List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Hawker Beechcraft Corporation (Type Certificate No. A00010WI previously held by Raytheon Aircraft Company): Docket No. FAA–2007–28068; Directorate Identifier 2007–CE–043–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by August 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 390 airplanes, serial numbers RB–1 and RB–4 through RB–149, that are certificated in any category.

Unsafe Condition

(d) This AD results from reports of a manufacturing error where certain starter-generators may have been improperly shimmed. We are issuing this AD to detect and replace defective starter-generators, which could result in premature starter-generator failure. This failure could lead to increased chances of dual starter-generator failure on the same flight.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Do a one-time inspection of the left-hand and right-hand starter-generators, Raytheon Aircraft Company (RAC) part number (P/N) 390–389001–0001 or Advance Industries, Inc. (AI) P/N MG94A–1, to determine the serial number and suffix letter, which indicates whether the part is defective.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first.	Follow RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006.
(2) If any defective starter-generator(s) is/are found during the inspection required in paragraph (e)(1) of this AD, replace any defective starter-generator with one of new design.	As follows: (i) If both starter-generators are found defective, replace at least one within 10 hours after the inspection required in paragraph (e)(1) of this AD. Replace the other within the next 200 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first. (ii) If one starter-generator is found defective, replace within the next 200 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first.	Follow RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006.
(3) If a defective starter-generator is not found during the inspection required in paragraph (e)(1) of this AD, no further action is required.	Not applicable	Follow RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006.
(4) Do not install on any airplane any RAC P/N 390–389001–0001 or AI P/N MG94A–1, unless it is inspected following paragraph (e)(1) of this AD and found not to be defective.	Before further flight after the inspection required in paragraph (e)(1) of this AD.	Follow RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Philip Petty, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; fax: (316) 946–4107; e-mail: *philip.petty@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Hawker Beechcraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2007–28068; Directorate Identifier 2007–CE–043–AD.

Issued in Kansas City, Missouri, on June 5, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11244 Filed 6–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 137

[USCG–2006–25708]

RIN 1625–AB09

Landowner Defenses to Liability Under the Oil Pollution Act of 1990: Standards and Practices for Conducting All Appropriate Inquiries

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish standards and practices

concerning the ''all appropriate inquiries'' element of a defense to liability of an owner or operator of a facility that is the source of a discharge or substantial threat of discharge of oil into the navigable waters or adjoining shorelines or the exclusive economic zone. To be entitled to the defense, those persons must show, among other elements not addressed in this rulemaking, that, before acquiring the real property on which the facility is located, they had made all appropriate inquiries into its previous ownership and uses to determine the presence or likely presence of oil. This proposed rule is consistent with a final rule on this subject published by the Environmental Protection Agency.

DATES: Comments and related material must reach the Docket Management Facility on or before September 10, 2007. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before September 10, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2006–25708 to the Docket Management Facility at the U.S. Department of Transportation. Two different locations are listed under the mail and delivery options below because the Document Management Facility is moving May 30, 2007. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:*

• Address mail to be delivered before May 30, 2007, as follows: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

• Address mail to be delivered on or after May 30, 2007, as follows: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 2059.

(3) *Fax:* 202–493–2251.

(4) *Delivery:*

• Before May 30, 2007, deliver comments to: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

• On or after May 30, 2007, deliver comments to: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

At either location, deliveries may be made between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

You must also send comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure that the comments are received on time, the preferred method is by e-mail at *nlesser@omb.eop.gov* or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

You may inspect the material referenced in this part at room 1013, National Pollution Funds Center, Coast Guard, 4200 Wilson Boulevard, Arlington, VA 22203–1804, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–493–6863. Copies of the material are available as indicated in the ''References'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Benjamin White, National Pollution Funds Center, Coast Guard, telephone 202–493–6863. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2006–25708), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Need for This Rulemaking

This rulemaking will codify the requirement of 33 U.S.C. 2703(d)(4)(B). It applies to persons planning to acquire real property on which a facility, as defined under 33 U.S.C. 2701(9), is located who choose to take steps necessary to protect themselves from liability should unknown oil that is the subject of a discharge or substantial threat of discharge be found at the facility after they acquire it. We call these persons ''landowners'' or ''owners'' in this preamble. Should prospective landowners opt for this protection, they may find that they have already complied with this proposed rule if they have complied with ASTM International (ASTM) E 1527–05, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' The industry standard ASTM E 1527–05, is consistent with this proposed rule and is compliant with the

statutory criteria for all appropriate inquiries. Persons conducting all appropriate inquiries may use the procedures included in the ASTM E 1527–05 standard to comply with this proposed rule. For more information on the ASTM standard, see the ''ASTM Standard E 1527–05'' section in this preamble.

Note that this proposed rule addresses only one of several elements that must be complied with in order to avail oneself of this protection. The element addressed in this proposed rule is called the ''all-appropriate-inquiries'' element found in 33 U.S.C. 2703(d)(4).

Background and Purpose

In general, under the Oil Pollution Act of 1990 (33 U.S.C. 2701, *et seq.*) (OPA 90), an owner or operator of a facility that is the source of a discharge, or a substantial threat of discharge, of oil into the navigable waters or adjoining shorelines or the exclusive economic zone is liable for damages and removal costs resulting from the discharge or threat. See 33 U.S.C. 2702(a). Under OPA 90, that person is known as a ''responsible party.'' See 33 U.S.C. 2701(32).

The Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293) (the 2004 Act) amended OPA 90, at 33 U.S.C. 2703(d)(4), by creating an ''innocent landowner'' defense to liability for those persons who could demonstrate, among other requirements, that before acquiring the real property on which the facility is located, they did not know, and had no reason to know that oil that is the subject of the discharge or substantial threat of discharge was located on, in, or at the facility. See 33 U.S.C. 2703(d)(2)(A). This is done by establishing that, before it acquired the real property on which the facility is located, it carried out ''all appropriate inquiries'' into its previous ownership and uses according to ''generally accepted good commercial and customary standards and practices.'' See 33 U.S.C. 2703(d)(4)(A)(i). The Coast Guard is required to establish, by regulation, the standards and practices for carrying out all appropriate inquiries (33 U.S.C. 2703(d)(4)(B)), which is the subject of this rulemaking.

Scope of the Proposed Rule

Congress included in the 2004 Act a list of criteria that the Coast Guard must address in their regulations for establishing standards and practices for conducting all appropriate inquiries. The criteria may be found in 33 U.S.C. 2703(d)(4)(C). This rulemaking is limited only to providing those standards and practices relative to the ''all appropriate inquiries'' element. This rulemaking does not address the other requirements in 33 U.S.C. 2703 which also must be met to qualify for the innocent-landowner defense.

The proposed rule would not apply to real property purchased by a non-governmental entity or non-commercial entity for residential use or other similar uses where an inspection and a title search of the facility and the real property on which the facility is located reveal no basis for further investigation. In those cases, 33 U.S.C. 2703(d)(4)(E) states that the inspection and title search satisfy the requirements for all appropriate inquiries.

Also, the proposed rule would not affect the existing OPA 90 liability protections for State and local governments that acquire a facility involuntarily in their functions as sovereigns under 33 U.S.C. 2701(26)(B)(i) and 33 U.S.C. 2703(d)(2)(B). Involuntary acquisition of facilities by State and local governments do not fall under the all-appropriate-inquiries provision of 33 U.S.C. 2703(d)(4).

Consultation With Other Agencies

Under 33 U.S.C. 2703(d)(4)(B), we are required to consult with the Environmental Protection Agency (EPA) to develop regulations establishing standards and practices for conducting ''all appropriate inquiries.'' On November 1, 2005, EPA published a final rule in the **Federal Register** (70 FR 66070) establishing standards and practices for conducting all appropriate inquiries as required by sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)(42 U.S.C. 9601, *et seq.*) found at 42 U.S.C. 9601(35)(B)(ii) and (iii). CERCLA applies to ''hazardous substances'', which is defined to exclude most forms of oil. These regulations are located in 40 CFR part 312. EPA used a negotiated rulemaking process to develop their standards and practices for conducting all appropriate inquiries under CERCLA. EPA's Negotiated Rulemaking Committee included interested parties from—

- Environmental interest groups;
- The Environmental Justice Community;
- Federal, State, tribal, and local Governments;
- Real estate developers, bankers and lenders; and
- Environmental professionals.

