Bureau of Ocean Energy Management (BOEM)

Gulf of Mexico OCS Region

Rocky Mountain Mineral Law Foundation
Oil Spill Financial Responsibility

April 10-12, 2018
New Orleans, Louisiana
Oil Spill Financial Responsibility for Offshore Facilities

Purpose: to ensure that the “designated applicant” for a “covered offshore facility” has the financial resources necessary to pay for cleanup and damages that could be caused by oil discharges
Federal Guidelines

Codified in the Code of Federal Regulations

- 30 CFR 553
- NTL No. 2008-N05, effective August 26, 2008
- Online resources:
  https://www.boem.gov/Oil-Spill-Financial-Responsibility-OSFR/
Terminology

• Covered Offshore Facility (COF) - (1) any structure, equipment, pipeline, or device used for oil exploration, drilling, production, or transportation (2) > 1,000 bbl discharge potential, (3) seaward of coastline or in a bay

• Designated Applicant - the entity that (1) provides financial coverage and (2) the responsible party(s) designates to demonstrate OSFR for a COF

• Responsible Party - owner/operator of a pipeline, lessee/permittee, holder of a right-of-use and easement (RUE), operating rights holder
Terminology

• **U.S. Agent for Service of Process** –
  — an agent of the company (Designated Applicant, Responsible Party, Indemnitor) who ensures that all potential claimants have a readily available contact to whom they can submit legal paperwork for claims for oil-spill cleanup and damages specified in Oil Pollution Act of 1990 (OPA 90)
  — a company officer whose primary business office is located within the confines of the United States or a person or company whose function is to accept and process claims paperwork for the company
Who must demonstrate OSFR?

30 CFR 553.11

A designated applicant (DA) must demonstrate OSFR. It may be a responsible party (owner, operator) or a parent company, authorized under the regulation.
How much OSFR must I demonstrate?

30 CFR 553.13

• For a COF located wholly or partially in OCS waters:
  • 1,001 bbl > 35,000 bbl = $35 million
  • 35,001 bbl > 70,000 bbl = $70 million
  • 70,001 bbl > 105,000 bbl = $105 million
  • > 105,000 bbl = $150 million

• For a COF not located in OCS waters:
  • 1,001 bbl > 10,000 bbl = $10 million
  • 10,001 bbl > 35,000 bbl = $35 million
  • 35,001 bbl > 70,000 bbl = $70 million
  • 70,001 bbl > 105,000 bbl = $105 million
  • > 105,000 bbl = $150 million
How to determine worst case oil spill volume

30 CFR 553.14

30 CFR 254 – Part of your Response Plan
or
40 CFR 112 - Oil Pollution Prevention
or
49 CFR 194 - Oil Pipeline Response Plan
or
$150 Million – Maximum Amount
What methods may I use to demonstrate OSFR?

**30 CFR 553.20**

- Self-Insurance
- Insurance (commercial)
- Indemnification (3rd party)
- Surety Bonds
- Alternative Methods (BOEM Director’s approval)
Alternative Methods

30 CFR 553.32

- BOEM Director’s approval
  - Pooling
  - Letters of Credit
  - Pledges of Treasury Notes
  - Trust Agreements
  - Other comparable methods
What OSFR evidence must I submit?

30 CFR 553.40

- Designated Applicant - Form 1016
  - Single demonstration for all COF
- Designation of Applicant by Responsible Parties - Form 1017
- Financial evidence
  - Form 1018 – Self Insurance
  - Form 1019 – Insurance
  - Form 1020 – Surety Bonds
- Identification of COF’s – BOEM Form 1021 or 1022
  - Form 1021 - Covered Offshore Facilities
  - Form 1022 - Covered Offshore Facility Changes
- Treasurer's Letter and Financial Statements
Self-Insurance

30 CFR 553.21 - 553.24

Complete Form BOEM-1018, Self-Insurance or Indemnity Information

• Pass Net Worth or Unencumbered Assets test

• Submit financial supporting data
  – Independently audited financial statement
  – Treasurer’s letter

• Renew by 1st calendar day of 5th month after close of fiscal year
Insurance (commercial)

30 CFR 553.29

Complete Form BOEM-1019, Insurance Certificate

- One Certificate per layer (no horizontal layers)
  - OCS (4) State waters (5)
- Insurance Options
  - Full
  - Deductible
  - Excess
- General Option (all facilities)
- Schedule Option (all facilities on dated attachment)
- Each Insurer’s Name, Quota Share & Signature
- Rating - Secure, Rating Service, Date
- Fax Binder (90 days)
Indemnification

30 CFR 553.30

• Complete Form BOEM-1018, Self-Insurance or Indemnity Information
  – One indemnity issued by one indemnitor
  – Indemnitor must be corporate parent or affiliate

• Pass Net Worth or Unencumbered Assets Test

• Submit Financial Supporting Data
Surety Bonds

30 CFR 553.31

Complete Form BOEM-1020, Surety Bond

• Licensed in State where bond is executed

• Listed on U.S. Treasury Circular No. 570
OSFR Statistics

- Total Number of Designated Applicants providing OSFR: 105
- Total Number of COFs: 4,544
  OCS (3,779)  St (765)  AK(164), AL(27), CA(3), LA(533), MS(1), TX(88)
- Total Coverage by Type:
  - Self-Insurance $1,393,000,000 (18.2%)
  - Insurance $4,106,159,000 (54%)
  - Indemnification $2,135,641,000 (27.8%)
  - Bonds $200,000 (0.00%)
  - Other - 0 -
  - Total $7,635,000,000
- Company Coverage by Amount:
  - $10 M: 8  $35 M: 52 (Self-Insurance 3, Indemnified 8, Insurance 41)
  - $70 M: 10  $105 M: 4
  - $150 M: 31
OSFR Contact

Gulf of Mexico Region

- boemosfr@boem.gov
- Leasing and Financial Responsibility Program Support
  Assistant will route your call 504-736-2465