ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2007–0584; FRL–8746–3]

RIN 2050–AG16

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Rule Requirements—Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending the Spill Prevention, Control, and Countermeasure (SPCC) rule in order to provide increased clarity, to tailor requirements to particular industry sectors, and to streamline certain requirements for those facility owners or operators subject to the rule, which should result in greater protection to human health and the environment. Specifically, this final rule: Exempts hot-mix asphalt (HMA), pesticide application equipment and related mix containers, and heating oil containers at single-family residences from the SPCC rule; amends the definition of ''facility'' to clarify the existing flexibility associated with describing a facility's boundaries; amends the facility diagram requirement to provide additional flexibility; defines ''loading/unloading rack'' to clarify the equipment subject to the provisions for facility tank car and tank truck loading/unloading racks, as well as amends the provisions for this equipment; provides streamlined requirements for a subset of qualified facilities; amends the general secondary containment requirement to provide more clarity; exempts non-transportation-related tank trucks from the sized secondary containment requirements; amends the security requirements; amends the integrity testing requirements to allow greater flexibility in the use of industry standards; amends the integrity testing requirements for containers that store animal fats or vegetable oils and meet certain criteria; streamlines a number of requirements for onshore oil production facilities; and exempts underground oil storage tanks at nuclear power generation facilities. EPA is also providing clarification in the preamble to this final rule on additional issues raised by the regulated community and, in a separate action in the **Federal Register** of November 26, 2008, (73 FR 72016), the Agency is proposing a new compliance date for farms.

DATES: This final rule is effective February 3, 2009.

ADDRESSES: The public docket for this rulemaking, Docket ID No. EPA–HQ–OPA–2007–0584, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in index at the *http://www.regulations.gov.* Although listed in the index, some information may not be publicly available, such as Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Public Reading Room is 202–566–1744, and the telephone number to make an appointment to view the docket is 202–566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 800–424–9346 or TDD at 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this final rule, contact either Vanessa E. Rodriguez at 202–564–7913 *(rodriguez.vanessa@epa.gov),* or Mark W. Howard at 202–564–1964 *(howard.markw@epa.gov),* U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION: The contents of this preamble are:

I. General Information
II. Entities Potentially Affected by This Final Rule
III. Statutory Authority and Delegation of Authority
IV. Background
V. This Action
A. Hot-Mix Asphalt
1. Hot-Mix Asphalt Exemption
2. Alternative Options Considered
B. Farms
1. Exemption for Pesticide Application Equipment and Related Mix Containers
2. Applicability of Mobile Refueler Requirements to Farm Nurse Tanks
3. Differentiating the SPCC Requirements for Farms
C. Residential Heating Oil Containers
1. Exemption for Residential Heating Oil Containers
2. Alternative Option Considered
D. Definition of Facility
1. Revisions to the Definition of Facility
2. Determining the Components of a Facility: Examples of Aggregation or Separation
3. Alternative Options Considered
E. Facility Diagram
1. Revision to the Facility Diagram Requirement Regarding Mobile or Portable Containers
2. Indicating Complicated Areas of Piping or Oil-filled Equipment on a Facility Diagram
F. Loading/Unloading Racks
1. Loading/Unloading Rack Definition
2. Requirements for Loading/Unloading Racks
3. Exclusions
4. Alternative Option Considered
G. Tier I Qualified Facilities
1. Eligibility Criteria
2. Provisions for Tier I Qualified Facilities
3. SPCC Plan Template
4. Self-Certification and Plan Amendments
5. Tier II Qualified Facility Requirements
6. Alternative Option Considered
H. General Secondary Containment
1. Revisions to the General Secondary Containment Requirement
I. General Secondary Containment for Non-Transportation-Related Tank Trucks
J. Security
1. Revisions to the Security Requirements
K. Integrity Testing
1. Amendments to Integrity Testing Requirements
L. Animal Fats and Vegetable Oils
1. Differentiated Requirements for AFVOs
2. Differentiation Criteria: Containers Subject to FDA Regulations—21 CFR part 110
3. Differentiation Criteria: Elevated Bulk Storage Containers
4. Differentiation Criteria: Containers made from Austenitic Stainless Steel
5. Differentiation Criteria: Containers with No External Insulation
6. Differentiation Criteria: Shop-Fabricated Containers
7. Required Recordkeeping
8. Other Suggested Criteria and Options
M. Oil Production Facilities
1. Definition of Production Facility
2. Modifications to § 112.9 for Drilling and Workover Facilities
3. SPCC Plan Preparation and Implementation
4. Flowlines and Intra-facility Gathering Lines
5. Flow-Through Process Vessels
6. Alternative Qualified Facility Eligibility Criteria for Oil Production Facilities
7. Produced Water Containers
8. Clarification of the Definition of Permanently Closed Containers
9. Oil and Natural Gas Pipeline Facilities
N. Man-made Structures
O. Underground Emergency Diesel Generator Tanks at Nuclear Power Stations