The all-appropriate-inquiries provisions of OPA 90 and CERCLA are similar in many respects, but not identical. The CERCLA provision has a broader scope than the OPA provision. It addresses certain liability defense provisions that are unique to CERCLA, involving persons who may not be affected by this proposed rule, such as contiguous property owners and individuals receiving Federal Brownfield grant monies under 40 U.S.C. 9604(k)(2)(B). While differences between OPA 90 and CERCLA have required certain differences between the Coast Guard's proposed rule and EPA's final rule, the two rules have been rendered as consistent as possible within statutory constraints. Maintaining consistency between the two rules helps standardize practices within the Federal Government.

ASTM Standard E 1527–05

ASTM International (ASTM) E 1527–05, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' is the current voluntary industry standard that defines good commercial and customary practice in the United States for conducting an environmental site assessment of a parcel of commercial real estate with respect to oil under OPA 90 and hazardous substances under CERCLA. The 2004 Act, at 33 U.S.C. 2703(d)(4)(D)(ii), refers to ASTM E 1527–97, which is no longer available from ASTM and has been replaced by ASTM E 1527–05. Both the EPA and the Coast Guard agree that the new ASTM E 1527–05 is the active industry standard and is consistent with Congressional intent. Persons conducting all appropriate inquiries may use the procedures included in the ASTM E 1527–05 standard to comply with this proposed rule.

Discussion of the Proposed Rule

The proposed provisions addressed here warrant further discussion. The following discussion is intended to help prospective landowners understand and comply with the proposed rule.

Sections 137.15 and 137.20. These sections concern the reference of an industry standard. See the discussion in the ''ASTM Standard E 1527–05'' section in this preamble.

Section 137.25. The qualifications for an environmental professional in proposed § 137.25 are the same as those published in EPA's final rule. See 40 CFR part 312.10(b).

Section 137.30(a) and (b). We believe that basing the regulations on a set of specific objectives and overall performance factors lends clarity and flexibility to the standards. Such an approach also allows for the application

of professional judgment and expertise to account for site-specific circumstances. In many cases, one piece of documentation may provide information satisfying more than one of the statutory criteria. For example, a chain of title document is historic documentation that may also include information on environmental cleanup liens and past oil use at the facility and the real property on which the facility is located. To avoid duplication of effort, the parties undertaking all appropriate inquiries must keep in mind the primary objectives of the proposed rule, as described in proposed § 137.30(a), and the performance factors for achieving those objectives, as described in proposed § 137.30(b).

It is important to note that the determination of whether or not the all-appropriate-inquiries standard is met remains within the discretion of an adjudicator, whether a court or, in the context of a claim to the Oil Spill Liability Trust Fund, the NPFC.

Section 137.30(a)(6). This provision would require the identification of institutional controls placed on the facility and the real property on which the facility is located. Institutional controls (*e.g.*, zoning restrictions, building permits, and easements) are typically used whenever the presence of environmental contaminants including oil precludes unlimited use of the facility and the real property on which the facility is located. Thus, institutional controls may have been needed both before and after completion of a past removal action or may have been employed in place of a removal action. Because institutional controls often must remain in place for an indefinite duration and, therefore, generally need to survive ownership changes (*i.e.*, run with the land) to be legally and practically effective, they can indicate past presence of oil at the facility and the real property on which it is located.

Section 137.33. The proposed rule includes provisions addressing each of the 10 statutory criteria for the conduct of all appropriate inquiries under 33 U.S.C. 2703(d)(4)(C). The proposed rule and 33 U.S.C. 2703(d)(4)(C) require that all appropriate inquiries include an inquiry by an environmental professional. The statute, however, does not require that all of the inquiries be conducted by, or under the supervision or responsible charge of, an environmental professional. The inquiries in §§ 137.55, 137.70, 137.75, and 137.80 must be conducted by either the prospective landowner or by, or under the supervision or responsible charge of, an environmental professional. All other required inquiries (*i.e.*, those in proposed §§ 137.35(c), 137.45, 137.50, 137.60, 137.65, and 137.85) must be conducted by, or under the supervision or responsible charge of, an environmental professional.

Under 33 U.S.C. 2703(d)(4)(A), the landowner must conduct all appropriate inquiries on or before the date on which the landowner acquired the real property on which the facility is located. To most closely reflect the intent of Congress, the date on which a person received documentation transferring title or possession should be the date that the landowner acquired the real property on which the facility is located.

Section 137.33(e). The proposed rule requires prospective landowners and environmental professionals to identify data gaps that affect their ability to identify conditions indicative of the presence or likely presence of oil. While the proposed rule does not require sampling and analysis as part of the all-appropriate-inquiries investigation, sampling and analysis may be valuable in determining the presence or likely presence of oil at a facility and on the real property on which the facility is located. In addition, the fact that the all-appropriate-inquiry standards do not require sampling and analysis does not prevent a court, or in the context of a claim to the Oil Spill Liability Trust Fund the NPFC, from concluding that, under the circumstances of a particular case, sampling and analysis should have been conducted to meet ''the degree of obviousness of the presence or likely presence of oil at the facility and on the real property on which the facility is located, and the ability to detect the oil by appropriate investigation'' criterion and obtain protection from OPA 90 liability. In addition, sampling and analysis may help explain existing data gaps. Prospective landowners should be mindful of all the statutory requirements for obtaining the OPA 90 liability protections when considering whether or not to conduct sampling and analysis prior to or after acquiring the real property on which the facility is located.

Sections 137.35(c). We propose no requirements regarding the format of the written report under proposed § 137.35(c). The report may use the same format as required under ASTM E 1527–05. In addition, there are no requirements that the report be submitted to the Coast Guard or other government agency or that the written report be maintained on-site for any length of time.

The written report may allow any person claiming the innocent-landowner liability protection under OPA 90 to offer documentation in support of his or her claim that all appropriate inquiries were conducted in compliance with Federal regulations. While the proposed rule does not require parties conducting all appropriate inquiries to retain the written report or any other documentation discovered, consulted, or created in the course of conducting the inquiries, the retention of the documentation may be helpful should the owner need to assert protection from OPA 90 liability after acquiring the real property on which the facility is located. Nothing in this regulation or preamble is intended to suggest that any particular documentation prepared in conducting all appropriate inquiries will be admissible in court in any litigation where a party raises the innocent-landowner liability protection or will in any way alter the judicial rules of evidence.

Section 137.35(c)(2). This paragraph would require that the report identify data gaps in the information collected that affect the ability of the environmental professional to render the opinion. Given that the burden of potential OPA 90 liability ultimately falls upon the person specified in § 137.1(a), a prospective landowner does not have to provide the results of an inquiry or related information to the environmental professional hired to undertake other aspects of the all-appropriate-inquiries investigation. However, if the lack of this information affects the ability of the environmental professional to identify conditions that indicate the presence or likely presence of oil at the facility and the real property on which the facility is located, he or she must note the data gap in their report under § 137.35(c).

Section 137.35(d). This provision would require the environmental professional, who conducts or oversees all appropriate inquiries, to sign the written report. There are two reasons for requiring that the report be signed. First, the individual signing the report must declare, on the signature page, that he or she meets the requirements for an environmental professional in proposed § 137.25. Second, the environmental professionals must declare that all appropriate inquiries have been developed and performed according to the standards and practices in proposed part 137.

Section 137.45. The primary purpose for the interviews portion of all appropriate inquiries is to obtain information regarding the current and

past ownership, current and past uses, and the potential environmental conditions at the facility and real property on which the facility is located. All interviews must be conducted by the environmental professional or by someone under their supervision or responsible charge. The intent is that an individual meeting the requirements of an environmental professional under proposed § 137.35 must oversee the conduct of, or review and approve the results of, the interviews to ensure that the interviews are conducted in compliance with the objectives and performance factors in proposed § 137.30(a) and (b). This is to ensure that the information obtained from the interviews provides sufficient information, in conjunction with the results of all other inquiries, to allow the environmental professional to render an opinion with regard to conditions at the facility and the real property on which the facility is located that may be indicative of the presence or likely presence of oil.

