

**UNITED STATES DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE**

NTL No. 99-N01

Effective Date: January 6, 1999

NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES
IN THE OUTER CONTINENTAL SHELF
AND LOCATED IN CERTAIN AREAS OF COASTAL STATES

Guidelines for Oil Spill Financial Responsibility for Covered Facilities

What is the purpose of this Notice to Lessees and Operators (NTL)?

This notice supersedes NTL 93-1N, dated April 16, 1993.

On August 11, 1998, the Minerals Management Service (MMS) published its final rule (see Federal Register, Vol. 63, No. 154, pages 42699-42719) governing Oil Spill Financial Responsibility for Offshore Facilities (OSFR) and related requirements for certain crude oil wells, production platforms, and pipelines located in the Outer Continental Shelf (OCS) and certain State waters. The regulations implement the Oil Pollution Act (OPA) requirement for responsible parties to demonstrate they can pay for cleanup and damages caused by facility oil spills. These new regulations became effective on October 13, 1998. This notice provides clarification, guidance, and information to operators/owners of facilities and leases on our policies and procedures for submitting OSFR documents to the Gulf of Mexico OCS Region (GOMR). The GOMR will serve as the national program manager for all OSFR applications.

Before the effective date of the final rule, all Certificates of Financial Responsibility (COFRs) filed with us were issued under 33 CFR 135 and according to the now superseded NTL 93-1N.

Am I required to demonstrate OSFR coverage, and what facilities are covered by the regulation?

You must demonstrate OSFR coverage for a covered offshore facility(s) (COF) on a lease, permit, or right-of-use and easement, if you are designated as a Designated Applicant by a responsible party(s). Your coverage will include all facilities that are classified as COFs.

How do I determine if my facility is a COF and requires OSFR coverage?

If your facility (1) has a worst case oil-spill discharge potential of more than 1,000 barrels of oil and (2) is located seaward of the coastline or in any portion of a bay that is connected to the sea either directly or through one or more other bays, it is classified as a COF, and it will require OSFR coverage.

When must I submit an application for OSFR approval and what will I receive when MMS approves it?

If your COFR expires on or after October 13, 1998, you must apply under 30 CFR 253 by the earlier of (1) April 8, 1999, or (2) the earliest date that an existing COFR for any of your COFs expires.

Companies currently holding a leasehold COFR may continue to do so, and may add and/or drop properties from that coverage until the earlier of (1) or (2). We will not allow companies currently holding a facility COFR to add properties to that coverage. You must apply for any requested additions as part of your OSFR application under 30 CFR 253. This transition method will ensure continuation of evidence of oil spill financial responsibility for those offshore facilities that can be classified as COFs under 30 CFR 253.

We will issue a letter to the Designated Applicant when we approve an OSFR application. This letter will confirm that the submitted OSFR evidence is adequate, will indicate when you must submit new OSFR evidence, and will identify the offshore properties, leases, permits, rights-of-use and easement and pipeline segments that the OSFR application covers.

What forms must a Designated Applicant submit for OSFR approval?

A new application for OSFR approval must include the following:

1. One Form MMS-1016, Designated Applicant Information Certification
2. One or more Forms MMS-1017, Designation of Applicant
3. One or more of the following forms appropriate for the type of financial evidence used:
 - A. Form MMS-1018, Self-Insurance or Indemnity Information
 - B. Form MMS-1019, Insurance Certificate
 - C. Form MMS-1020, Surety Bond
4. One Form MMS-1021, Covered Offshore Facilities

If I do not already have an MMS qualification number, how do I obtain one for my OSFR application?

State operators and lessees, U. S. agents for service of process, indemnitors, insurance agents, or brokers are parties who do not normally hold Federal OCS leases and do not have a previously established qualification number. We will assign a qualification number for such parties when we receive applications which list them on the various OSFR forms. We will assign a qualification number for new Federal OCS lessees and operators in connection with the processing of their lease documents. This could occur simultaneously with the submission of an OSFR application.