P. Wind Turbines
Q. Technical Corrections
VI. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order—13132 Federalism
F. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045—Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

The Environmental Protection Agency (EPA or the Agency) is amending the Spill Prevention, Control, and Countermeasure (SPCC) rule to address a number of issues that have been raised by the regulated community. These amendments are intended to clarify, tailor, and streamline certain requirements for those facility owners or operators who are required to prepare and implement an SPCC Plan (or ''Plan''). Specifically:

- EPA is exempting hot-mix asphalt (HMA) from the SPCC requirements. This material is unlikely to flow as a result of the entrained aggregate, such that there would be very few circumstances in which a discharge of HMA would have the potential to reach navigable waters or adjoining shorelines. EPA will continue to regulate asphalt cement (AC), asphalt emulsions, and cutbacks, which are not HMA (that is, they are not entrained with aggregate).
- EPA is exempting pesticide application equipment and related mix containers, regardless of ownership or where used, that may currently be subject to the SPCC rule when crop oil or adjuvant oil is added to formulations.
- EPA is exempting residential heating oil containers (that is, those used solely at single-family residences) from the SPCC requirements. This exemption applies to aboveground containers, as well as completely buried heating oil tanks, at single-family residences, including those located at farms.
- EPA is modifying the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to specify that the ''facility'' definition governs the applicability of 40 CFR part 112. These revisions will allow an owner or operator to separate or aggregate containers to determine the facility boundaries, based on such factors as ownership or operation of the buildings, structures, containers, and equipment on the site, the activities being conducted, property boundaries, and other relevant considerations.
- EPA is revising the facility diagram requirement at § 112.7(a)(3) to clarify how containers, fixed and mobile, are identified on the facility diagram. EPA is also clarifying that where facility diagrams become complicated due to the presence of multiple fixed oil storage containers or complex piping/transfer areas at a facility, the owner or operator can include that information separately in the SPCC Plan in an accompanying table or key. For any mobile or portable containers located in a certain area of the facility, an owner or operator can mark the area on the diagram. If the total number of mobile or portable containers changes, the owner or operator can indicate the potential range in number of containers and the anticipated contents and capacities of the mobile or portable containers maintained at the facility in the Plan.
- EPA is defining the term ''loading/unloading rack,'' and specifying that this definition governs the applicability of the provision at § 112.7(h), *Facility tank car and tank truck loading/unloading rack*. This amendment provides clarity to the regulated community on whether this provision applies to a facility. Furthermore, EPA is specifically excluding oil production facilities and farms from the requirements at § 112.7(h), because loading/unloading racks are not typically found at these facilities (loading/unloading activities at these facilities will remain subject to the general secondary containment requirements of § 112.7(c)). EPA also is finalizing editorial revisions to the provision at § 112.7(h) for clarity.
- EPA is streamlining and tailoring the SPCC requirements for a subset of qualified facilities. Qualified facilities were addressed in a recent amendment to the SPCC rule (71 FR 77266, December 26, 2006). The owner or operator of such a facility has the option to self-certify his SPCC Plan. This final rule further designates a subset of qualified facilities (''Tier I qualified facilities'') as those that meet the current qualified facility eligibility criteria and that have no oil storage containers with an individual aboveground storage capacity greater than 5,000 U.S. gallons. The owner or operator of a Tier I qualified facility has the option to complete a self-certified SPCC Plan template (found in Appendix G to 40 CFR part 112) in lieu of a full SPCC Plan. The owner or operator can complete the SPCC Plan template, which is comprised of a set of streamlined SPCC rule requirements, and implement those streamlined requirements, to comply with the SPCC regulation. All other qualified facilities will be designated as ''Tier II qualified facilities.''
- EPA is amending the general secondary containment requirements at § 112.7(c) to clarify that the scope of secondary containment need only take into consideration the typical failure mode, and most likely quantity of oil that would be discharged, consistent with current Agency guidance. This amendment also provides additional examples of prevention systems for onshore facilities found at § 112.7(c)(1).
- EPA is extending the exemption from the sized secondary containment requirement for mobile refuelers provided in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) to non-transportation-related tank trucks at a facility subject to the SPCC rule.
- EPA is amending the facility security requirements at § 112.7(g) to allow an owner or operator of a facility to tailor his security measures to the facility's specific characteristics and location. A facility owner or operator is required to describe in the SPCC Plan how he secures and controls access to the oil handling, processing, and storage areas; secures master flow and drain valves; prevents unauthorized access to starter controls on oil pumps; secures out-of-service and loading/unloading connections of oil pipelines; and addresses the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges. This action extends the streamlined security requirements that EPA provided to qualified facilities in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) to all facilities subject to the security requirements.
- EPA is amending the requirements at §§ 112.8(c)(6) and 112.12(c)(6) to provide flexibility in complying with the bulk storage container integrity testing requirements. That is, EPA is modifying the current provision to allow an owner or operator to consult and rely on industry standards to determine the appropriate qualifications for personnel performing tests and

