

§ 135.210

(2) Designate an agent in the United States for service of process.

(b) Guaranties filed as evidence of financial responsibility must be accompanied by the same proof that the Guarantor is financially responsible as this subpart would require of the owner or operator; *i.e.*, insurance, surety bond, self-insurance, or other acceptable methods.

(c) A guaranty as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in force until the date of termination indicated in the endorsement or until:

(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person guarantied, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the guaranty applies ceases to be a facility under § 135.201(b).

(d) Termination of the guaranty shall not affect the liability of the guarantor for an incident occurring before the effective date of termination.

§ 135.210 Indemnity as evidence.

(a) An indemnitor must:

(1) Agree to be sued directly, within the limits of the contract coverage, by any person for claims under the Act against the owner or operator to the extent of the indemnity coverage; and

(2) Designate an agent in the United States for service of process.

(b) Indemnity filed as evidence of financial responsibility must be accompanied by the same proof of the indemnitor's financial responsibility as this subpart would require of the owner or operator; *i.e.*, insurance, surety bond, self-insurance; or other acceptable methods.

(c) An indemnity as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in force until the date of termination indicated in the endorsement or until—

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(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person indemnified, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the indemnity applies ceases to be a facility under § 135.201(b).

(d) Termination of an indemnity shall not affect the liability of the indemnitor for an incident occurring before the effective date of termination.

§ 135.211 Surety bond as evidence.

(a) Each surety bond filed with the Fund Administrator as evidence of financial responsibility shall be issued by a bonding company that:

(1) Is authorized to do business in the United States;

(2) Is licensed to do business in the state or territory in which the bond is executed;

(3) Is certified by the Department of the Treasury with respect to the issuance of Federal bonds in the penal sum of the bond; and

(4) Designates an agent in the United States for service of process.

(b) The bonding company must agree to be sued directly, within the limits of the surety bond, by any person for claims under the Act against the owner or operator.

(c) A surety bond as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in force until the date of termination indicated in the endorsement or until:

(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person bonded, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the surety bond applies ceases to be a facility under § 135.201(b).

(d) Termination of the surety bond shall not affect the liability of the surety for an incident occurring before the effective date of termination.

§ 135.213 Qualification as self-insurer.

(a) Qualification for self insurance must be supported by a copy of the self-insurer's current balance sheet, income statement, and statement of changes in financial position that are certified by an independent Certified Public Accountant and must be accompanied by either:

(1) An additional statement confirming that the self-insurer's current U.S. assets, including those of consolidated subsidiaries held in the U.S., not including pledged assets or stock not publicly traded, exceed the current U.S. liabilities, and the self-insurer's net worth exceeds the amount of the requested self-insurance; or

(2) A statement, based on an analysis of the self-insurer's financial position, which shows that sufficient assets or cash flow, other than which might be damaged as a result of a pollution incident, are available which may be liquidated to provide the funds necessary to retire a claim for the amount of the self-insurance without placing the self-insurer in an insolvent position.

(b) The statements required by paragraphs (a) (1) and (2) of this section must be prepared and submitted by the involved Certified Public Accountant when the required financial statements are prepared in consolidated form and the liability represents less than the full financial backing of the consolidated entity, otherwise they may be prepared and submitted by the Treasurer or equivalent official.

(c) If the self-insurer files a Securities and Exchange Commission Form 10-K report, a copy of the self-insurer's most recent 10-K report must be filed with the Fund Administrator within 120 days after the end of the fiscal year to which it relates, in addition to filing the most recent 10-K report with the initial application.

(d) Each self-insurer must file annually with the Fund Administrator, copies of documents required under paragraph (a) of this section, within 120 days after the close of the self-insurer's fiscal accounting period. If a self-insurer files a 10-K report with the Fund Administrator under paragraph (c) of this section which contains some of the financial statements required in para-

graph (a), a separate filing of those specific statements need not be made.

§ 135.215 Certification.

(a) Applicants shall:

(1) If the facility is in existence before September 17, 1979, apply for a Certificate of Financial Responsibility before September 17, 1979.

(2) If the offshore facility is not in existence on September 17, 1979, apply for a Certificate of Financial Responsibility at least 45 days before placing the offshore facility into operation or coverage becomes effective.

(3) If submitting an application to include an additional facility under previously established evidence of financial responsibility, apply for a Certificate of Financial Responsibility as early as possible before the anticipated date of desired coverage.

(b) Each application for a Certificate of Financial Responsibility must be made on a Coast Guard prescribed Application for Certificate of Financial Responsibility form, available from the Fund Administrator or any Coast Guard District Office. This form must be submitted for each facility; however, if evidence of financial responsibility has been previously established in an amount sufficient to meet § 135.203 (a), no additional evidence need be submitted with the application.

(c) Each application form submitted under this section must be signed by the applicant. A written statement proving authority to sign must also be submitted where the signer is not disclosed as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director or other officer of a corporate applicant.

(d) Financial data or other information submitted under this section that is proprietary in nature, or constitutes a trade secret, must be clearly designated as such to insure confidential treatment by the Fund Administrator, under 5 U.S.C. 552, the Freedom of Information Act, which provides for exemption from disclosure of trade secret data.

(e) If any of the information submitted for certification is determined