Are there any definitions in addition to those listed in 30 CFR 253 that I must consider when I apply for OSFR?

In addition to the definitions specified in OPA and 30 CFR 253.3, the following new and supplemental definitions apply to OSFR program:

de minimis - a worst case oil spill potential of 1,000 barrels or less.

Fax binder - a facsimile copy of Form MMS-1019 (Insurance Certificate) completed to show the full insurance slip, i.e., listing of all underwriters with their individual quota shares, and at least one insurance underwriter's signature, and submitted to the MMS as a fax copy of evidence. This binder, completed in accordance with 30 CFR 253.29(d), may be used as temporary insurance evidence of OSFR.

Fixed offshore facility - a bottom anchored offshore facility permanently attached to the seabed of Federal, State, or Territorial coastal waters of the United States of America. This term includes platforms, guyed towers, articulated gravity platforms, single- and multi-well caissons, gravel and ice islands, caisson retained islands, sub-sea wells and manifolds, and similar facilities designed for drilling, production, storage, or transportation of oil. This does not include marina structure and piers, and marine loading docks not connected to offshore facilities in, on, or under Federal, State, or Territorial coastal waters of the United States of America as described in 30 CFR 253. This definition also does not include facilities licensed under the Deepwater Port Act of 1994.

Floating offshore facility - a buoyant offshore facility, securely and substantially moored or otherwise connected to the seabed of Federal, State, or Territorial coastal waters of the United States of America, that cannot be moved without substantial effort. This term includes tension leg platforms, spars, and similar facilities designed or modified for drilling, production, separation, or storage of oil. These facilities may have semi-submersible or ship-shape hulls.

Incident - an oil or gas condensate spill or blowout from a single well, platform, or pipeline resulting from any equipment failure, human action, or weather condition.

Lease term pipeline - a pipeline that is wholly contained within the boundaries of a single lease, unitized leases, or contiguous (not cornering) leases of the same owner or operator.

Mobile offshore drilling units (MODU) - facilities designed or modified to engage in drilling and exploration activities, but not production, separation, or storage of oil in or on Federal, State, or Territorial coastal waters of the United States of America. This term includes drilling vessels, semisubmersibles, submersibles, jack-ups, and similar facilities that can be moved without substantial effort. These facilities may or may not have self-propulsion equipment on board and may require dynamic positioning equipment or mooring systems to maintain their position.

Oil - oil or gas condensate produced from wells or platforms with a surface location in, on, or under Federal, State, or Territorial coastal waters of the United States as described in 30 CFR 253; stored in, on, or under these waters; or transported through pipelines in or under these waters.

U.S. agent for service of process - a designated agent of the company to ensure that all potential claimants have a readily available contact and to whom claimants can submit legal paperwork for claims for oil spill clean-up and damages specified in OPA 90. A company officer whose primary business office is located within the confines of the United States may be named as a company's agent. A person or company whose function is to accept and process claims paperwork for the company may also be named as a company's agent.

Will the U. S. Coast Guard (USCG) also require a COFR?

You must also obtain a COFR from the USCG, in compliance with 33 CFR 138, for vessels and MODU's, for floating offshore facilities which store oil and for loading docks used to transfer petroleum and other products to and from a vessel or floating offshore facility, including lightering of produced hydrocarbons. This COFR is in addition to the OSFR certification we issue and addresses the operator's financial responsibility for the clean up and damages from oil discharges resulting from non-well related sources and produced oil stored onboard the vessel, MODU, or floating offshore facility. You should direct any questions concerning a USCG COFR to the USCG at (703) 235-4813.

Which method should I use to calculate my worst case oil spill potential?

For producing wells you must calculate the worst case oil spill discharge potential as 4 times the uncontrolled flow volume estimated for the first 24 hours of production. For new wells you must consider the worst case oil spill discharge potential to be over 1,000 barrels. For all other facilities on the OCS, you must use the methods listed in 30 CFR 254 (Response Plans for Facilities Located Seaward of the Coast Line) to calculate the worst case oil spill potential. Those leases involving drilling, completion or workover rigs, or removal of surface safety equipment will be deemed to have an oil spill potential of not less than 1,001 barrels. We will require OSFR coverage for these types of operations.