The proposed rule does not prescribe particular questions that must be asked during the interview. The type and content of any questions asked during interviews would depend upon the site-specific conditions and circumstances and the extent of the knowledge of the environmental professional (or other individual under the supervision or responsible charge of the environmental professional) of the facility and the real property on which the facility is located before conducting the interviews. Interviews with current and past owners and occupants may provide opportunities to collect information that was not previously recorded nor well documented and may provide valuable perspectives on how to find or interpret information required to complete other aspects of all the appropriate inquiries.

In the case of facilities and the real properties on which they are located where there may be more than one owner or occupant, the proposed rule does not specify the number of owners and occupants to be interviewed. Instead, proposed § 137.45 requires that interviews be conducted with major occupants, as well as those occupants likely to use, store, treat, handle or dispose of oil or those who likely have done so in the past. The environmental professional may use their professional judgment to determine the specific occupants to be interviewed and the total number of occupants to be interviewed in seeking to comply with the objectives and performance factors for the inquiries. In the case of abandoned properties, it most likely will be difficult to identify or interview current or past owners and occupants of the property. Therefore, the proposed rule requires that at least one owner or occupant of a neighboring property be interviewed to obtain information regarding past owners or uses of the abandoned property.

Section 137.50. The proposed rule requires that historical records on the real property on which the facility is located be searched by the environmental professional, or by a person under their supervision or responsible charge, for information dating as far back in time as there is documentation that the real property contained structures or was placed into use of some form.

The proposed rule does allow the environmental professional to exercise his or her professional judgment in context of the facts available at the time of the inquiry as to how far back in time it is necessary to search historical records. We believe that this provides sufficient flexibility to allow for any circumstances where, due to the availability of other information about a real property, an environmental professional may conclude that a comprehensive search of historical records is not necessary to meet the objectives and performance factors in proposed § 137.30(a) and (b).

The proposed rule also does not require that any specific type of historic information be collected. The proposed rule allows for the environmental professional to use professional judgment when determining what types of historical documentation may provide the most useful information about a real property's ownership, uses, and potential environmental conditions when seeking to comply with the objectives and performance factors for the inquiries. In addition, nothing in the proposed rule prohibits the use of secondary sources (e.g., a previously conducted title search) when gathering information about historical ownership and usage of a real property. Information from secondary sources would also be required to be updated if it was last collected more than 180 days prior to the date of acquisition under proposed § 137.33(b)(3).

Section 137.55. Searching for recorded environmental cleanup liens is required to be conducted by either the environmental professional (or a person under their supervision or responsible charge) or by a person specified in § 137.1(a). Recorded environmental cleanup liens often provide an indication that environmental conditions either currently exist or previously existed at a facility and the real property on which the facility is located that may include the presence or likely presence of oil.

Environmental cleanup liens that are not recorded by government entities or agencies are not addressed by the language of the statute. The statute speaks only of ''recorded liens.'' Therefore, the proposed rule requires that only a search for recorded environmental liens be included in the all-appropriate-inquiries investigation.

Section 137.60. The proposed rule describes, in § 137.60(b), the types of Federal, State, tribal, and local government records or data bases of governmental records to be reviewed to obtain information on the subject facility, the real property on which the facility is located, and nearby properties necessary to meet the proposed rule's objectives and performance factors in § 137.30(a) and (b). The review of actual records is not necessary, provided that the same information contained in the government records is attainable by searching available data bases.

The proposed rule allows the environmental professional to adjust the search distances for reviewing government records of nearby properties based upon his or her professional judgment. Environmental professionals may consider one or more of the factors in § 137.60(d)(1) through (d)(7), when determining an alternative appropriate search distance. The proposed § 137.60 requires environmental professionals to document the rationale for making any modifications to the required minimum search distances.

Section 137.65. The visual on-site inspection of a facility, the real property on which the facility is located, and adjoining properties during the conduct of all appropriate inquiries may be the most important aspect of the inquiries and the primary source of information regarding environmental conditions.

In all cases, every effort must be made to conduct an on-site visual inspection of a facility and the real property on which the facility is located when conducting all appropriate inquiries. The proposed rule requires that the on-site visual inspection be conducted by an environmental professional (or by someone under their supervision or responsible charge) to achieve the objectives and performance factors in § 137.30(a) and (b).

The proposed rule requires that a visual on-site inspection be conducted in all but a few very limited cases. In those cases where physical limitations restrict the portions of the facility and the real property on which the property is located that may be visually inspected, physical limitations encountered during the visual on-site

inspection (*e.g.*, weather conditions, physical obstructions) must be documented.

We understand that, in some limited circumstances, it may not be possible to obtain on-site access to a facility and the real property on which the property is located due to extreme and prolonged weather conditions, remote locations, or refusal by the owner of the facility and the real property on which the facility is located to allow access, even after the party exercises all good faith efforts to gain access (*e.g.*, by seeking the assistance of government officials). However, the mere refusal of an owner to allow access to the facility and the real property on which the facility is located does not justify the failure to conduct an on-site inspection, where a party has failed to exercise all good faith efforts to gain access.

If on-site access is not possible despite the exercise of good faith efforts, the proposed rule requires that the facility and the real property on which the facility is located be visually inspected, or observed by another method such as through the use of aerial photography, or be inspected or observed from the nearest accessible vantage point, such as the property line or a public road that runs through or along the real property. In addition, the proposed rule requires that the all-appropriate-inquiries report include documentation of efforts undertaken to obtain on-site access to the facility and the real property on which the facility is located and include an explanation of why good faith efforts to gain access were unsuccessful.

The proposed rule also requires that the all-appropriate-inquiries investigation include visual inspections of properties that adjoin the subject real property. Visual inspections of adjoining properties may provide excellent information on the potential for the facility and the real property on which the facility is located to be affected by oil migrating from adjoining properties. Visual inspections of adjoining properties may be conducted from the real property's property line, one or more public rights-of-way, or other vantage point (e.g., by aerial photography). Where practicable, a visual on-site inspection is recommended and may provide greater specificity of information. The visual inspections of adjoining properties must include observing areas where oil currently may be, or previously may have been, stored, treated, handled, or disposed and must also be conducted to achieve the objectives and performance factors in proposed § 137.30(a) and (b) for all the appropriate inquiries. Physical limitations to the visual inspections of adjoining properties must be noted in the report.

Section 137.70. The proposed rule requires that the specialized knowledge of prospective landowners and the persons responsible for undertaking the all appropriate inquiries be taken into account when conducting the all appropriate inquiries for the purposes of identifying conditions indicative of the presence or likely presence of oil at a facility and the real property on which the facility is located to achieve the objectives and performance factors in § 137.30(a) and (b). Including the specialized knowledge of the environmental professional or a person under their supervision or responsible charge is not required.

Section 137.75. Addressing the relationship of the purchase price to the value of the facility and the real property on which the facility is located if oil was not present is required to be conducted by either the environmental professional (or a person under their supervision or responsible charge) or by a person specified in § 137.1(a). There may be many reasons that the price paid for a particular facility and the real property on which the facility is located is not an accurate reflection of the fair market value. The all-appropriate-inquiries investigation need only include a consideration of whether a significant difference between the price paid and the fair market value is an indication that oil may be at the facility and the real property on which the facility is located.

The proposed rule does not require that a real estate appraisal be conducted to achieve compliance with this requirement. The objective is not to ascertain the exact value of the facility and the real property on which the facility is located, but to determine whether or not the purchase price paid generally is reflective of its fair market value.

In the case of many real estate transactions, a formal appraisal may be conducted for other purposes (*e.g.*, to establish the value of the facility and the real property on which the facility is located for the purposes of establishing the conditions of a mortgage or to provide information of relevance where a windfall lien may be filed). In cases where the results of a formal appraisal are available, the appraisal results may serve as an excellent source of information on the fair market value of the facility and the real property on which the facility is located.

