

## Minerals Management Service, Interior

## § 253.50

(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

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

[63 FR 42711, Aug. 11, 1998, as amended at 64 FR 72794, Dec. 28, 1999]

**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 non-payment 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.