For all offshore facilities in waters landward of the OCS, you must use the methods listed in 40 CFR 112 (Oil Pollution Prevention) or 49 CFR 194 (Response Plans for Onshore Oil Pipelines) to calculate the worst case oil spill potential.

What effect will OSFR have on my lease term pipelines?

We estimate that the potential worst case spill from a production facility is greater than that of its associated lease term pipelines; therefore, you do not need to include such pipelines, that do not leave the lease, on an OSFR application unless the Designated Applicant is different.

Are my OSFR requirements different if I choose to demonstrate financial responsibility for the maximum amount of \$150 million?

The only difference between demonstrating for \$150 million and a lower level is that you do not have to list the potential worst case oil spill amounts on any forms requiring this information.

Am I required to attach a proof of authority to sign to Form MMS-1016 (Designated Applicant Information Certification) as stated in 30 CFR 253.40(b)?

We do not require evidence of authority to sign. Our Adjudication office maintains the qualification's card file of each company qualified to do business with us. This card identifies each individual who is authorized to execute documents. We will verify signatures on the OSFR forms against this card file. Your company is responsible for maintaining the correct signatory authorization on file with the Adjudication office.

May I attach a separate listing of my COFs?

If you choose not to list your COFs on either Form MMS-1017 (Designation of Applicant) or Form MMS-1021 (Covered Offshore Facilities) we will accept a separate, dated listing containing your COFs. This listing must contain our exact headings as shown on these forms and a statement on the applicable form that references the attached exhibit.

How should I identify OSFR evidence for facilities located on rights-of-use and easement?

We issue the following two types of rights-of-use and easement as defined in 30 CFR 253.3:

1. A pipeline right-of-way is a type of right-of-use and easement issued under 30 CFR 250.1010(d) for pipelines, and any appurtenant structures, that are installed on blocks that are either unleased or leased and operated by another company(s). When required, you should identify the OSFR evidence for pipeline rights-of-way by the pipeline right-of-way number (e.g. G-2314) that we issue.
2. A right-of-use and easement is also issued under 30 CFR 250.107 for wells and platforms needed to explore or produce a lease from a surface location on an adjacent block that is either unleased or leased and operated by another company(s). When required, you should identify the OSFR evidence for these rights-of-use and easement by the associated well bottom-hole location lease number. However, you must note the surface facility in the application.

What effect will OSFR have on permit approval?

We will not approve the following permits until we verify OSFR compliance:

- Application for Permit to Drill (APD) (Form MMS-123)
- Sundry Notices and Reports on Well (Form MMS-124) for operations that involve the use of a drilling, completion, or workover rig, or that involve removal of the surface safety equipment (tree)
- Applications for new production facilities or modifications to existing production facilities required by 30 CFR 250, Subpart H

If your Designated Applicant submitted OSFR evidence for the maximum \$150 million level, you should indicate this in your well or facility permit request.

If the proposed well operations or proposed new or modified facilities are on a lease currently identified as a COF, you must include in your permit request a statement that indicates if the calculated worst case oil spill potential for the proposed operation(s) is less than or equal to your current highest COF demonstration. If the calculated potential worst case discharge is in excess of your current highest COF demonstration, you must submit Form MMS-1022 (Covered Offshore Facility Changes) to the following address before we will approve the request .

U. S. Department of the Interior
Minerals Management Service
Gulf of Mexico Region
Oil Spill Financial Responsibility Program
1201 Elmwood Park Boulevard, Mail Stop 5421
New Orleans, LA 70123

If the proposed well operations or proposed new or modified facilities are on a lease not yet identified as a COF, before we will approve the permit, you must submit with your application calculations of the worst case oil spill potential. If these calculations indicate a worst case oil spill potential in excess of 1,000 barrels, the Designated Applicant must submit Form MMS-1022 to the above address. All well operations involving a drilling, completion, or workover rig, or removal of surface safety equipment, will have the potential for a spill in excess of 1,000 barrels; therefore, we will require OSFR coverage for these types of operations.