In cases where the results of a formal appraisal are not available, the determination of fair market value may be made by comparing the price paid for a particular facility and the real property on which the facility is located to prices paid for similar facilities and real properties on which they are located in the same vicinity, or by consulting a real estate expert familiar with properties in the general locality and who may be able to provide a comparability analysis.

Section 137.80. The inclusion of commonly known or reasonably ascertainable information into the inquiry is required by either the environmental professional (or a person under their supervision or responsible charge) or by a person specified in § 137.1(a) to satisfy objectives and performance factor in proposed § 137.30(a) and (b). Information about a facility and the real property on which the facility is located, including its ownership and uses, that is commonly known or reasonably ascertainable within the community or neighborhood may be valuable to identifying conditions indicative of the presence or likely presence of oil. Commonly known or reasonably ascertainable information includes information about a facility and the real property on which the facility is located that generally is known to the public within the community and can be easily sought and found from individuals familiar with the facility and the real property on which the facility is located or from easily attainable public sources of information.

This information may be ascertained from the owner or occupant of a facility and the real property on which the facility is located, members of the local community, including owners or occupants of neighboring properties, local or state government officials, local media sources, and local libraries and historical societies. In many cases, this information may be incidental to other information collected during the inquiries, and separate or distinct efforts to collect the information may not be necessary.

Section 137.85. The proposed rule requires that persons conducting all appropriate inquiries consider all the information collected during the conduct of the inquiries in totality to assess whether or not an obvious conclusion may be drawn that there are conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located.

We interpret the statutory criterion to require the environmental professional or a person under their supervision or responsible charge to consider information already obtained during the

conduct of all-appropriate-inquiries investigation which achieves the objectives and performance factors in § 137.30(a) and (b) and not as a requirement to collect additional information.

References

Material referenced appears in § 137.15. You may inspect this material at the National Pollution Funds Center where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 137.15.

Regulatory Analysis and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Draft Regulatory Evaluation

Compliance with this proposed rule is required only for those persons engaging in a commercial real estate transaction who choose to take steps necessary to protect themselves from liability should unknown oil that is the subject of a discharge or substantial threat of discharge be found at the facility after they acquire it.

The following analysis of the economic impacts associated with this proposed rule relies heavily upon the data collected and the assumptions made in the Environmental Impact Analysis of EPA's final rule, ''Economic Impact Analysis for the Final All Appropriate Inquiries Regulation,'' Docket ID No. SFUND–2004–0001 found at *http://www.regulations.gov/fdmspublic/component/main* or at EPA Docket Center, EPA West Building, room B102, 1301 Constitution Avenue, NW., Washington, DC. EPA surveyed all publicly available literature on environmental assessments of sites to determine what standard industry was customarily using. These assessments correspond to the all appropriate inquiries provision being addressed in this rulemaking and are commonly known as Phase I environmental site assessments (Phase I ESAs). EPA determined that the 2000 edition of ASTM E 1527 (*i.e.*, ASTM E 1527–00) would be their regulatory baseline. This baseline represented the ''no action'' scenario to which all regulatory alternatives were compared and their economic impacts were measured. ASTM E 1527–00 would have been applied by industry absent EPA's regulation, because this voluntary industry standard represented ''generally accepted good commercial and customary practices.'' This assumption was confirmed by the members of EPA's Negotiated Rulemaking Committee (See the ''Consultation with Other Agencies'' section of this preamble.). To further validate their assumption, EPA received no public comments on this aspect of its Economic Impact Analysis. In addition, ASTM International states that ASTM E 1527–97 (the edition referred to in the 2004 Act) is no longer available because, when a new version of a standard is released, previous versions of the standard are no longer the active industry standard. The Coast Guard, after independently contacting ASTM International, concurs that the ASTM E 1527–00 standard more accurately reflects the current market conditions than the E 1527–97 standard referenced in OPA 90 as the acceptable interim standard (33 U.S.C. 2703(d)(4)(D)(ii)). The Coast Guard therefore uses the ASTM E 1527–00 standard as its regulatory baseline for its analysis of the economic impacts associated with this proposed rule.

Historically, Phase I ESAs have been used towards providing liability protection to individuals under CERCLA. A recent survey conducted by Environmental Data Resources, Inc. (EDR) indicates that approximately 55 percent of all Phase I ESAs are driven exclusively by a need for the landowner to qualify for protection from CERCLA liability. The remaining 45 percent are driven by a desire to assess other business environmental risk concerns (*i.e.*, asbestos, lead-based paint, oil, etc.).

As previously discussed in the ''Consultation with Other Agencies'' section of this preamble, this proposed rule is consistent with EPA's final rule. The scope of EPA's rulemaking however is much larger than this proposed rule. As such, the economic impacts of this proposed rule are a subset of the impacts estimated by EPA's rulemaking. This reduction in economic impact results primarily from the lower number of Phase I ESAs expected to be conducted annually under this proposed rule compared to EPA's final rule.

As was the case with EPA's rulemaking, this proposed rule is expected to result in the following economic impacts:

(1) A reduced burden for the conduct of interviews in those cases where the facility and the real property on which the facility is located is abandoned. The new requirement requires only that neighboring property owners and occupants be interviewed and not the current owners and occupants of the abandoned property. This burden would range from no change to a decrease of 0.5 hour per Phase I ESA depending on the type and size of the facility and the real property on which the facility is located.

(2) An increased burden in those cases where past owners or occupants of the facility and the real property on which the facility is located need to be interviewed. This would involve the additional effort required to locate and interview past owners and occupants. This increased burden would range from 1 hour to 2 hours per Phase I ESA depending on the type and size of the facility and the real property on which the facility is located.

(3) An increased burden associated with documenting recorded environmental cleanup liens. This increased burden would involve additional time spent in preparing the Phase I ESA report. This increased burden would range from an additional 0.5 hour to 1 hour per Phase I ESA depending on the size and type of the facility and the real property on which the facility is located.

(4) An increased burden for documenting the reasons for the price and fair market value of a facility and the real property on which the facility is located in those cases where the purchase price paid is significantly below its fair market value. This increased burden would involve interviews with local government officials and increased time spent in preparing the Phase I ESA report. This increased burden would reflect an additional 0.5 hour per Phase I ESA for all sizes and types of facilities and the real properties on which the facilities are located.

(5) An increased burden for recording information about the degree of obviousness of the presence or likely presence of oil at a facility and the real property on which the facility is located. This increased burden would involve additional time spent in preparing the Phase I Environmental report. This increased burden would range from 0.5 hour to 1 hour per Phase I ESA depending on the type and size of the facility and the real property on which the facility is located.

Using a weighted labor rate of $51.20/hour applied to the activities (as outlined above) required as a result of their regulation (as they vary from those required in their regulatory baseline), EPA determined that there would be an incremental cost ranging from $52 to $58 per Phase I ESA (the low end estimate assumes that 15 percent of

properties are abandoned, while the high end estimate assumes that 28 percent of properties are abandoned). Our analysis simplifies this range as an average incremental cost of $55 per Phase I ESA.

A. Analysis Calculations and Results

Using data from EPA's final rule and extrapolated for the period from 2007 to 2016, there would be an average of 332,038 Phase I ESAs conducted annually. As previously mentioned, the incremental cost of conducting a Phase I ESA to comply with EPA's rulemaking above and beyond what was required under ASTM E 1527–00 as calculated by EPA's rulemaking would be approximately $55 per ESA.

B. Estimated Annual Number of OPA 90-Related Phase I ESAs

This analysis is severely limited by the lack of data available which would allow the number of Phase I ESAs conducted applicable to this proposed rule to be segregated from the total population of Phase I ESAs conducted.

In order to put an upward bound on the costs associated with this proposed rule, this analysis first describes the absolute upper bound scenario (*i.e.*, that all commercial real estate transactions not exclusively conducted for CERCLA liability protection requiring a Phase I ESA would be impacted by this proposed rule). Next the Coast Guard attempts to develop a more likely scenario that takes into account that Phase I ESAs for certain commercial real estate transactions are outside the scope of this proposed rule. We acknowledge that, of all of the commercial real estate transactions that occur annually, a likely small percentage would involve—

1. A facility and the real property on which the facility is located where a discharge or substantial threat of discharge of oil may impact the navigable waters or exclusive economic zone of the United States; and

2. A Phase I ESA that was conducted for establishment of the innocent landowner liability protection provision under OPA 90 and not to assess environmental risk concerns not related to oil (*e.g.*, lead-based paint contamination, asbestos, CERCLA hazardous substances, etc.).