inspections, as well as the type and frequency of integrity testing required for a particular container size and configuration. This action extends the streamlined bulk storage container inspection requirement that EPA provided to qualified facilities in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) to all facilities subject to the integrity testing provisions.

- EPA is differentiating the integrity testing requirements at § 112.12(c)(6) for an owner or operator of a facility that handles certain types of Animal Fats and Vegetable Oils (AFVOs). EPA is providing the Professional Engineer (PE) or an owner or operator self-certifying an SPCC Plan with the flexibility to determine the scope of integrity testing that is appropriate for containers that store AFVOs, based on compliance with certain FDA regulations and other criteria.
- EPA is finalizing several amendments to tailor the requirements for oil production facilities to address a number of concerns that have been raised by this sector. Specifically, EPA is: Modifying the definition of ''production facility'' to be consistent with the amendments to the definition of ''facility;'' extending the timeframe by which the owner or operator of a new oil production facility must prepare and implement an SPCC Plan; providing an alternative option for flow-through process vessels at oil production facilities to comply with the general secondary containment requirement and additional oil spill prevention measures in lieu of sized secondary containment requirements; providing an exemption for certain intra-facility gathering lines subject to regulatory requirements of the U.S. Department of Transportation's (DOT's) pipeline regulations in 49 CFR parts 192 or 195; providing an alternative option for flowlines and intra-facility gathering lines at oil production facilities for contingency planning in lieu of all secondary containment requirements, while establishing more specific requirements for a flowline/intra-facility gathering line maintenance program; exempting certain produced water containers that do not contain oil as certified by a Professional Engineer (PE); providing compliance alternatives to sized secondary containment for produced water storage containers that are not otherwise exempt; establishing an option for an oil production facility to be eligible to self-certify an SPCC Plan as a qualified facility; and clarifying the definition of ''permanently closed'' as it applies to oil production facilities and containers present at an oil production facility.
- EPA is exempting underground oil storage tanks deferred under 40 CFR part 280 that supply emergency diesel generators at nuclear power generation facilities and that are subject to design criteria under the Nuclear Regulatory Commission (NRC) regulations. This exemption includes both tanks that are completely buried and tanks that are below-grade and vaulted.

In this notice, EPA is also reiterating clarifications to a number of issues of concern to the regulated community that were provided in the 2007 proposal (72 FR 58378, October 15, 2007), including the consideration of man-made structures in determining how to comply with the SPCC rule requirements and the applicability of the rule to wind turbines that are used to produce electricity. Additionally, EPA is explaining actions that will be taken in collaboration with DOT to clarify the jurisdiction over facilities, as defined in a Memorandum of Understanding (MOU) between the DOT and EPA (36 FR 24080, November 24, 1971). EPA also is finalizing technical corrections to §§ 112.3 and 112.12. This rulemaking marks the completion of the SPCC-related improvements planned by the Agency at this time. EPA greatly benefited from the considerable public input in the recent SPCC rulemakings. Given the breadth of these changes, and the importance of the SPCC program, EPA plans to review the implementation of these changes after these latest revisions become effective. With regard to the oil production industry, this revision would include an examination of the utility and effectiveness of the new approaches for avoiding and minimizing spills.

