

(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.

PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS)

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APPENDIX A TO PART 138—APPLICATION FORM.

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APPENDIX F TO PART 138—MASTER FINANCIAL GUARANTY FORM

AUTHORITY: 33 U.S.C. 2716, 2716a; 42 U.S.C. 9608, 9609; sec. 7(b), E.O. 12580, 3 CFR, 1987 Comp., p. 198; E.O. 12777, 3 CFR 1991 Comp., p. 351; 49 CFR 1.46.

Section 138.30 also issued under the authority of 46 U.S.C. 2103, 14302.

SOURCE: CGD 91-005, 59 FR 34227, July 1, 1994, unless otherwise noted.

§ 138.10 Scope.

This part sets forth the procedures by which an operator of a vessel may establish and maintain, for itself, and, where the operator is not the owner or demise charterer, for the owner and demise charterer of the vessel, evidence of financial responsibility to cover liability of the owner, operator, and demise charterer arising under—

(a) Section 1002 of the Oil Pollution Act of 1990 (OPA 90) (33 U.S.C. 2702); and

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(b) Section 107(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA) (42 U.S.C. 9607(a)(1)).

[CGD 91-005, 59 FR 34227, July 1, 1994, as amended by CGD 91-005, 61 FR 9274, Mar. 7, 1996]

§ 138.12 Applicability.

(a) This part applies to—

(1) A tank vessel of any size, and to a foreign-flag vessel of any size, using the waters of the exclusive economic zone to transship or lighter oil (whether delivering or receiving) destined for a place subject to the jurisdiction of the United States; and

(2) A vessel using the navigable waters of the United States or any port or place subject to the jurisdiction of the United States, including an offshore facility subject to the jurisdiction of the United States, except—

(i) A vessel that is 300 gross tons or less; and

(ii) A non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.

(b) For the purposes of financial responsibility under OPA 90, a mobile offshore drilling unit is treated as a tank vessel when it is being used as an offshore facility and there is a discharge, or a substantial threat of a discharge, of oil on or above the surface of the water. A mobile offshore drilling unit is treated as a vessel other than a tank vessel when it is not being used as an offshore facility.

(c) In addition to a non-self-propelled barge over 300 gross tons that carries hazardous substances as cargo, for the purposes of financial responsibility under CERCLA, this part applies to a self-propelled vessel over 300 gross tons, even if it does not carry hazardous substances.

(d) This part does not apply to a public vessel.

[CGD 91-005, 59 FR 34227, July 1, 1994, as amended at 61 FR 9274, Mar. 7, 1996]

§ 138.15 Implementation schedule.

(a) A tank vessel is subject to the following implementation schedule:

(1) Until December 28, 1994, a tank vessel is required to carry a Certificate

issued under parts 130, 131, and 132 of this chapter, as may be applicable to that vessel. On or after that date, and until July 1, 1995, a non-self-propelled tank vessel must carry a Certificate issued under parts 130, 131, and 132 of this chapter, as may be applicable to that vessel, unless it carries a Certificate issued under this part.

(2) A self-propelled tank vessel to which this part applies and which carries a valid Certificate issued under part 130 of this chapter may not operate on or after December 28, 1994, unless the operator of that vessel has submitted to the Director, NPFCA, before that date acceptable evidence of financial responsibility applicable to that vessel under this part. A self-propelled tank vessel covered by that evidence of financial responsibility before December 28, 1994, may continue to operate with the Certificate issued under part 130 of this chapter. The expiration date of the Certificate issued under part 130 of this chapter for that vessel will be deemed to be December 28, 1995, regardless of the expiration date appearing on the Certificate. Thereafter, a Certificate issued under this part is required.

(3) A self-propelled tank vessel to which this part applies, but which does not carry a valid Certificate issued under part 130 of this chapter before December 28, 1994, may not operate on or after that date unless it carries a Certificate under this part.

(4) A non-self-propelled tank vessel to which this part applies may not operate on or after July 1, 1995, without a Certificate issued under this part. A non-self-propelled tank vessel may continue to operate with a Certificate issued under parts 130, 131, and 132 of this chapter, as may be applicable to that vessel, until that date.

(b) A vessel that is not a tank vessel (non-tank vessel) is subject to the following implementation schedule:

(1) Until December 28, 1997, a non-tank vessel is required to carry a Certificate issued under parts 130 and 132 of this chapter, as may be applicable to that vessel, unless that vessel carries a Certificate issued under this part. On or after December 28, 1997, each non-tank vessel subject to this part must carry a Certificate issued under this part.