

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 253

RIN 1010-AB78

Oil Spill Financial Responsibility for Offshore Facilities  
Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is announcing its intention to publish regulations governing the establishment of financial responsibility for offshore oil facilities and gas facilities with concurrent gas condensate production, and requests comments from interested parties. This action is necessary to ensure that parties responsible for offshore oil and gas facilities are able to meet the financial responsibility requirements of the Oil Pollution Act of 1990 (OPA 90). These regulations will establish a level of financial responsibility at \$150 million for all offshore facilities in, on, or under the navigable waters of the United States (U.S.).

DATES: Comments should be received or postmarked by February 28, 1994 to receive full consideration.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service, Mail

Stop 4700; 381 Elden Street; Herndon, Virginia 22070-4817;

Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: William S. Cook, Chief,  
Inspection and Enforcement Branch, telephone (703) 787-1610 or  
FAX (703) 787-1575.

SUPPLEMENTARY INFORMATION: The Minerals Management Service  
(MMS) is developing new regulations to implement Title I and  
section 4303 of OPA 90 (33 USC 2701) for offshore facilities in  
navigable waters of the U.S. These regulations will:

- Establish the amount of oil spill financial responsibility that must be evidenced by responsible parties at \$150 million;
- Establish requirements for certification of financial responsibility for all "offshore facilities" (as defined in OPA 90) including those in, on, or under any navigable waters, including inland waters, of the States of the U.S., territories, and possessions, and facilities subject to U.S. jurisdiction in, on, or under any other waters.
- Define acceptable methods available to demonstrate evidence of oil spill financial responsibility;
- Define procedures to be used to submit evidence of oil spill financial responsibility;
- Define responsibilities, liabilities, and defenses of guarantors;

- Establish the maximum civil penalties to which responsible parties are subject as \$25,000 per day of violation; and
- Establish civil penalties procedures.

The MMS solicits information and comments on OPA 90 issues, and MMS' preliminary interpretation of the OPA 90 requirements.

Commentors should propose solutions to any problems they anticipate in complying with the OPA 90 requirements. The MMS is also seeking information on the effect of the new OPA 90 requirements on the oil, financial, and insurance industries; how MMS can best utilize the administrative expertise and experience of State regulatory agencies; and the concerns of environmental groups and other interested parties.

In August 1990, Congress passed OPA 90 which contains various provisions aimed at:

- Strengthening oil spill prevention, response capability, and cleanup efforts.
- Ensuring payment of damages resulting from oil spills.

Title III of the Outer Continental Shelf (OCS) Lands Act Amendments of 1978 (OCSLAA 78) was repealed and the Federal Water Pollution Control Act and the Deepwater Port Act of 1974 were amended by OPA 90. To implement the authority under OPA 90, Executive Order (E.O.) 12777 was signed by the President on October 18, 1991, and was published in the Federal Register on

October 22, 1991 (56 FR 54757). The E.O. delegated certain responsibilities to the Secretary of the Interior, including responsibilities relative to ensuring evidence of financial responsibility for companies operating offshore facilities on the OCS and other U.S. navigable waters. The Secretary subsequently redelegated these responsibilities to the Director, MMS.

A similar function was previously performed by the U.S. Coast Guard (USCG) on OCS waters under the authority of Title III of OCSLAA 78, and implemented by 33 CFR part 135 provides that the regulations in 33 CFR part 135 be continued effective until new offshore financial responsibility regulations are promulgated. On October 1, 1992, a memorandum of agreement (MOA) was signed transferring the personnel, equipment, and files associated with the function to the MMS in furtherance of the delegations in E.O. 12777.

#### Affected Facilities

The definition of "facility" in OPA 90 [section 1001(9)] includes all structures, equipment, or devices, other than vessels and deep water ports, used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term specifically includes pipelines. For the purposes of administering Section 1016 of OPA 90, the MMS will apply financial responsibility requirements, in the case of offshore facilities other than pipelines, to the

lessee or permittee of the area in which the facility is located or the holders of a right of use and easement granted under applicable State law or the OCS Lands Act for the area in which the facility is located. In the case of pipelines, the MMS will apply financial responsibility requirements to any person owning or operating pipelines located in, on, or under the navigable waters of the U.S. Under E.O. 12777, the responsibility for Deepwater Ports has been assigned to the Department of Transportation.