C. Upper Bound Cost Scenario

The estimated incremental cost of this scenario, where all future Phase I ESAs not conducted specifically for CERCLA liability protection (*i.e.*, 45 percent as per the results of EDR's survey mentioned above) are impacted by this proposed rule, would be approximately $8.2 Million per year.

Cost Calculation 1—Estimated Annual Number of Coast Guard related Phase I ESAs

332,038 Phase I ESAs × 0.45 = 149,417 Phase I ESAs

Estimated Annual Cost of Coast Guard related Phase I ESAs

149,417 Phase I ESAs × $55/ESA = $8,217,935 per year.

D. Most Likely Cost Scenario

To more accurately reflect the scope of this proposed rule, certain commercial real estate transactions involving a Phase I ESA from EPA's analysis would have to be removed from this analysis. Those include transactions where a discharge or substantial threat of discharge of oil from a facility and the real property on which the facility is located would not have the possibility of impacting the navigable waters or exclusive economic zone of the United States and transactions which are conducted for substances other than oil. Absent the data to make more than an approximation, we assumed that five percent of the total number of Phase I ESAs may realistically reflect the number of Phase I ESAs within the scope of this proposed rule. Under this assumption, the estimated cost associated with this proposed rule would be significantly reduced. The estimated incremental cost under this scenario is approximately $913,110 per year.

Cost Calculation 2—Estimated Annual Number of Coast Guard related Phase I ESAs

332,038 Phase I ESAs × 0.05 = 16,602 Phase I ESAs

Estimated Annual Cost of Coast Guard related Phase I ESAs

16,602 Phase I ESAs × $55/ESA = $913,110 per year.

ASTM International has since updated their ASTM E 1527 standard. Their new standard is ASTM E 1527–05. Both EPA and Coast Guard recognize that this new standard is consistent with their rulemakings on the subject. See **Federal Register** (70 FR 66081). Because the new standard is consistent with the EPA final rule, which went into effect on November 1, 2006, and provides documentation for both hazardous substances and oil, it is likely that all prudent prospective commercial landowners will be using the more rigorous ASTM standard for their real estate transactions well before our rule becomes effective. Thus, the possible economic impact attributed to this proposed rule might be reduced to a negligible value. The Coast Guard further notes that there have been no instances to date where a responsible party has attempted to use the interim innocent-landowner defense to liability provision under OPA 90.

EPA qualitatively assessed the benefits for their final rule. Of these benefits, only one is applicable to our proposed rule due to our much smaller regulatory scope, namely the increased level of certainty with regard to OPA 90 liability provided to prospective owners of facilities and the real properties on which they are located with potential oil discharges. The Coast Guard, as was the case with EPA's analysis, is not able to quantify, with any significant level of confidence, the exact proportion of benefits associated with the proposed rule. For these reasons, the costs and benefits can not be directly compared. However, because complying with this proposed rule is required only for those persons who choose to take steps necessary to protect themselves from liability should unknown oil that is the subject of a discharge or substantial threat of discharge be found at the facility after they acquire it, it can be assumed that persons would only do so if the potential benefits to them associated with this protection from liability outweigh their costs of compliance.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As previously stated in the above regulatory evaluation section, compliance with this proposed rule is only required for those entities, regardless of their operations, involved in a real estate transaction who choose to take steps necessary to protect themselves from liability should unknown oil that is the subject of a discharge or substantial threat of discharge be found at the facility after they acquire it. Therefore, it assumed that entities across all industries, as defined by the North American Industry Classification System (NAICS), could potentially be affected.

The Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act of 1996 require Federal agencies to measure the regulatory impacts of the rule to determine whether there will be a significant economic impact on a substantial

number of small entities. Entities, however, may operate at multiple physical locations. For example, most family-owned restaurants operate at a single location, while chain restaurants have multiple locations. Thus, the annual number of transactions per entity, and therefore the demand for Phase I ESAs, is a function of the number of establishments an entity owns.

According to 2001 U.S. Census data, the distribution of establishments by entity size of the regulated community is as follows:

Less than 100 employees: 81%.
100 to 499 employees: 5%.
500 to 1,499 employees: 2%.
1,500 employees or more: 12%.

According to EPA's Office of Policy, Economics, and Innovations and EPA's National Center for Environmental Economics, it is a common practice when a proposed regulation has the potential of affecting all industries to consider all entities with less than 500 employees as small. According to 2001 U.S. Census data, when small entities are defined as entities with less than 500 employees, small entities own 86 percent of all establishments. Using EPA's assumption that small entities are equally likely to engage in commercial real estate transactions as large ones, we estimate that 86 percent of all commercial real estate transactions completed annually involve small entities. Applying this 86 percent to the ''Most Likely Cost Scenario'' and the ''Upper Bound Cost Scenario'' (See ''Regulatory Evaluation'' in this preamble.) provides a range in the number of potential transactions occurring annually of between 14,278 and 128,499.

Based on 2001 Census Bureau data, the average annual revenue per employee for an entity is approximately $24,000. Therefore, even for a small entity receiving the minimum average annual revenue of $24,000 that makes one transaction a year (a very conservative assumption), the annual cost impact of $55 would represent only 0.23 percent of annual revenues.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Benjamin White, National Pollution Funds Center, Coast Guard, telephone 202–493–6863. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Landowner Defenses to Liability under the Oil Pollution Act of 1990: Standards and Practices for Conducting All Appropriate Inquiries.

Summary of the Collection of Information: For landowners choosing to avail themselves of the innocent-landowner defense, they or their environmental professionals must conduct the all appropriate inquiries specified in the proposed rule. Depending upon the particular case, this may involve interviews, research, and reports.

Need for Information: This proposed rule is needed to assist prospective landowners in establishing the innocent-landowner defense.

Proposed Use of Information: The information could be used by persons if their liability under OPA 90 for the discharge or substantial threat of discharge of oil were challenged in a court.

Description of the Respondents: The respondents include anyone engaging in a commercial real estate transaction that may desire to assert an innocent landowner defense to liability under OPA 90.

Number of Respondents: We estimate that there would be 16,602 respondents. This is based on an estimate made in the ''Draft Regulatory Evaluation'' section of this preamble.

Frequency of Response: 1 hour per response.

Burden of Response: $67 per response.

Estimate of Total Annual Burden: 16,602 respondents × 1 hour per response × $67 per response = $1,112,334.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and

would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule references the following voluntary consensus standard: ASTM E 1527–05, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' The proposed section that references this standard and the location where this standard is available is listed in proposed § 137.15. Persons conducting all appropriate inquiries may use the procedures included in the ASTM E 1527–05 standard to comply with this proposed rule.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. This proposed rule concerns the making of inquiries into the previous ownership and uses of facilities and the real property on which they are located, before they are acquired, to determine the presence or likely presence of oil. It has no effect on the environment.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 137

Environmental protection, Administrative practice and procedure, Petroleum, Intergovernmental relations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to add 33 CFR part 137 as follows:

1. Add part 137 to read as follows:

PART 137—OIL SPILL LIABILITY: STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES UNDER THE INNOCENT LAND-OWNER DEFENSE

Subpart A—Introduction

Sec.
137.1 Purpose and applicability.
137.5 Disclosure obligations.
137.10 How are terms used in this part defined?
137.15 References: Where can I get a copy of the publications mentioned in this part?