What effect will OSFR have on applications for pipeline rights-of-way and modifications to existing pipeline rights-of-way required by 30 CFR 250, Subpart J?

If your Designated Applicant submitted OSFR evidence for the maximum \$150 million level, you should indicate this in your right-of-way permit request.

If your Designated Applicant did not submit OSFR evidence at the \$150 million level, then your application(s) for new rights-of-way for non-dry gas pipelines with a static volume greater than 1,000 barrels must include calculations of the estimated potential worst case spill from the pipeline and any appurtenant structures. If the worst case oil spill potential is greater than 1,000 barrels, we may conditionally approve the right-of-way permit to allow construction. However, you must submit Form MMS-1022 (Covered Offshore Facility Changes) to the above address before you may activate the pipeline.

We assume the potential worst case oil spill volume for pipelines will be less than the static volume of the pipelines. We also assume the potential worst case spill volume from most pipelines used to transport dry gas will be less than 1,000 barrels. Therefore, we will not require OSFR evidence for pipelines used to transport only dry gas or for pipelines with a static volume of 1,000 barrels or less.

For applications to modify the service, size, or length of a right-of-way pipeline, and applications to add an appurtenant structure to a pipeline right-of-way, you must include a statement to indicate if the proposed modification will result in a worst case oil spill potential greater than previously stated in your OSFR application for this pipeline. If the calculations indicate a potential worst case oil spill discharge in excess of the amount previously stated in your OSFR application for this pipeline, you must submit Form MMS-1022 to the above address before we will approve the application.

What effect will OSFR have on assignments of record title, operating rights, pipeline rights-of-way, name changes, or mergers on a leasehold basis?

If an assignment involves a COF on which the entity relinquishing the interest (assignor) is the Designated Applicant, the assignor will submit a cover letter with the assignment which states whether they will continue to maintain OSFR coverage. If the assignor will continue to maintain coverage, then the entity receiving the interest (assignee) must submit a Form MMS-1017 (Designation of Applicant). If the assignor will not continue to maintain coverage, then the assignee must prepare Form MMS-1017 naming the new Designated Applicant. The new Designated Applicant must submit either (1) a complete OSFR application if Form MMS-1016 (Designated Applicant Information Certification) is not already on file with the MMS, or (2) Form MMS-1017 and Form MMS-1022 (Covered Offshore Facility Changes) if an approved OSFR application is currently on file with the MMS.

If an assignment involves a COF on which the assignor is not the Designated Applicant, the assignee must submit a Form MMS-1017 with the assignment.

When a name change occurs, the newly named entity must submit a certificate of incorporation from the Secretary of State for the State of incorporation. Before we can accept the name change, you must also submit a rider to your insurance or surety OSFR coverage. No additional OSFR forms are required.

If the surviving entity in a merger does not have OSFR coverage, that entity must submit a new OSFR application if any facilities obtained through the merger can be classified as COFs. If the surviving entity in a merger has OSFR coverage on file, that entity must submit Form MMS-1017 and Form MMS-1022.

Upon receipt of an assignment, the Adjudication Unit will verify the Designated Applicant information and, before approving the assignment, will adjust OSFR records simultaneously with the assignment change. For any assignments, name changes, and mergers, you should submit only single, originally executed OSFR forms to the Adjudication Unit.

What effect will OSFR have on my designation of operator (DOO) changes?

