

■ 8. Amend § 309.6 by adding the following new sentence at the end of paragraph (b)(3) to read as follows:

**§ 309.6 Disclosure of exempt records.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \* Finally, the Director, or designee, may in his or her discretion and for good cause, disclose reports of examination or other confidential supervisory information concerning any depository institution or other entity examined by the Corporation under authority of Federal law to: any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity; any officer, director, or receiver of such depository institution or entity; and any other person that the Corporation determines to be appropriate.

\* \* \* \* \*

By Order of the Board of Directors.

Dated at Washington, DC, the 19th day of December, 2007. Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E8-294 Filed 1-11-08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 137

[Docket No. 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:** Final rule.

**SUMMARY:** The Coast Guard is establishing 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 rule is consistent with a final rule on this subject published by the Environmental Protection Agency.

**DATES:** This final rule is effective February 13, 2008.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2006-25708 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Benjamin White, National Pollution Funds Center, Coast Guard, telephone 202-493-6863. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On June 12, 2007, we published a notice of proposed rulemaking (NPRM) entitled “Landowner Defenses to Liability Under the Oil Pollution Act of 1990: Standards and Practices for Conducting All Appropriate Inquiries” in the *Federal Register* (72 FR 32232). We received no comments on the proposed rule. No public meeting was requested and none was held. The Coast Guard is, therefore, adopting the NPRM as published and without change as a final rule.

##### 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.

This rulemaking 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 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 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 rule. For more information on the ASTM standard, see the “ASTM Standard E 1527-05” section in this preamble.

Note that this 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 rule is called the “all-appropriate-inquiries” element found in 33 U.S.C. 2703(d)(4).

##### Scope of the 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 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 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's liability provision applies to releases or threatened releases of "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 rule, such as contiguous property owners and bona fide prospective purchasers. While differences between OPA 90 and CERCLA have required certain differences between the Coast Guard's final rule and EPA's final rule, we have coordinated with EPA to ensure that 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 are permitted to use the procedures included in the ASTM E 1527-05 standard to comply with this rule, but use of the ASTM is not mandatory.

#### **Regulatory Evaluation**

##### *Executive Order 12866*

This 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.

A final Regulatory Evaluation follows: Compliance with this 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 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 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 rule is consistent with EPA's final rule. The scope of EPA's rulemaking however is much larger than this rule. As such, the economic impacts of this 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 rule compared to EPA's final rule.

As was the case with EPA's rulemaking, this 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 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 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 rule). Next the Coast Guard developed a more likely scenario that takes into account that Phase I ESAs for certain

commercial real estate transactions are outside the scope of this 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 rule, would be approximately \$8.2 million per year.

Cost calculation 1—Estimated Annual Number of Coast Guard related Phase I ESAs  
 $332,038 \text{ Phase I ESAs} \times 0.45 =$   
 $149,417 \text{ Phase I ESAs}$   
 Estimated Annual Cost of Coast Guard related Phase I ESAs  
 $149,417 \text{ Phase I ESAs} \times \$55/\text{ESA} =$   
 $\$8,217,935 \text{ per year.}$

#### D. Most Likely Cost Scenario

To more accurately reflect the scope of this 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 rule. Under this assumption, the estimated cost associated with this 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  $\times$  0.05 = 16,602 Phase I ESAs.  
 Estimated Annual Cost of Coast Guard related Phase I ESAs:  
 16,602 Phase I ESAs  $\times$  \$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 the **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 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 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 rule. For these reasons, the costs and benefits can not be directly compared. However, because complying with this 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 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 regulatory evaluation section above, compliance with this 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 final rule will not have a significant economic impact on a substantial number of small entities.

#### *Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding this rule so they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard received no requests for assistance from small entities concerning this rulemaking and provided none. 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 rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*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 all the appropriate inquiries specified in the rule. Depending upon the particular case, this may involve interviews, research, and reports.

