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112.22 Temporary Suspension of Response Planning Level Requirements to Support Deepwater Horizon Spill Response.

APPENDIX A TO PART 112—MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF TRANSPORTATION AND THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

APPENDIX B TO PART 112—MEMORANDUM OF UNDERSTANDING AMONG THE SECRETARY OF THE INTERIOR, SECRETARY OF TRANSPORTATION, AND ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

APPENDIX C TO PART 112—SUBSTANTIAL HARM CRITERIA

APPENDIX D TO PART 112—DETERMINATION OF A WORST CASE DISCHARGE PLANNING VOLUME

APPENDIX E TO PART 112—DETERMINATION AND EVALUATION OF REQUIRED RESPONSE RESOURCES FOR FACILITY RESPONSE PLANS

APPENDIX F TO PART 112—FACILITY-SPECIFIC RESPONSE PLAN

APPENDIX G TO PART 112—TIER I QUALIFIED FACILITY SPCC PLAN

AUTHORITY: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

SOURCE: 38 FR 34165, Dec. 11, 1973, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 112 appear at 65 FR 40798, June 30, 2000.

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

SOURCE: 67 FR 47140, July 17, 2002, unless otherwise noted.

§ 112.1 General applicability.

(a)(1) This part establishes procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).

(2) As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

(b) Except as provided in paragraph (d) of this section, this part applies to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) that has oil in:

(1) Any aboveground container;

(2) Any completely buried tank as defined in § 112.2;

(3) Any container that is used for standby storage, for seasonal storage, or for temporary storage, or not otherwise “permanently closed” as defined in § 112.2;

(4) Any “bunkered tank” or “partially buried tank” as defined in § 112.2, or any container in a vault, each of which is considered an aboveground storage container for purposes of this part.

(c) As provided in section 313 of the Clean Water Act (CWA), departments, agencies, and instrumentalities of the Federal government are subject to this part to the same extent as any person.

(d) Except as provided in paragraph (f) of this section, this part does not apply to:

(1) The owner or operator of any facility, equipment, or operation that is not subject to the jurisdiction of the Environmental Protection Agency (EPA) under section 311(j)(1)(C) of the CWA, as follows:

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(i) Any onshore or offshore facility, that due to its location, could not reasonably be expected to have a discharge as described in paragraph (b) of this section. This determination must be based solely upon consideration of the geographical and location aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and must exclude consideration of man-made features such as dikes, equipment or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in paragraph (b) of this section.

(ii) Any equipment, or operation of a vessel or transportation-related onshore or offshore facility which is subject to the authority and control of the U.S. Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of EPA, dated November 24, 1971 (Appendix A of this part).

(iii) Any equipment, or operation of a vessel or onshore or offshore facility which is subject to the authority and control of the U.S. Department of Transportation or the U.S. Department of the Interior, as defined in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).

(2) Any facility which, although otherwise subject to the jurisdiction of EPA, meets both of the following requirements:

(i) The completely buried storage capacity of the facility is 42,000 U.S. gallons or less of oil. For purposes of this exemption, the completely buried storage capacity of a facility excludes the capacity of a completely buried tank, as defined in §112.2, and connected underground piping, underground ancillary equipment, and containment systems, that is currently subject to all of the technical requirements of part 280 of this chapter or all of the technical requirements of a State program approved under part 281 of this chapter, or the capacity of any underground oil storage tanks deferred under 40 CFR part 280 that supply emergency diesel generators at a nuclear power genera-

tion facility licensed by the Nuclear Regulatory Commission and subject to any Nuclear Regulatory Commission provision regarding design and quality criteria, including, but not limited to, 10 CFR part 50. The completely buried storage capacity of a facility also excludes the capacity of a container that is "permanently closed," as defined in §112.2 and the capacity of intra-facility gathering lines subject to the regulatory requirements of 49 CFR part 192 or 195.

(ii) The aggregate aboveground storage capacity of the facility is 1,320 U.S. gallons or less of oil. For the purposes of this exemption, only containers with a capacity of 55 U.S. gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes:

(A) The capacity of a container that is "permanently closed" as defined in §112.2;

(B) The capacity of a "motive power container" as defined in §112.2;

(C) The capacity of hot-mix asphalt or any hot-mix asphalt container;

(D) The capacity of a container for heating oil used solely at a single-family residence;

(E) The capacity of pesticide application equipment and related mix containers.

(3) Any offshore oil drilling, production, or workover facility that is subject to the notices and regulations of the Minerals Management Service, as specified in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).

(4) Any completely buried storage tank, as defined in §112.2, and connected underground piping, underground ancillary equipment, and containment systems, at any facility, that is subject to all of the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter, or any underground oil storage tanks including below-grade vaulted tanks, deferred under 40 CFR part 280, as originally promulgated, that supply emergency diesel generators at a nuclear power

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generation facility licensed by the Nuclear Regulatory Commission, provided that such a tank is subject to any Nuclear Regulatory Commission provision regarding design and quality criteria, including, but not limited to, 10 CFR part 50. Such emergency generator tanks must be marked on the facility diagram as provided in §112.7(a)(3), if the facility is otherwise subject to this part.

(5) Any container with a storage capacity of less than 55 gallons of oil.

(6) Any facility or part thereof used exclusively for wastewater treatment and not used to satisfy any requirement of this part. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph.