If a DOO involves a COF, the new designated operator must comply with OSFR through one of the following options:

- If the new operator is not already a Designated Applicant, you must submit a complete OSFR application package. This package must include the following:
 - Form MMS-1016 (Designated Applicant Information Certification),
 - Form MMS-1017 (Designation of Applicant),
 - Form MMS-1021 (Covered Offshore Facilities), and depending upon the combination of OSFR coverage used, one or more of
 - Form MMS-1018 (Self Insurance or Indemnity Information),
 - Form MMS-1019 (Insurance Certificate), and/or
 - Form MMS-1020 (Surety Bond).
- If the new operator is already a Designated Applicant, you must submit the following :
 - Form MMS-1017 (Designation of Applicant),
 - Form MMS-1019 (Insurance Certificate) if the new operator uses insurance for OSFR coverage, and
 - Form MMS-1022 (Covered Offshore Facility Changes).

All DOO changes will be effective pending review and approval of the above information. For DOO changes you should submit only single, originally executed OSFR forms to the Adjudication Unit.

What should I do when there are multiple operators on a facility, multiple operators on a lease, or multiple facilities on a lease?

If there is more than one operator on a facility, we allow only a single OSFR demonstration for that facility. You must decide who will be the Designated Applicant for the facility.

If there are multiple operators on a lease, each operator, who is a Designated Applicant, can submit an OSFR demonstration for their aliquot portion of the lease.

If a lease with a single operator contains more than one facility that can be classified as a COF, we require only the COF with the largest potential worst case oil spill discharge on the lease to be listed in the OSFR application.

Are the OSFR requirements impacted by any State financial responsibility programs?

The States currently affected by the rule (Alabama, Alaska, California, Florida, Louisiana, Mississippi, and Texas) may have regulations which require operators, lessees, and right-of-way holders to demonstrate financial responsibility in amounts different from those listed in 30 CFR 253.13. This demonstration for a State will not duplicate or replace the OSFR requirements.

Some OCS operators and lessees have facilities in State waters. If facilities in State waters exceed the *de minimis* levels of 30 CFR 253, you must also demonstrate OSFR in addition to any State requirements. The State and Federal programs are separate and distinct.

Are there any limitations on the financial information that I must submit as OSFR evidence?

We will only consider financial information as OSFR evidence for the valid term of that evidence. For example: Self-insurance or indemnity evidence is valid from the first day of the fifth month after the end of a fiscal year to the earlier of (1) the first day of the fifth month after the end of the next fiscal year, or (2) the date the basis for the self-insurance or indemnity is no longer valid. It may no longer be valid due to the sale of the company, the sale of the specified assets of the company, the merger of the company into another company or a new company, or the application for bankruptcy protection by the company.

You must submit the audited financial statements for the end of the prior fiscal years and the associated information specified in 30 CFR 253.23 through 253.26 for any OSFR application that includes a Form MMS-1018 (Self-insurance or Indemnity Information) for each year covered by the OSFR application.

If a company provides OSFR coverage as a third party indemnitor for multiple companies, the indemnitor must demonstrate OSFR for the highest coverage level. For example, if you provide coverage for two companies where one requires \$35 million of coverage, and the other requires \$70 million of coverage, then we require the indemnitor to demonstrate OSFR for \$70 million.

A surety bond can only serve as evidence for oil spill financial responsibility for the amount specified on Form MMS-1020 (Surety Bond), which can be no more than the underwriting limitation amount listed in U.S. Treasury Circular 570. The bond is valid from the date we receive the bond until it is terminated or cancelled by MMS.

Are there any limitations on the insurance information that I must submit as OSFR evidence?

Insurance certification can only serve as evidence for OSFR for the amount specified on Form MMS-1019 (Insurance Certificate), which can be no more than the claims paying ability of the identified insurance companies specified by an insurance rating service. The insurance is valid from the effective date on Form MMS-1019 to the earliest of (1) the certificate's expiration date, (2) the certificate's cancellation date, or (3) the application date for bankruptcy protection by any of the insurance companies specified on Form MMS-1019.

If you use an insurance certificate as OSFR evidence, all specified insurance companies must have "Secure" ratings, as specified in 30 CFR 253.29(a), as of the effective date of the Certificate. Any specified insurance company that has a "Secure" rating must continue to have a "Secure" rating as long as we consider Form MMS-1019 to be valid. If your certificate becomes invalid, you will have 5 working days to provide either a new certificate or a fax binder, unless we provide an extension of time.