*Need for Information:* This 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 "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 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection effective February 13, 2008. The collection will be added to 33 CFR part 137. The corresponding approval number is OMB Control Number 1625-0111, which expires on February 13, 2011.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### *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 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 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 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### *Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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 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 rule uses the following voluntary consensus standard: ASTM E 1527-05, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process." The section that references this standard and the location where this standard is available is listed in § 137.15. Persons conducting all appropriate inquiries may use the procedures included in the ASTM E 1527-05 standard to comply with this rule.

#### *Environment*

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded 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, this rule is categorically excluded, under figure 2-1, paragraph (34)(a), of the Instruction, from further environmental documentation. This rule concerns 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 final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

#### **List of Subjects in 33 CFR Part 137**

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

#### **Words of Issuance and Regulatory Text**

■ For the reasons set out in the preamble, the Coast Guard adds 33 CFR 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 publication 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 publication 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 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. Use of ASTM E 1527-05 for this purpose is optional and not mandatory.

**§ 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.

(b) [Reserved]

#### **§ 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 databases 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 databases of the government records and local government records and databases 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 databases 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: January 7, 2008.

**William Grawe,**

*Acting Director, National Pollution Funds Center, United States Coast Guard.*

[FR Doc. E8-329 Filed 1-11-08; 8:45 am]

BILLING CODE 4910-15-P

## POSTAL SERVICE

### 39 CFR Part 20

#### Undeliverable Items

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service™ has implemented new standards for returned undeliverable-as-addressed items that were posted abroad with a United States return address. When this occurs, the Postal Service provides the return service but currently receives no payment for the services rendered. This final rule implements collection of a fee for returned items.

**DATES:** *Effective Date:* January 14, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Obataiye B. Akinwole, 703-292-5260, Bruce Marsh, 703-292-3570.

**SUPPLEMENTARY INFORMATION:** Article RL 147 of the Letter Post Regulations of the Universal Postal Union (UPU), "Undeliverable Items," allows all posts to collect handling charges for undeliverable-as-addressed pieces posted abroad by customers residing in their territories. In order to recover costs associated with handling these pieces, the Postal Service will collect the applicable First-Class Mail International postage for each returned item.

#### List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Effective the date of this rulemaking the USPS formally adopts the UPU provisions into the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®), incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

#### PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

■ 2. Revise the Mailing Standards of the United States Postal Service, International Mail Manual (IMM) as follows:

\* \* \* \* \*

#### 7 Treatment of Inbound Mail

\* \* \* \* \*

780 Items Mailed Abroad by or on Behalf of Senders in the United States

[Revise the heading of 781 as follows:]

#### 781 Payment Required

[Add new 781.1 using the current text of 781 as follows:]

##### 781.1 Postage Payment Required

Payment of U.S. Postage is required to secure delivery of mail when the mailing is by or on behalf of a person or firm that is a resident of the United States and the foreign postage rate applied to such items is lower than the comparable U.S. domestic rate.

[Add new 781.2 as follows:]

##### 781.2 Handling Charges

Undeliverable-as-addressed mail returned to the sender for which outbound postage was not paid to the USPS is subject to the payment of handling charges. On delivery to the sender, the sender may be charged the First-Class Mail International rate for the weight and shape of the returned piece.

\* \* \* \* \*

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. E8-392 Filed 1-11-08; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2007-1010; FRL-8515-6]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revised Motor Vehicle Emission Budgets for the Charleston 8-Hour Ozone Maintenance Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The revision amends the 8-hour ozone maintenance plan for the Charleston area. This revision amends the maintenance plans' 2009 and 2018

motor vehicle emissions budgets (MVEBs) by reallocating a portion of the plans' safety margins which results in an increase in the MVEBs. The revised plan continues to demonstrate maintenance of the 8-hour national ambient air quality standard (NAAQS) for ozone. EPA is approving this SIP revision to the West Virginia maintenance plan for Charleston in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on March 14, 2008 without further notice, unless EPA receives adverse written comment by February 13, 2008. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-1010 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail:* [febbo.carol@epa.gov](mailto:febbo.carol@epa.gov).

C. *Mail:* EPA-R03-OAR-2007-1010, Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2007-1010. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the