#### Geographic Jurisdiction

The financial responsibility requirements for offshore facilities under OPA 90 apply to all U.S. navigable waters. The law (OPA 90) defines U.S. navigable waters as the waters of the U.S. including the territorial sea. This includes all of the States of the U.S., the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the U.S. Also, these new authorities and responsibilities apply to offshore facilities that the MMS currently regulates for oil and gas operations in the OCS.

Through its definition of the terms "navigable waters of the United States," and "offshore facility" in section 1001(22), OPA 90 extends its provisions concerning offshore facilities to facilities in, on, or under navigable waters of the U.S. and any

facilities subject to the jurisdiction of the U.S. in, on, or under other waters. Thus, for example, a company operating a petroleum pipeline that crosses the Ohio River below Pittsburgh, Pennsylvania, would be subject to the \$150 million financial responsibility provisions of this rule, as would the operator of an oil well in the Great Lakes.

#### Implementation Procedures

In developing regulations to implement the oil spill financial responsibility requirements of OPA 90, the MMS will need to determine whether the following concepts in the existing regulations at 33 CFR part 135 can be used to address the responsibilities delegated under E.O. 12777:

- Evidence of financial responsibility may be provided by one or more Guarantors for one or more offshore facilities of a particular responsible party.
- Where multiple responsible parties own an offshore facility, evidence of financial responsibility may be established and maintained on behalf of all of the parties by that party designated as the lead responsible party.
- When evidence of financial responsibility is established in a consolidated form, the proportional share of each Guarantor must be shown.
- Each responsible party of an offshore facility is subject to civil penalties and/or referral to the Department of Justice if

the required evidence of financial responsibility is not established and maintained.

- Evidence of financial responsibility may be established and maintained by any one or any combination of acceptable methods.
- Individual insurance underwriters, indemnitors, and bonding companies are subject to direct action to the extent of their contracts, indemnity coverage, or bond.

#### Solicited Information

Responses to the following questions are requested to assist MMS in formulating the requirements to implement OPA 90. In addition, to help fulfill its responsibilities for determining the economic effects of regulations, MMS requests information that can be used to determine the potential economic effect of this rulemaking on the oil and gas, the pipeline, the insurance, the fishing, the tourism, and other industries.

1. The MMS solicits information on the types and locations of facilities that may be subject to the offshore financial responsibility requirements of OPA 90. The OPA 90 defines an offshore facility as any facility of any kind located in, on, or under any of the navigable waters of the U.S., and any facility of any kind which is subject to the jurisdiction of the U.S. and is located in, on, or under any other waters, other than a vessel or a public vessel. In addition, OPA 90 defines a facility as any structure, group of structures, equipment, or device (other

than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes. Comments are invited on whether or not, and if not why not, this definition includes:

- Pipelines crossing over bodies of water on bridges, piers, breakwaters, berms, or similar structures.
- Fuel storage tanks, piping, and hoses installed in, on (i.e., in contact with or supported above), or under navigable waters, including those facilities in private marinas.
- Pipelines in, on, or under inland navigable waters but not crossing the inland navigable waters.
- Pipelines that cross in, on, or under both land masses and inland navigable waters.
- Pipelines that cross under inland navigable waters in tunnels or are surrounded by other impermeable barriers.
- Pipelines that cross the waters of the U.S. and the waters of another country.
- Drill strings, flow lines, or production casing extending under navigable waters but originating from land-based drilling and production facilities.
- Other structures to which the applicability of OPA 90 may be unclear.



2. Section 1016(e) of OPA 90, and 33 CFR part 135 enumerate the following potential ways of demonstrating financial responsibility:

- Insurance;
- Guaranty;
- Indemnity;
- Surety bond;
- Letters of credit;
- Qualification as self-insurer; or
- Any combination of the above methods.