The Designated Applicant must provide us with any delegations of authority to a broker, an underwriter of another insurance company, or an underwriting manager to bind an insurance company specified on Form MMS-1019 to all risks and liabilities specified in OPA 90. The only exceptions are (a) the underwriter of a Lloyds of London insurance syndicate specified on a Form MMS-1019 may bind all risks and liabilities specified in OPA 90 to all Lloyds of London insurance syndicates specified on this form, and (b) the underwriter of an Institute of London Underwriters (ILU) member insurance company specified on Form MMS-1019 may bind all risks and liabilities specified in OPA 90 to all ILU member insurance companies specified on this form.

For those States that also require financial responsibility, you cannot use a single insurance certificate as financial evidence for both OSFR and State demonstrations. Additionally, you cannot use a single insurance certificate for both our OSFR demonstration and a USCG issued COFR. However, a single backing insurance policy, if it covers the sum total of financial evidence required by the MMS OSFR program, the USCG COFR program, and a State required demonstration, can be used as the basis for Form MMS-1019.

What are the civil penalties for noncompliance with OSFR?

We may assess civil penalties of up to \$25,000 per COF per day for noncompliance with the requirements of 30 CFR 253.51(a). However, we will consider the following guidelines when we assess these penalties:

Amounts of Civil Penalties Per COF for Noncompliance with Oil Spill Financial Responsibility (OSFR) Requirements¹			
Category of Noncompliance	Period of Noncompliance		
	1st Week	2nd & 3rd Weeks	After 3 Weeks
Failure to submit OSFR evidence	\$500	\$750/week	\$250/day
Failure of a Responsible Party to Prepare Form MMS-1017 (Designation of Applicant)	\$500	\$750/week	\$250/day
Lapse in OSFR coverage	\$750	\$1,000/week	\$300/day
Cancellation of OSFR without alternative coverage	\$2,500	\$5,000/week	\$1,000/day
Failure to correct an erroneous or inadequate submission within 30 days of MMS request ²	\$100	\$250/week	\$1,000/week

¹ Penalties will double each time there is an additional violation within 1 calendar year of the first violation, up to a maximum of \$25,000/day. Periodically as needed to ensure compliance we will update the penalty amounts in this table.

² Includes under-subscribed insurance slips, use of insurers not rated “Secure” or better, errors in lease, permit, or right-of-use and easement identification and similar problems with the OSFR evidence submitted.

We will provide a written notice of our intent to recommend the imposition of civil penalties. We may recommend the U. S. Department of Justice pursue criminal penalties for knowing and willful violations of the OSFR requirements which may include shutting-in OCS offshore operations of the Designated Applicant and the Responsible Parties for the leases(s) in question. We will coordinate enforcement actions with the States for those lessees and operators who have COFs in State waters.

How can I obtain OSFR information and application forms?

We have an Internet web site located at www.gomr.mms.gov/homepg/lseale/osfr.html to assist you with the OSFR program. You can print all OSFR application forms through a pdf format at our site. You may also contact the Oil Spill Financial Responsibility Program Office, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Mail Stop 5421, New Orleans, LA 70123.

Paperwork Reduction Act of 1995 Statement: This NTL refers to various information collection provisions in our regulations and forms which the Office of Management and Budget

(OMB) has approved and assigned OMB control numbers. The primary collection of information referred to is required by 30 CFR part 253 (OMB control number 1010-0106). Other information collections referred to are required by 30 CFR part 254 (OMB control number 1010-0091) and 30 CFR part 250 (this part has various OMB control numbers which are displayed in 30 CFR 250, subpart A). This notice provides clarification, description, or interpretation of requirements and does not impose additional information collection requirements subject to the Paperwork Reduction Act of 1995.

If you have any questions on this NTL, you may contact Pat Clancy at (504) 736-2600.

1/6/99
Dated:

/s/
Carolita U. Kallaur
Associate Director for
Offshore Minerals Management