

**§ 253.24**

(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.

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**§ 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

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(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