II. Entities Potentially Affected by This Final Rule

Industry sector	NAICS code
Oil Production	211111
Farms	111, 112
Electric Utility Plants	2211
Petroleum Refining and Related Industries	324
Chemical Manufacturing	325
Food Manufacturing	311, 312
Manufacturing Facilities Using and Storing Animal Fats and Vegetable Oils	311, 325
Metal Manufacturing	331, 332
Other Manufacturing	31–33
Real Estate Rental and Leasing	531–533
Retail Trade	441–446, 448, 451–454
Contract Construction	23
Wholesale Trade	42
Other Commercial	492, 541, 551, 561–562
Transportation	481–488
Arts Entertainment & Recreation	711–713
Other Services (Except Public Administration)	811–813
Petroleum Bulk Stations and Terminals	4247
Education	61
Hospitals & Other Health Care	621, 622
Accommodation and Food Services	721, 722
Fuel Oil Dealers	45431
Gasoline stations	4471
Information Finance and Insurance	51, 52
Mining	212
Warehousing and Storage	493
Religious Organizations	813110
Military Installations	928110
Pipelines	4861, 48691

Industry sector	NAICS code
Government	92

The list of potentially affected entities in the above table may not be exhaustive. The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section titled **FOR FURTHER INFORMATION CONTACT**.

III. Statutory Authority and Delegation of Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1321(j)(1)(C), requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil to navigable waters or adjoining shorelines from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related onshore facilities to EPA in Executive Order 11548 (35 FR 11677, July 22, 1970), which was superseded by Executive Order 12777 (56 FR 54757, October 22, 1991). An MOU between DOT and EPA (36 FR 24080, November 24, 1971) established the definitions of transportation-related and non-transportation-related facilities. An MOU between EPA, the U.S. Department of the Interior (DOI), and DOT (59 FR 34102, July 1, 1994) re-delegated the responsibility to regulate certain offshore facilities from DOI to EPA.

IV. Background

The SPCC rule was originally promulgated on December 11, 1973 (38 FR 34164). On July 17, 2002, EPA published a final rule amending the SPCC rule, formally known as the Oil Pollution Prevention regulation (40 CFR part 112). The July 2002 rule included revisions to the requirements for SPCC Plans and for Facility Response Plans (FRPs). It also included new subparts outlining the requirements for various classes of oil; revised the applicability of the regulation; amended the requirements for completing SPCC Plans; and made other modifications (67 FR 47042). The revised rule became effective on August 16, 2002. After publication of this rule, several members of the regulated community filed legal challenges to certain aspects of the rule.[1] All of the issues raised in the litigation have been resolved; EPA published clarifications in the **Federal Register** to several aspects of the revised rule (69 FR 29728, May 25, 2004),[2] and in a separate action in the **Federal Register** of November 26, 2008, (73 FR 71941), the Agency is announcing the vacatur of the July 17, 2002 revisions to the definition of ''navigable waters.'' In addition, concerns were raised about the ability to implement certain aspects of the July 2002 rule.

As a result, EPA proposed amendments to the SPCC rule in December 2005 and finalized them in December 2006 to address a number of issues, including those pertaining to certain ''qualified'' facilities, qualified oil-filled operational equipment, motive power containers, mobile refuelers, removal of provisions inapplicable to AFVOs, and the compliance date for farms. See the rule amendment that was published in the **Federal Register** at 71 FR 77266 (December 26, 2006) for a more detailed discussion of these amendments.

In addition, EPA released the *SPCC Guidance for Regional Inspectors* in December 2005. This guidance document is intended to assist regional inspectors in reviewing the implementation of the SPCC rule at a regulated facility. The guidance document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of the inspector in the review and evaluation of a facility owner or operator's compliance with the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. The guidance is available on the Agency's Web site at *http://www.epa.gov/emergencies*. EPA intends to issue revisions to this guidance document that address changes made to the SPCC rule, consistent with the regulatory amendments in this action and the December 2006 amendments (71 FR 77266, December 26, 2006).