Subpart B—Standards and Practices

137.18 Duties of persons specified in § 137.1(a).
137.20 May voluntary industry standards be used to comply with this regulation?
137.25 Qualifications of the Environmental Professional.
137.30 Objectives and performance factors.
137.33 General All Appropriate Inquiries requirements.
137.35 Inquiries by an environmental professional.
137.40 Additional inquiries.
137.45 Interviews with past and present owners, operators, and occupants.
137.50 Reviews of historical sources of information.
137.55 Searches for recorded environmental cleanup liens.
137.60 Reviews of Federal, State, tribal and local government records.
137.65 Visual inspections of the facility, the real property on which the facility is located, and adjoining properties.
137.70 Specialized knowledge or experience on the part of persons specified in § 137.1(a).
137.75 The relationship of the purchase price to the value of the facility and the real property on which the facility is located, if oil was not at the facility or on the real property.
137.80 Commonly known or reasonably ascertainable information about the

facility and the real property on which the facility is located.

137.85 The degree of obviousness of the presence or likely presence of oil at the facility and the real property on which the facility is located and the ability to detect the oil by appropriate investigation.

Authority: 33 U.S.C. 2703(d)(4); Department of Homeland Security Delegation No. 14000.

Subpart A—Introduction

§ 137.1 Purpose and applicability.

(a) In general under the Oil Pollution Act of 1990 (33 U.S.C. 2701, *et seq.*), an owner or operator of a facility (as defined in § 137.10) that is the source of a discharge, or a substantial threat of discharge, of oil into the navigable waters or adjoining shorelines or the exclusive economic zone is liable for damages and removal costs resulting from the discharge or threat. However, if that person can demonstrate, among other criteria not addressed in this part, that they did not know and had no reason to know at the time of their acquisition of the real property on which the facility is located that oil was located on, in, or at the facility, the person may be eligible for the innocent landowner defense to liability under 33 U.S.C. 2703(d)(4). One element of the defense is that the person made all appropriate inquiries into the nature of the real property on which the facility is located before acquiring it. The purpose of this part is to prescribe standards and practices for making those inquiries.

(b) Under 33 U.S.C. 2703(d)(4)(E), this part does not apply to real property purchased by a non-governmental entity or non-commercial entity for residential use or other similar uses where a property inspection and a title search reveal no basis for further investigation. In those cases, the property inspection and title search satisfy the requirements of this part.

(c) This part does not affect the existing OPA 90 liability protections for State and local governments that acquire a property involuntarily in their functions as sovereigns under 33 U.S.C. 2703(d)(2)(B). Involuntary acquisition of properties by State and local governments fall under the provisions of 33 U.S.C. 2703(d)(2)(B), not under the all-appropriate-inquiries provision of 33 U.S.C. 2703(d)(4) and this part.

§ 137.5 Disclosure obligations.

(a) Under 33 U.S.C. 2703(c)(1), persons specified in § 137.1(a), including environmental professionals, must report the incident as required by law if they know or have reason to know of the incident.

(b) This part does not limit or expand disclosure obligations under any Federal, State, tribal, or local law. It is the obligation of each person, including environmental professionals, conducting inquiries to determine his or her respective disclosure obligations under Federal, State, tribal, and local law and to comply with them.

§ 137.10 How are terms used in this part defined?

(a) The following terms have the same definitions as in 33 U.S.C. 2701: ''damages;'' ''discharge;'' ''incident;'' ''liable'' or ''liability;'' ''oil;'' ''owner or operator;'' and ''removal costs.''

(b) As used in this part—

Abandoned property means a property that, because of its general disrepair or lack of activity, a reasonable person could believe that there is an intent on the part of the current owners to surrender their rights to the property.

Adjoining property means real property the border of which is shared in part or in whole with that of the subject property or that would be shared in part or in whole with that of the property but for a street, road, or other public thoroughfare separating the properties.

Data gap means a lack of, or inability to, obtain information required by subpart B of this part despite good faith efforts by the environmental professional or persons specified in § 137.1(a), as appropriate, to gather the information under § 137.33.

Environmental professional means an individual who meets the requirements of § 137.25.

Facility means 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.

Good faith means the absence of any intention to seek an unfair advantage or to defraud another party; an honest and sincere intention to fulfill one's obligations in the conduct or transaction concerned.

Institutional controls means non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to oil discharge and/or protect the integrity of a removal action.

Relevant experience means participation in the performance of all-appropriate-inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located.

§ 137.15 References: Where can I get a copy of the publications mentioned in this part?

Section 137.20 of this part refers to ASTM E 1527–05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. That document is available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. It is also available for inspection at the Coast Guard National Pollution Funds Center, 4200 Wilson Boulevard, Suite 1013, Arlington, VA 22203–1804.

Subpart B—Standards and Practices

§ 137.18 Duties of persons specified in § 137.1(a).

In order to make all appropriate inquiries, persons seeking to establish the liability protection under § 137.1(a) must conduct the inquiries and investigations as required in this part and ensure that the inquiries and investigations required to be made by environmental professionals are made.

§ 137.20 May voluntary industry standards be used to comply with this regulation?

The industry standards in ASTM E 1527–05, (Referenced in § 137.15) may be used to comply with the requirements set forth in §§ 137.45 through 137.85 of this part.

§ 137.25 Qualifications of the environmental professional.

(a) An environmental professional is an individual who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of the presence or likely presence of oil at a facility and the real property on which the facility is located sufficient to meet the objectives and performance factors in § 137.30(a) and (b).

(1) Such a person must—

(i) Hold a current Professional Engineer's or Professional Geologist's license or registration from a State, tribe, or U.S. territory (or the Commonwealth

of Puerto Rico) and have the equivalent of 3 years of full-time relevant experience;

(ii) Be licensed or certified by the Federal government, a State, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries under § 137.35 and have the equivalent of 3 years of full-time relevant experience;

(iii) Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of 5 years of full-time relevant experience; or

(iv) Have the equivalent of 10 years of full-time relevant experience.

(2) An environmental professional should remain current in his or her field through participation in continuing education or other activities.

(3) The requirements for an environmental professional in this section do not preempt State professional licensing or registration requirements, such as those for a professional geologist, engineer, or site-remediation professional. Before commencing work, a person should determine the applicability of State professional licensing or registration laws to the activities to be undertaken as part of an inquiry under § 137.35(b).

(4) A person who does not qualify as an environmental professional under this section may assist in the conduct of all appropriate inquiries according to this part if the person is under the supervision or responsible charge of an environmental professional meeting the requirements of this section when conducting the inquiries.

§ 137.30 Objectives and performance factors.

(a) *Objectives.* This part is intended to result in the identification of conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located. In order to meet the objectives of this regulation, persons specified in § 137.1(a) and the environmental professional must seek to identify, through the conduct of the standards and practices in this subpart, the following types of information about the facility and the real property on which the facility is located:

(1) Current and past uses and occupancies of the facility and the real property on which the facility is located.

(2) Current and past uses of oil.

(3) Waste management and disposal activities that indicate presence or likely presence of oil.

(4) Current and past corrective actions and response activities that indicate presence or likely presence of oil.

(5) Engineering controls.

(6) Institutional controls, such as zoning restrictions, building permits, and easements.

(7) Properties adjoining or located nearby the facility and the real property on which the facility is located that have environmental conditions that could have resulted in conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located.

(b) *Performance factors.* In order to meet this part and to meet the objectives stated in paragraph (a) of this section, the persons specified in § 137.1(a) or the environmental professional (as appropriate to the particular standard and practice) must—

(1) Gather the information that is required for each standard and practice listed in this subpart that is publicly available, is obtainable from its source within a reasonable time and cost, and can be reviewed practicably; and

(2) Review and evaluate the thoroughness and reliability of the information gathered in complying with each standard and practice listed in this subpart taking into account information gathered in the course of complying with the other standards and practices of this part.

§ 137.33 General all appropriate inquiries requirements.

(a) All appropriate inquiries must be conducted within 1 year before the date of acquisition of the real property on which the facility is located, as evidenced by the date of receipt of the documentation transferring title to, or possession of, the real property and must include:

(1) An inquiry by an environmental professional, as provided in § 137.35.

(2) The collection of information under § 137.40 by persons specified in § 137.1(a).

(b) The following components of the all appropriate inquiries must be conducted or updated within 180 days before the date of acquisition of the real property on which the facility is located:

(1) Interviews with past and present owners, operators, and occupants. See § 137.45.

(2) Searches for recorded environmental cleanup liens. See § 137.55.