(7) Any “motive power container,” as defined in §112.2. The transfer of fuel or other oil into a motive power container at an otherwise regulated facility is not eligible for this exemption.

(8) Hot-mix asphalt, or any hot-mix asphalt container.

(9) Any container for heating oil used solely at a single-family residence.

(10) Any pesticide application equipment or related mix containers.

(11) Intra-facility gathering lines subject to the regulatory requirements of 49 CFR part 192 or 195, except that such a line’s location must be identified and marked as “exempt” on the facility diagram as provided in §112.7(a)(3), if the facility is otherwise subject to this part.

(e) This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. SPCC Plans are designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules. The purpose of an SPCC Plan is to form a comprehensive Federal/State spill prevention program that minimizes the potential for discharges. The SPCC Plan must address all relevant spill prevention, control, and countermeasures necessary at the specific facility. Compliance with this part does not in any way relieve the owner or operator of an onshore or an

offshore facility from compliance with other Federal, State, or local laws.

(f) Notwithstanding paragraph (d) of this section, the Regional Administrator may require that the owner or operator of any facility subject to the jurisdiction of EPA under section 311(j) of the CWA prepare and implement an SPCC Plan, or any applicable part, to carry out the purposes of the CWA.

(1) Following a preliminary determination, the Regional Administrator must provide a written notice to the owner or operator stating the reasons why he must prepare an SPCC Plan, or applicable part. The Regional Administrator must send such notice to the owner or operator by certified mail or by personal delivery. If the owner or operator is a corporation, the Regional Administrator must also mail a copy of such notice to the registered agent, if any and if known, of the corporation in the State where the facility is located.

(2) Within 30 days of receipt of such written notice, the owner or operator may provide information and data and may consult with the Agency about the need to prepare an SPCC Plan, or applicable part.

(3) Within 30 days following the time under paragraph (b)(2) of this section within which the owner or operator may provide information and data and consult with the Agency about the need to prepare an SPCC Plan, or applicable part, the Regional Administrator must make a final determination regarding whether the owner or operator is required to prepare and implement an SPCC Plan, or applicable part. The Regional Administrator must send the final determination to the owner or operator by certified mail or by personal delivery. If the owner or operator is a corporation, the Regional Administrator must also mail a copy of the final determination to the registered agent, if any and if known, of the corporation in the State where the facility is located.

(4) If the Regional Administrator makes a final determination that an SPCC Plan, or applicable part, is necessary, the owner or operator must prepare the Plan, or applicable part, within six months of that final determination and implement the Plan, or applicable part, as soon as possible, but not

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later than one year after the Regional Administrator has made a final determination.

(5) The owner or operator may appeal a final determination made by the Regional Administrator requiring preparation and implementation of an SPCC Plan, or applicable part, under this paragraph. The owner or operator must make the appeal to the Administrator of EPA within 30 days of receipt of the final determination under paragraph (b)(3) of this section from the Regional Administrator requiring preparation and/or implementation of an SPCC Plan, or applicable part. The owner or operator must send a complete copy of the appeal to the Regional Administrator at the time he makes the appeal to the Administrator. The appeal must contain a clear and concise statement of the issues and points of fact in the case. In the appeal, the owner or operator may also provide additional information. The additional information may be from any person. The Administrator may request additional information from the owner or operator. The Administrator must render a decision within 60 days of receiving the appeal or additional information submitted by the owner or operator and must serve the owner or operator with the decision made in the appeal in the manner described in paragraph (f)(1) of this section.

[67 FR 47140, July 17, 2002, as amended at 71 FR 77290, Dec. 26, 2006; 73 FR 74300, Dec. 5, 2008; 74 FR 58809, Nov. 13, 2009]

§ 112.2 Definitions.

For the purposes of this part:

Adverse weather means weather conditions that make it difficult for response equipment and personnel to clean up or remove spilled oil, and that must be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in Appendix E to this part (as appropriate), ice conditions, temperatures, weather-related visibility, and currents within the area in which the systems or equipment is intended to function.

Alteration means any work on a container involving cutting, burning,

welding, or heating operations that changes the physical dimensions or configuration of the container.

Animal fat means a non-petroleum oil, fat, or grease of animal, fish, or marine mammal origin.

Breakout tank means a container used to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline.

Bulk storage container means any container used to store oil. These containers are used for purposes including, but not limited to, the storage of oil prior to use, while being used, or prior to further distribution in commerce. Oil-filled electrical, operating, or manufacturing equipment is not a bulk storage container.

Bunkered tank means a container constructed or placed in the ground by cutting the earth and re-covering the container in a manner that breaks the surrounding natural grade, or that lies above grade, and is covered with earth, sand, gravel, asphalt, or other material. A bunkered tank is considered an aboveground storage container for purposes of this part.

Completely buried tank means any container completely below grade and covered with earth, sand, gravel, asphalt, or other material. Containers in vaults, bunkered tanks, or partially buried tanks are considered aboveground storage containers for purposes of this part.

Complex means a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the CWA.

Contiguous zone means the zone established by the United States under Article 24 of the Convention of the Territorial Sea and Contiguous Zone, that is contiguous to the territorial sea and that extends nine miles seaward from the outer limit of the territorial area.

Contract or other approved means means:

(1) A written contractual agreement with an oil spill removal organization that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times; and/or