton Beach; Bruce; Bunker; Cape Romano; Cape Saint George; Cape San Blas; Captiva; Carrabelle; Cedar Key; Chassahowitzka; Chassahowitzka Bay; Chiefland SW; Choctaw Beach; Chokoloskee; Clearwater; Clive Key; Cobb Rocks; Cockroach Bay; Crawfordville East; Crooked Island; Crooked Point; Cross City SW; Crystal River; Destin; Dog Island; Dunedin; East Pass; Egmont Key; El Jobean; Elfers; Englewood; Englewood NW; Estero; Everglades City; Fivay Junction; Flamingo; Fort Barrancas; Fort Myers Beach; Fort Myers SW; Fort Walton Beach; Freeport; Gandy Bridge; Garcon Point; Gator Hook Swamp; Gibsonton; Goose Island; Grayton Beach; Green Point; Gulf Breeze; Harney River; Harold SE; Holley; Holt SW; Homosassa; Horseshoe Beach; Indian Pass; Jackson River; Jena; Keaton Beach; Laguna Beach; Lake Ingraham East; Lake Ingraham West; Lake Wimico; Laurel; Lebanon Station; Lighthouse Point; Lillian; Long Point; Lostmans River Ranger Station; Manlin Hammock; Marco Island; Mary Esther; Matlacha; McIntyre;

Milton South; Miramar Beach; Myakka River; Naples North; Naples South; Navarre; New Inlet; Niceville; Nutall Rise; Ochopee; Okefenokee Slough; Oldsmar; Orange Beach; Oriole Beach; Overstreet; Ozello; Pace; Palmetto; Panama City; Panama City Beach; Panther Key; Pass-A-Grille Beach; Pavillion Key; Pensacola; Perdido Bay; Pickett Bay; Pine Island Center; Placida; Plover Key; Point Washington; Port Boca Grande; Port Richey; Port Richey NE; Port Saint Joe; Port Tampa; Punta Gorda; Punta Gorda SE; Punta Gorda SW; Red Head; Red Level; Rock Islands; Royal Palm Hammock; Safety Harbor; Saint Joseph Point; Saint Joseph Spit; Saint Marks; Saint Marks NE; Saint Petersburg; Saint Teresa Beach; Salem SW; Sandy Key; Sanibel; Sarasota; Seahorse Key; Seminole; Seminole Hills; Shark Point; Shark River Island; Shired Island; Snipe Island; Sopchoppy; South of Holley; Southport; Sprague Island; Spring Creek; Springfield; Steinhatchee; Steinhatchee SE; Steinhatchee SW; Sugar Hill; Sumner; Suwannee; Tampa; Tarpon Springs; Valparaiso; Venice; Vista; Waccassassa Bay; Ward Basin; Warrior Swamp; Weavers Station; Weeki Wachee Spring; West Bay; West Pass; West Pensacola; Whitewater Bay West; Withlacoochee Bay; Wulfert; Yankeetown.

Louisiana (1:24,000 scale): Alligator Point; Barataria Pass; Bastian Bay; Bay Batiste; Bay Coquette; Bay Courant; Bay Dosgris; Bay Ronquille; Bay Tambour; Bayou Blanc; Bayou Lucien; Belle Isle; Belle Pass; Big Constance Lake; Black Bay North; Black Bay South; Breton Islands; Breton Islands SE; Buras; Burwood Bayou East; Burwood Bayou West; Calumet Island; Cameron; Caminada Pass; Cat Island; Cat Island Pass; Central Isles Dernieres; Chandeleur Light; Chef Mentur; Cheniere Au Tigre; Cocodrie; Coquille Point; Cow Island; Creole; Cypremort Point; Deep Lake; Dixon Bay; Dog Lake; Door Point; East Bay Junop; Eastern Isles; Dernieres; Ellerslie; Empire; English Lookout; False Mouth Bayou; Fearman Lake; Floating Turf Bayou; Fourleague Bay; Franklin; Freemason Island; Garden Island Pass; Grand Bayou; Grand Bayou du Large; Grand Chenier; Grand Gosier Islands; Grand Isle; Hackberry Beach; Hammock Lake; Happy Jack; Hebert Lake; Hell Hole Bayou; Hog Bayou; Holly Beach; Intercoastal City; Isle Au Pitre; Jacko Bay; Johnson Bayou; Kemper; Lake Athanasio; Lake Cuatro Caballo; Lake Eloi; Lake Eugene; Lake Felicity; Lake La Graise; Lake Merchant; Lake Point; Lake Salve; Lake Tambour; Leeville; Lena Lagoon; Lost Lake; Main Pass; Malheureux Point; Marone Point; Martello Castle; Mink Bayou; Mitchell Key; Morgan City SW; Morgan Harbor; Mound Point; Mulberry Island East; Mulberry Island West; New Harbor Islands; North Islands; Oak Mound Bayou; Oyster Bayou; Pass A Loutre East; Pass A Loutre West; Pass du Bois; Pass Tante Phine; Pecan Island; Pelican Pass; Peveto Beach; Pilottown; Plumb Bayou; Point Au Fer; Point Au Fer NE; Point Chevreuil; Point Chicot; Port Arthur South; Port Sulphur; Pte. Aux Marchuttes; Proctor Point; Pumpkin Islands; Redfish Point; Rollover Lake; Sabine Pass; Saint Joe Pass; Smith Bayou; South of South Pass; South Pass; Stake Islands; Taylor Pass; Texas Point; Three Mile Bay; Tigre Lagoon; Timbalier