What additional methods of demonstrating evidence of the \$150 million level of financial responsibility exist to enable responsible parties and guarantors to meet the requirement? Do all of these methods provide equal assurance that all claims will be paid in a timely manner?

3. Section 1019 of OPA 90 states, "A State may enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility under section 1016." The MMS is seeking comments on:

- Existing State programs that can be demonstrated to be equivalent to OPA 90.
- Other State programs that address oil spill financial responsibility.

- How States expect to administer evidence of financial responsibility programs consistent with OPA 90.
- What relationships can exist between MMS and States that do and States that do not have their own evidence of financial responsibility programs.
- How MMS can verify that a State program satisfies the requirements of OPA 90.
- What contact and coordination mechanisms MMS can establish with States.
- To what extent MMS may be allowed to defer offshore facility financial responsibility under OPA 90 to a State program.

4. The oil and gas industry has expressed concerns regarding the availability of insurance for those responsible parties that cannot self-insure. Insurers attribute their problem to claimant direct action, duplicative liability under State law, and determinations of covered damages. The MMS is seeking comments regarding:

- Whether and how direct action, language limiting liability, uncertain scope of damage provisions, and lack of preemption provisions in OPA 90 affect the availability of insurance.
- What regulatory approaches are available under OPA 90 that may improve the availability of an insurance market.

5. Section 1016(e) of OPA 90 authorizes MMS, as the agent of the President, to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing evidence of financial responsibility. The MMS is seeking comments regarding:

- What defenses should be available to a Guarantor to ensure the availability of affordable bonds, insurance, or other forms of guarantees.

- On what terms and conditions, if any, should bank letters of credit be acceptable as evidence of financial responsibility.

- On what terms and conditions, if any, should third party guaranties be acceptable as evidence of financial responsibility.

- On what terms and conditions should a lessee/operator be allowed to self-insure for financial responsibility obligations under OPA 90.

6. Self-insurance, as well as insurance, re-insurance, and other indemnity mechanisms have been identified as methods to achieve the \$150 million oil spill financial responsibility requirement of OPA 90. The MMS is seeking comments regarding:

- What organizational structures could be used for other indemnity mechanisms.

- What limitations are appropriate for these indemnity mechanisms to ensure that adequate financial responsibility coverage exists for all participating responsible parties.

- To what extent can a single indemnity mechanism be acceptable as evidence for a number of responsible parties or their offshore facilities.

- Should the utilization of a single indemnity mechanism be limited by a maximum number of offshore facilities or a maximum volume of oil handled by the offshore facilities. If not, why not.

12 (i of ii)

- What financial tests or criteria should be used to judge applications for self-insurance.

7. For the purposes of administering section 1016 of OPA 90, the MMS interpretation of the definition for "oil" in section 1001(23) of OPA 90, excludes facilities that handle or produce only dry natural gas. The MMS recognizes that some quantity of natural gas liquids may be produced with the gas. Facilities handling at any one time 1,000 barrels or less of these highly volatile, light end petroleum fractions were exempted from the USCG financial responsibility regulations (33 CFR part 135) because these liquids posed significantly less environmental risk

than crude or refined oil. The MMS is seeking comments and the basis for those comments regarding:

- Should offshore facilities that store or process only dry natural gas be exempt from the financial responsibility requirements of OPA 90.

- Should offshore facilities that store or process a de minimis quantity of natural gas condensate be exempt from the financial responsibility requirements of OPA 90.

- What are appropriate de minimis quantities.

8. The oil and gas industry has claimed that the requirement for \$150 million in financial responsibility may result in premature abandonment of wells and preclude their transfer to smaller companies. The MMS is seeking comments regarding:

12 (ii of ii)

- What information is available to substantiate this claim.

- How regulations can be structured to avoid premature abandonment of producing wells.

Persons choosing to respond to this notice should send comments to the address shown in the addresses section. Following the

analysis of comments received, proposed rules governing oil spill financial responsibility for offshore facilities will be developed and published in the Federal Register.

---

Date

---

Assistant Secretary for  
Land and Minerals Management