

## **PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES**

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Authority: 33 U.S.C. 2716, 28 U.S.C. 2461.

Source: 76 FR 64623, Oct. 18, 2011, unless otherwise noted.

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## **Subpart A—General**

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### **§ 553.1 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.

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### **§ 553.3 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 Bureau of Ocean Energy Management.

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.

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## **§ 553.5 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 553 under 44 U.S.C. 3501 et seq., and assigned OMB control number 1010-0106.

(b) BOEM 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. BOEM 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, Bureau of Ocean Energy Management, 381 Elden Street, Herndon, VA 20170.

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## **Subpart B—Applicability and Amount of OSFR**

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### **§ 553.10 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.

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### **§ 553.11 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 BOEM-1017 to select a designated applicant. The designated applicant must submit Form BOEM-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 550.143 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) BOEM 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 BOEM 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.

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## **§ 553.12 May I ask BOEM for a determination of whether I must demonstrate OSFR?**

You may submit to BOEM a request for a determination of OSFR applicability. Address the request to the office identified in § 553.45. You must include in your request any information that will assist BOEM in making the determination. BOEM may require you to submit other information before making a determination of OSFR applicability.

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## § 553.13 How much OSFR must I demonstrate?

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

<b>If you are the designated applicant for . . .</b>	<b>Then you must demonstrate . . .</b>
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:

<b>COF worst case oil-spill discharge volume</b>	<b>Applicable amount of OSFR</b>
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:

<b>COF worst case oil-spill discharge volume</b>	<b>Applicable amount of OSFR</b>
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 (2) of this section 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.

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## **§ 553.14 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 § 553.13(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.

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## **§ 553.15 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 BOEM 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 BOEM.
- (e) You must notify BOEM 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 BOEM directs to ensure an acceptable OSFR demonstration.
- (f) If you deny payment of a claim presented to you under § 553.60, then you must give the claimant a written explanation for your denial.

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## **Subpart C—Methods for Demonstrating OSFR**

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### **§ 553.20 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 §§ 553.21 through 553.28;
- (b) Insurance under § 553.29;
- (c) An indemnity under § 553.30;
- (d) A surety bond under § 553.31; or
- (e) An alternative method the Director approves under § 553.32.

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### **§ 553.21 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 §

553.25 or an unencumbered net asset test under § 553.28.

(b) To establish the amount of self-insurance allowed, you must submit evidence of your net worth under § 553.23 or evidence of your unencumbered assets under § 553.26.

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

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## **§ 553.22 How do I apply to use self-insurance as OSFR evidence?**

(a) You must submit a complete Form BOEM-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 BOEM your initial application to demonstrate OSFR using self-insurance at any time.

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## **§ 553.23 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 BOEM; 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).

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## **§ 553.24 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 BOEM 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.

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## **§ 553.25 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.

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## **§ 553.26 What information must I submit to support my unencumbered assets demonstration?**

You must support your unencumbered assets evaluation with the information required by § 553.23(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.

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## **§ 553.27 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 § 553.24; 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.

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## **§ 553.28 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.

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## **§ 553.29 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 BOEM.
- (b) You must submit information about your insurers to BOEM on a completed and unaltered Form BOEM-1019. The information you submit must:
  - (1) Include all the information required by § 553.41 and
  - (2) Be executed on one original insurance certificate ( i.e., Form BOEM-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 BOEM 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 § 553.13;

(2) No more than one insurance certificate may be used to cover each OSFR layer specified in § 553.13(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 BOEM. The agent may be different for each insurance certificate.

(d) You may submit to BOEM a temporary insurance confirmation (fax binder) for each insurance certificate you use as OSFR evidence. Submit your fax binder on Form BOEM-1019, and each form must include the signature of an underwriter for at least one of the participating insurers. BOEM 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.

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## **§ 553.30 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 BOEM-1018 and provide an indemnity that:

(1) Includes all the information required by § 553.41; and

(2) Does not exceed the amounts calculated using the net worth or unencumbered assets tests specified under §§ 553.21 through 553.28.

(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 BOEM 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.

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## **§ 553.31 How can I use a surety bond as OSFR evidence?**

(a) Each bonding company that issues a surety bond that you submit to BOEM 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 BOEM-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 § 553.41.

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## **§ 553.32 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 § 553.45. 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 590 or 43 CFR part 4.

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## **Subpart D—Requirements for Submitting OSFR Information**

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### **§ 553.40 What OSFR evidence must I submit to BOEM?**

(a) You must submit to BOEM:

- (1) A single demonstration of OSFR that covers all the COFs for which you are the designated applicant;
- (2) A completed and unaltered Form BOEM-1016;
- (3) BOEM forms that identify your COFs (Form BOEM-1021, Form BOEM-1022), and the methods you will use to demonstrate OSFR (Form BOEM-1018, Form BOEM-1019, Form BOEM-1020). Forms are available from the address listed in § 553.45;
- (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 BOEM-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 § 553.32.

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

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## **§ 553.41 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 BOEM and the designated applicant receive from the instrument issuer a notification of intent to cancel; or

(ii) BOEM 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 § 553.60 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 a BOEM form that you submit as part of your OSFR demonstration. If you attempt to do this, BOEM will disregard the changes, omissions, additions, limitations, or exceptions and by operation of this rule BOEM will consider the form to contain all the terms and conditions included on the original BOEM form.

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## **§ 553.42 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 BOEM a completed Form BOEM-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 BOEM a completed Form BOEM-1022. You must continue to demonstrate OSFR for the COF until BOEM 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).

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## **§ 553.43 When is my OSFR demonstration or the amendment to my OSFR demonstration effective?**

(a) BOEM 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, BOEM 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.

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## **§ 553.44 [Reserved]**

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## **§ 553.45 Where do I send my OSFR evidence?**

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

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## **Subpart E—Revocation and Penalties**

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## **§ 553.50 How can BOEM refuse or invalidate my OSFR evidence?**

(a) If BOEM 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 § 553.51.

(b) BOEM 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 BOEM 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 BOEM specifies within 15 calendar days from the date you receive such a notice, we will invalidate your OSFR demonstration.

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## **§ 553.51 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 \$30,000 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

(b) BOEM will determine the date of a noncompliance. BOEM will assess penalties in accordance with an OSFR penalty schedule using the procedures found at 30 CFR part 550, subpart N. You may obtain a copy of the penalty schedule from BOEM at the address in § 553.45.

(c) BOEM 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 250.170 or seek judicial relief, including an order suspending the operation of any COF.

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

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### **§ 553.60 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:

<b>If the reason for denial or nonpayment is . . .</b>	<b>Then you may elect to . . .</b>
(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.