(3) Reviews of Federal, State, tribal, and local government records. See § 137.60.

(4) Visual inspections of the facility, the real property on which the facility is located, and adjoining properties. See § 137.65.

(5) The declaration by the environmental professional. See § 137.35(d).

(c) All appropriate inquiries may include the results of and information contained in an inquiry previously conducted by, or on behalf of, persons specified in § 137.1(a) who are responsible for the inquiries for the facility and the real property on which the facility is located if—

(1) The information was collected during the conduct of an all-appropriate-inquiries investigation under this part.

(2) The information was collected or updated within 1 year before the date of acquisition of the real property on which the facility is located.

(3) The following components of the inquiries were conducted or updated within 180 days before the date of acquisition of the real property on which the facility is located:

(i) Interviews with past and present owners, operators, and occupants. See § 137.45.

(ii) Searches for recorded environmental cleanup liens. See § 137.55.

(iii) Reviews of Federal, State, tribal, and local government records. See § 137.60.

(iv) Visual inspections of the facility, the real property on which the facility is located, and the adjoining properties. See § 137.65.

(v) The declaration by the environmental professional. See § 137.35(d).

(4) Previously collected information is updated by including relevant changes in the conditions of the facility and the real property on which the facility is located and specialized knowledge, as outlined in § 137.70, of the persons conducting the all appropriate inquiries for the facility and the real property on which the facility is located, including persons specified in § 137.1(a) and the environmental professional.

(d) All appropriate inquiries may include the results of an environmental professional's report under § 137.35(c) that have been prepared by or for other persons if—

(1) The reports meet the objectives and performance factors in § 137.30(a) and (b); and

(2) The person specified in § 137.1(a) reviews the information and conducts the additional inquiries under §§ 137.70, 137.75, and 137.80 and updates the inquiries requiring an update under paragraph (b) of this section.

(e) To the extent there are data gaps that affect the ability of persons specified in § 137.1(a) and environmental professionals to identify conditions indicative of the presence or likely presence of oil, the gaps must be identified in the report under § 137.35(c)(2). In addition, the sources of information consulted to address data gaps should be identified and the significance of the gaps noted. Sampling and analysis may be conducted to develop information to address data gaps.

(f) Any conditions indicative of the presence or likely presence of oil identified as part of the all-appropriate-inquiries investigation should be noted in the report.

§ 137.35 Inquiries by an environmental professional.

(a) Inquiries by an environmental professional must be conducted either by the environmental professional or by a person under the supervision or responsible charge of an environmental professional.

(b) The inquiry of the environmental professional must include the requirements in §§ 137.45 (interviews with past and present owners), 137.50 (reviews of historical sources), 137.60 (reviews of government records), 137.65 (visual inspections), 137.80 (commonly known or reasonably ascertainable information) and 137.85 (degree of obviousness of the presence or likely presence of oil). In addition, the inquiry should take into account information provided to the environmental professional by the person specified in § 137.1(a) conducting the additional inquiries under § 137.40.

(c) The results of the inquiry by an environmental professional must be documented in a written report that, at a minimum, includes the following:

(1) An opinion as to whether the inquiry has identified conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located.

(2) An identification of data gaps in the information developed as part of the inquiry that affect the ability of the environmental professional to identify conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located. The report must also indicate whether the gaps prevented the environmental professional from reaching an opinion regarding the identification of conditions indicative of the presence or likely presence of oil.

(3) The qualifications of the environmental professional.

(4) An opinion regarding whether additional appropriate investigation is necessary.

(d) The environmental professional must place the following statements in the written document identified in paragraph (c) of this section and sign the document: ''[I, We] declare that, to the best of [my, our] professional knowledge, [I, we] meet the requirements under 33 CFR 137.25 for an environmental professional.'' and ''[I, We] have the specific qualifications based on education, training, and experience to assess the nature, history, and setting of a facility and the real property on which it is located. [I, We] have developed and conducted all appropriate inquiries according to the standards and practices in 33 CFR part 137.''

§ 137.40 Additional inquiries.

(a) Persons specified in § 137.1(a) must conduct inquiries in addition to those conducted by the environmental professional under § 137.35 and may provide the information associated with these additional inquiries to the environmental professional responsible for conducting the activities listed in § 137.35—

(1) As required by § 137.55 and if not otherwise obtained by the environmental professional, environmental cleanup liens against the facility and the real property on which it is located that are filed or recorded under Federal, State, tribal, or local law.

(2) As required by § 137.70, specialized knowledge or experience of the person specified in § 137.1(a).

(3) As required by § 137.75, the relationship of the purchase price to the fair market value of the facility and the real property on which the facility is located if the oil was not at the facility and the real property on which it is located.

(4) As required by § 137.80 and if not otherwise obtained by the environmental professional, commonly known or reasonably ascertainable information about the facility and the real property on which it is located.

§ 137.45 Interviews with past and present owners, operators, and occupants.

(a) Interviews with owners, operators, and occupants of the facility and the real property on which the facility is located must be conducted for the purposes of achieving the objectives and performance factors of § 137.30(a) and (b).

(b) The inquiry of the environmental professional must include interviewing the current owner and occupant of the facility and the real property on which the facility is located. If the facility and the real property on which the facility is located has multiple occupants, the inquiry of the environmental professional must include interviewing major occupants, as well as those occupants likely to use, store, treat, handle or dispose of oil or those who have likely done so in the past.

(c) The inquiry of the environmental professional also must include, to the extent necessary to achieve the objectives and performance factors in § 137.30(a) and (b), interviewing one or more of the following persons:

(1) Current and past facility and real property managers with relevant knowledge of uses and physical characteristics of the facility and the real property on which the facility is located.

(2) Past owners, occupants, or operators of the facility and the real property on which the facility is located.

(3) Employees of current and past occupants of the facility and the real property on which the facility is located.

(d) In the case of inquiries conducted at abandoned properties where there is evidence of potential unauthorized uses or evidence of uncontrolled access, the environmental professional's inquiry must include an interview of at least one owner or occupant of a neighboring property from which it appears possible that the owner or occupant of the neighboring property could have observed use or other presence or likely presence of oil.

§ 137.50 Reviews of historical sources of information.

(a) Historical documents and records must be reviewed for the purposes of achieving the objectives and performance factors of § 137.30(a) and (b). Historical documents and records may include, but are not limited to, aerial photographs, fire insurance maps, building department records, chain of title documents, and land use records.

(b) Historical documents and records reviewed must cover a period of time as far back in the history of the real property to when the first structure was built or when it was first used for residential, agricultural, commercial, industrial, or governmental purposes. The environmental professional may exercise professional judgment in context of the facts available at the time of the inquiry as to how far back in time it is necessary to search historical records.

§ 137.55 Searches for recorded environmental cleanup liens.

(a) All appropriate inquiries must include a search for the existence of environmental cleanup liens against the facility and the real property on which the facility is located that are filed or recorded under Federal, State, tribal, or local law.

(b) All information collected by persons specified in § 137.1(a) rather than an environmental professional regarding the existence of environmental cleanup liens associated with the facility and the real property on which the facility is located may be provided to the environmental professional or retained by the applicable party.

§ 137.60 Reviews of Federal, State, tribal, and local government records.

(a) Federal, State, tribal, and local government records or data bases of government records of the facility, the real property on which the facility is located, and adjoining properties must be reviewed for the purposes of achieving the objectives and performance factors of § 137.30(a) and (b).

(b) With regard to the facility and the property on which the facility is located, the review of Federal, State, and tribal government records or data bases of the government records and local government records and data bases of the records should include—

(1) Records of reported oil discharges present, including site investigation reports for the facility and the real property on which the facility is located;

(2) Records of activities, conditions, or incidents likely to cause or contribute to discharges or substantial threat of discharges of oil, including landfill and other disposal unit location records and permits, storage tank records and permits, hazardous waste handler and generator records and permits, federal, tribal and state government listings of sites identified as priority cleanup sites, and spill reporting records;

(3) Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) records;

(4) Public health records;

(5) Emergency Response Notification System records;

(6) Registries or publicly available lists of engineering controls; and

(7) Registries or publicly available lists of institutional controls, including environmental land use restrictions, applicable to the facility and the real property on which the facility is located.