Island; Triumph; Venice; Weeks; West of Johnson Bayou; Western Isles Dernieres; Wilkinson Bay; Yscloskey.

Mississippi (1:24,000 scale): Bay Saint Louis; Biloxi; Cat Island; Chandeleur Light; Deer Island; Dog Keys Pass; English Lookout; Gautier North; Gautier South; Grand Bay SW; Gulfport North; Gulfport NW; Gulfport South; Horn Island East; Horn Island West; Isle Au Pitre; Kreole; Ocean Springs; Pascagoula North; Pascagoula South; Pass Christian; Petit Bois Island; Saint Joe Pass; Ship Island; Waveland.

Texas (1:24,000 scale): Allyns Bright; Anahuac; Aransas Pass; Austwell; Bacliff; Bayside; Big Hill Bayou; Brown Cedar Cut; Caplen; Carancahua Pass; Cedar Lakes East; Cedar Lakes West; Cedar Lane NE; Christmas Point; Clam Lake; Corpus Christi; Cove; Crane Islands NW; Crane Islands SW; Decros Point; Dressing Point; Estes; Flake; Freeport; Frozen Point; Galveston; Green Island; Hawk Island; High Island; Hitchcock; Hoskins Mound; Jones Creek; Keller Bay; Kleberg Point; La Comal; La Leona; La Parra Ranch NE; Laguna Vista; Lake Austin; Lake Como; Lake Stephenson; Lamar; Long Island; Los Amigos; Windmill; Maria Estella Well; Matagorda; Matagorda SW; Mesquite Bay; Mission Bay; Morgans Point; Mosquito Point; Mouth of Rio Grande; Mud Lake; North of Port Isabel NW; North of Port Isabel SW; Oak Island; Olivia; Oso Creek NE; Oyster Creek; Palacios; Palacios NE; Palacios Point; Palacios SE; Panther Point; Panther Point NE; Pass Cavallo SW; Pita Island; Point Comfort; Point of Rocks; Port Aransas; Port Arthur South; Port Bolivar; Port Ingleside; Port Isabel; Port Isabel NW; Port Lavaca East; Port Mansfield; Port O'Connor; Portland; Potrero Cortado; Potrero Lopeno NW; Potrero Lopeno SE; Potrero Lopeno SW; Rockport; Sabine Pass; San Luis Pass; Sargent; Sea Isle; Seadrift; Seadrift NE; Smith Point; South Bird Island; South Bird Island NW; South Bird Island SE; South of Palacios Point; South of Potrero Lopeno NE; South of Potrero Lopeno NW; South of Potrero Lopeno SE; South of Star Lake; St. Charles Bay; St. Charles Bay SE; St. Charles Bay SW; Star Lake; Texas City; Texas Point; The Jetties; Three Islands; Tivoli SE; Turtle Bay; Umbrella Point; Virginia Point; West of Johnson Bayou; Whites Ranch; Yarborough Pass.

[FR Doc. 98-21096 Filed 8-10-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 191-0088a; FRL-6138-6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the California State Implementation Plan (SIP). The revision concerns a rule from the Monterey Bay Unified Air Pollution Control District (MBUAPCD) which controls emissions of oxides of nitrogen (NO_x) and sulfur compounds. This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of NO_x and SO₂ in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, and SIPs for national primary and secondary ambient air quality standards.

DATES: This rule is effective on October 13, 1998 without further notice, unless EPA receives relevant adverse comments by September 10, 1998. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revision and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.
Monterey Bay Unified Air Pollution Control District, Rule Development, 24580 Silver Cloud Ct., Monterey, CA 93940-6536.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1191.

SUPPLEMENTARY INFORMATION:

I. Applicability

This document addresses EPA's direct final action to approve Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 404, Sulfur Compounds and Nitrogen Oxides, into the California SIP. This rule was adopted by MBUAPCD on October 16, 1996. It was submitted by the California