

Office of the Secretary, Interior

§ 29.6

§ 29.4 General powers.

The Fund shall have such powers as may be necessary and appropriate for the exercise of the powers herein specifically and impliedly conferred upon the Fund and all such incidental powers as are customary in non-profit corporations generally, including but not limited to the following:

(a) By resolution of the Board of Trustees, the fund shall adopt a corporate seal.

(b) The Fund may sue and be sued in its corporate name and may employ counsel to represent it.

(c) The Fund shall be a resident of the State of Alaska with its principal place of business in Alaska, and the Board of Trustees shall establish a business office or offices as deemed necessary for the operation of the Fund.

(d) In any civil action for the recovery of damages resulting from an incident, the Fund shall waive personal jurisdiction upon being furnished with a copy of the summons and complaint in the action.

(e) The Board of Trustees of the Fund, by a majority of those present and voting, shall adopt and may amend and repeal by-laws governing the performance of its statutory duties.

(f) The Fund shall do all things necessary and proper in conducting its activities as Trustee including

(1) Receipt of fee collections pursuant to section 204(c)(6) of the Act;

(2) Payment of costs and expenses reasonably necessary to the administration of the Fund as well as costs required to satisfy claims against the Fund;

(3) Investment of all sums not needed for administration and the satisfaction of claims in income-producing securities as hereinafter provided; and

(4) Seeking recovery of any monies to which it is entitled as subrogee under circumstances set forth in section 204(c)(8) of the Act.

(g) The Fund shall determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid. The Board of Trustees shall establish an annual budget, subject to the approval of the Secretary.

(h) All costs and expenses reasonably necessary to the administration of the Fund, including costs and expenses incident to the termination, settlement, or payment of claims, are properly chargeable as expenses and payable out of fees or other income of the Fund.

§ 29.5 Officers and employees.

(a) The Administrator is the Chief Executive Officer of the Fund and is responsible for carrying out all executive and administrative functions as authorized by the Board of Trustees in accordance with the Act including the receipt and verification of fees collected from Owners of TAPS oil pursuant to § 29.6(a), the investment of Fund assets in securities according to guidelines approved by the Board of Trustees and consistent with these regulations, and the disbursement of such assets in payment of expenses and approved claims.

(b) The Fund may employ such other persons as may be necessary to carry out its functions.

§ 29.6 Financing, accounting, and audit.

(a)(1) The Operator of the Pipeline shall notify each Permittee within a reasonable time as to the date of the tanker loadings and the volumes of TAPS oil loaded. The Permittee will send an invoice for transportation charges for TAPS oil (which includes five cents per barrel for the Fund) to the Owner of the oil. The Permittee will receive the five cents per barrel fee from the Owner of the oil in accordance with the terms of its particular pipeline tariff, filed with the appropriate governmental agency, and shall transfer the fee on or before the next business day to a Fund bank account designated by the Administrator. Collection of fees shall cease at the end of the month following the month in which \$100 million has been accumulated in the Fund from any source. Collection of fees shall be resumed when the accumulation falls below \$100 million. The Administrator shall notify the Pipeline carriers by the fifteenth of the month if fees are to be collected during the following month.

(2) The value of the Fund shall be the current market value of the Fund on

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the day at the end of each month or other agreed upon accounting period.

(b) Costs of the administration shall be paid from the money received by the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested in accordance with § 29.11. The interest on and the proceeds from the sale of any obligations held in the Fund shall be credited to and form a part of the Fund. Income from such securities shall be added to the principal of the Fund if not used for costs of administration or settlement of claims.

(c) At the end of each month that fees are payable under the Act, or other agreed upon accounting period, the Operator of the Pipeline shall provide the Fund with a statement of the respective volumes of crude oil transported by the Operator of the Pipeline and delivered to vessels, the amount of fees charged and collected, and the Owners of TAPS oil from whom such fees were or are due. The Administrator shall provide a copy of the statement to the Owners of the oil, and to the State of Alaska.

(d) The Fund shall undertake an annual accounting.

(e) The Fund shall be subject to an annual audit by the Comptroller General, in coordination with the Administrator and the Secretary. Authorized representatives of the Comptroller General and the Secretary shall have complete access, for purposes of the audit or otherwise, to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and they shall be afforded full facilities for verifying among other things, transactions with the balances on securities held by depositories, fiscal agents, and custodians. A report of each audit made by the Comptroller General shall be submitted to the Congress.

§ 29.7 Imposition of strict liability.

(a) Notwithstanding the provisions of any other law, where a vessel is engaged in any segment of transportation between the terminal facilities of the Pipeline and ports under the jurisdiction of the United States, and is carrying TAPS oil, the Owner and Oper-

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ator (jointly and severally), and the Fund established by section 204(c) of the Act, shall be strictly liable without regard to fault in accordance with that section for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as a result of any discharge of TAPS oil from such vessel. Strict liability under this section shall cease when the TAPS oil has first been brought ashore at a port under the jurisdiction of the United States.

(b) Strict liability shall not be imposed under this part if the Owner or Operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under the Act with respect to the claim of a damaged party if the Owner or Operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such damaged party.

(c)(1) Strict liability for all claims arising out of any one incident shall not exceed \$100 million. The Owner and Operator of the vessel shall be jointly and severally liable for the first \$14 million of the claims that meet the definition of damages as provided for in these regulations. The Fund shall be liable for the balance of the claims that meet the same definition up to \$100 million. If the total of these claims exceeds \$100 million, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

(2) The Fund shall establish uniform procedures to determine whether claims from a TAPS oil spill might exceed \$14 million and \$100 million. These procedures shall provide that when a determination is made that claims may exceed \$100 million, payment of claims may be withheld in full or in part for a twenty-four month period so that claims may be proportionately reduced prior to payment.

(d)(1) Each Owner or Operator of a vessel shall obtain from the Federal Maritime Commission a "Certificate of Financial Responsibility (Alaska Pipeline)" demonstrating compliance with the provisions of section 311(p) of the