(c) With regard to nearby or adjoining properties, the review of Federal, State, tribal, and local government records or databases of government records should include the identification of the following:

(1) Properties for which there are government records of reported discharges or substantial threat of discharges of oil. Such records or databases containing such records and the associated distances from the facility and the real property on which the facility is located for which such information should be searched include the following:

(i) Records of National Priorities List (NPL) sites or tribal- and state-equivalent sites (one mile).

(ii) Resource Conservation and Recovery Act (RCRA) properties subject to corrective action (one mile).

(iii) Records of Federally-registered, or State-permitted or registered, hazardous waste sites identified for investigation or remediation, such as sites enrolled in State and tribal voluntary cleanup programs and tribal- and State-listed brownfield sites (one-half mile).

(iv) Records of leaking underground storage tanks (one-half mile).

(2) Properties that previously were identified or regulated by a government entity due to environmental concerns at the facility and the real property on which the facility is located. The records or databases containing the records and the associated distances from the facility and the real property on which the facility is located for which the information should be searched include the following:

(i) Records of delisted NPL sites (one-half mile).

(ii) Registries or publicly available lists of engineering controls (one-half mile).

(iii) Records of former CERCLIS sites with no further remedial action notices (one-half mile).

(3) Properties for which there are records of Federally-permitted, State-permitted or -registered, or tribal-permitted or -registered waste management activities. The records or data bases that may contain the records include the following:

(i) Records of RCRA small quantity and large quantity generators (adjoining properties).

(ii) Records of Federally-permitted, State-permitted or -registered, or tribal-permitted landfills and solid waste management facilities (one-half mile).

(iii) Records of registered storage tanks (adjoining property).

(4) A review of additional government records with regard to sites identified under paragraphs (c)(1) through (c)(3) of this section may be necessary in the judgment of the environmental professional for the purpose of achieving the objectives and performance factors of §§ 137.30 (a) and (b).

(d) The search distance from the real property boundary for reviewing government records or databases of government records listed in paragraph (c) of this section may be modified based upon the professional judgment of the environmental professional. The rationale for the modifications must be documented by the environmental professional. The environmental professional may consider one or more of the following factors in determining an alternate appropriate search distance—

(1) The nature and extent of a discharge.

(2) Geologic, hydrogeologic, or topographic conditions of the property and surrounding environment.

(3) Land use or development densities.

(4) The property type.

(5) Existing or past uses of surrounding properties.

(6) Potential migration pathways (*e.g.*, groundwater flow direction, prevalent wind direction).

(7) Other relevant factors.

§ 137.65 Visual inspections of the facility, real property on which the facility is located, and adjoining properties.

(a) For the purpose of achieving the objectives and performance factors of § 137.30(a) and (b), the inquiry of the environmental professional must include the following:

(1) A visual on-site inspection of the facility and the real property on which the facility is located, and the improvements at the facility and real property, including a visual inspection of the areas where oil may be or may have been used, stored, treated, handled, or disposed. Physical limitations to the visual inspection must be noted.

(2) A visual inspection of adjoining properties, from the subject real property line, public rights-of-way, or other vantage point (*e.g.*, aerial photography), including a visual inspection of areas where oil may be or may have been stored, treated, handled or disposed. A visual on-site inspection is recommended, though not required. Physical limitations to the inspection of adjacent properties must be noted.

(b) Except as in paragraph (c) of this section, a visual on-site inspection of the facility and the real property on which the facility is located must be conducted.

(c) An on-site inspection is not required if an on-site visual inspection

of the facility and the real property on which the facility is located cannot be performed because of physical limitations, remote and inaccessible location, or other inability to obtain access to the facility and the real property on which the facility is located after good faith efforts have been taken to obtain access. The mere refusal of a voluntary seller to provide access to the facility and the real property on which the facility is located is not justification for not conducting an on-site inspection. The inquiry of the environmental professional must include—

(1) Visually inspecting the facility and the real property on which the facility is located using another method, such as aerial imagery for large properties, or visually inspecting the facility and the real property on which the facility is located from the nearest accessible vantage point, such as the property line or public road for small properties;

(2) Documenting the efforts undertaken to obtain access and an explanation of why such efforts were unsuccessful; and

(3) Documenting other sources of information regarding the presence or likely presence of oil at the facility and the real property on which the facility is located that were consulted according to § 137.30(a). The documentation should include comments, if any, by the environmental professional on the significance of the failure to conduct a visual on-site inspection of the facility and the real property on which the facility is located with regard to the ability to identify conditions indicative of the presence or likely presence of oil at the facility and the real property.

§ 137.70 Specialized knowledge or experience on the part of persons specified in § 137.1(a).

(a) For the purpose of identifying conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located, persons specified in § 137.1(a) must take into account their own specialized knowledge of the facility and the real property on which the facility is located, the area surrounding the facility and the real property on which the facility is located, and the conditions of adjoining properties and their experience relevant to the inquiry.

(b) The results of all appropriate inquiries under § 137.33 must take into account the relevant and applicable specialized knowledge and experience of the persons specified in § 137.1(a) responsible for undertaking the inquiry.

§ 137.75 The relationship of the purchase price to the value of the facility and the real property on which the facility is located, if oil was not at the facility or on the real property.

(a) Persons specified in § 137.1(a) must consider whether the purchase price of the facility and the real property on which the facility is located reasonably reflects the fair market value of the facility and real property if oil was not present or likely present.

(b) If the persons conclude that the purchase price does not reasonably reflect the fair market value of that facility and real property if oil was not at the facility and the real property, they must consider whether or not the differential in purchase price and fair market value is due to the presence or likely presence of oil.

§ 137.80 Commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located.

(a) Throughout the inquiries, persons specified in § 137.1(a) and environmental professionals conducting the inquiry must take into account commonly known or reasonably ascertainable information within the local community about the facility and the real property on which the facility is located and consider that information when seeking to identify conditions indicative of the presence or likely presence of oil at the facility and the real property.

(b) Commonly known information may include information obtained by the person specified in § 137.1(a) or by the environmental professional about the presence or likely presence of oil at the facility and the real property on which the facility is located that is incidental to the information obtained during the inquiry of the environmental professional.

(c) To the extent necessary to achieve the objectives and performance factors of § 137.30(a) and (b), the person specified in § 137.1(a) and the environmental professional must gather information from varied sources whose input either individually or taken together may provide commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located; the environmental professional may refer to one or more of the following sources of information:

(1) Current owners or occupants of neighboring properties or properties adjacent to the facility and the real property on which the facility is located.

(2) Local and state government officials who may have knowledge of, or information related to, the facility and the real property on which the facility is located.

(3) Others with knowledge of the facility and the real property on which the facility is located.

(4) Other sources of information, such as newspapers, Web sites, community organizations, local libraries, and historical societies.

§ 137.85 The degree of obviousness of the presence or likely presence of oil at the facility and the real property on which the facility is located and the ability to detect the oil by appropriate investigation.

(a) Persons specified in § 137.1(a) and environmental professionals conducting an inquiry of a facility and the real property on which it is located on their behalf must take into account the information collected under §§ 137.45 through 137.80 in considering the degree of obviousness of the presence or likely presence of oil at the facility and the real property on which the facility is located.

(b) Persons specified in § 137.1(a) and environmental professionals conducting an inquiry of a facility and the property on which the facility is located on their behalf must take into account the information collected under §§ 137.45 through 137.80 in considering the ability to detect the presence or likely presence of oil by appropriate investigation. The report of the environmental professional should include an opinion under § 137.35(c)(4) regarding whether additional appropriate investigation is necessary.

Dated: May 29, 2007.

Thad W. Allen,

Admiral, Commandant, United States Coast Guard.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2007–0001; FRL–8326–4]

Redesignation of the Toledo, Ohio Area to Attainment for the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Ohio Environmental Protection Agency (Ohio EPA) submitted a request on December 22, 2006, and supplemented it on March 9, 2007, for redesignation of the Toledo, Ohio area which includes Lucas and