Furthermore, EPA has amended the dates for compliance with the July 2002 amendments to the SPCC rule by extending the dates for preparing or amending, and implementing revised SPCC Plans in 40 CFR 112.3(a), (b), and (c), most recently by a rule published May 16, 2007 (72 FR 27443). EPA took the most recent action to provide owners or operators of facilities the time necessary to fully understand the amendments to the SPCC rule finalized in December 2006, and to allow potentially affected owners and operators an opportunity to make any changes to their facilities and to their SPCC Plans, as well as to provide time for the Agency to take final action on this amendment. EPA expects that this extension will provide the regulated community time to review and understand any revised material presented in the *SPCC Guidance for Regional Inspectors*. Please see the **Federal Register** notice at 72 FR 27443, May 16, 2007 for further discussion of the July 1, 2009 compliance date. In a separate action in the **Federal Register** of November 26, 2008 (73 FR 72016), EPA is also proposing new dates by which the owners or operators of facilities must prepare or amend and implement their SPCC Plan.

The December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) addressed only certain areas of the SPCC requirements and specific issues and concerns raised by the regulated community. The EPA Regulatory Agenda and the 2005 Office of Management and Budget (OMB) report on ''Regulatory Reform of the U.S. Manufacturing Sector'' highlighted other areas where further changes may be appropriate. Therefore, in October 2007, EPA proposed additional amendments to the SPCC rule to address these changes (72 FR 58378, October 15, 2007). Section V of this notice describes EPA's final action on those proposed amendments and presents the major comments received on the proposal, as well as EPA's response to those comments. For a more complete discussion of the comments received, and the Agency's response to comments, *see Comment and Response Document: Spill Prevention, Control, and Countermeasure Rule 2008 Amendments*, a copy of which is available in the docket for this rulemaking.

[1] *American Petroleum Institute* v. *Johnson*, 571 F.Supp. 2d 165 (D.D.C. 2008). The only issue resolved through litigation was the challenge to the definition of navigable waters in the 2002 rule amendment.

[2] Several commenters requested that the Agency codify the clarifications as part of this rulemaking. To the extent the subject matter of the clarification has been reflected in this rulemaking, the Agency has either incorporated the clarification in the regulatory text or reaffirmed the Agency's position in this preamble.

V. This Action

A. Hot-Mix Asphalt

Hot-mix asphalt (HMA) is a blend of asphalt cement (AC) and aggregate material, such as stone, sand, or gravel, which is formed into final paving products for use on roads and parking lots. All types of asphalt, including HMA, are petroleum oil products. Under this amendment to the SPCC rule, EPA is exempting HMA from SPCC rule applicability.

1. Hot-Mix Asphalt Exemption

EPA is exempting HMA from SPCC rule applicability by adding a new paragraph (8) under the general applicability section, § 112.1(d), and modifying § 112.1(d)(2) so that the capacity of storage containers solely containing HMA is not counted toward the facility's oil storage capacity calculation. EPA is taking this action based on the fact that this material is unlikely to flow as a result of the entrained aggregate, such that there would be very few circumstances in which a discharge of HMA would have the potential to reach navigable waters or adjoining shorelines. This is particularly of concern at facilities subject to the SPCC requirements solely because of the presence of HMA. EPA never intended that HMA be included as part of a facility's SPCC Plan.

a. Comments

Several commenters expressed general support for the exemption, and no comments were submitted that opposed the proposed exemption.

b. Response to Comments

EPA agrees with the commenters and is finalizing the exemption for HMA, as proposed.

2. Alternative Options Considered

As an alternate approach, EPA also considered exempting both HMA and AC from the requirements of the SPCC rule, but chose not to propose, nor finalize, such an option. Therefore, this exemption for HMA does not include AC. Although AC is semi-solid or solid at ambient temperature and pressure, it is generally stored at elevated temperatures. At such elevated temperatures, AC has fluid flow properties similar to other semi-solid oils, such as paraffin wax and heavy bunker fuels and therefore is capable of flowing. All of these oils are regulated under the SPCC rule to prevent discharges to navigable waters or adjoining shorelines.

a. Comments

A number of alternative approaches focused on extending the exemption to other similar materials, such as AC, Group 5 oils (that is, those oils with specific gravities greater than or equal to 1.0), waxes and other heavy oils. One commenter suggested extending the exemption to all solid or non-flowing materials, such as whenever oil is mixed with material that will make the mixture unlikely to flow at ambient temperatures: Oil mixed with sorbents, gelled oils, etc. Another commenter suggested extending the exemption to other Group 5 oils. Other commenters suggested extending this exemption to paraffin wax or to all waxes. One commenter requested that EPA clarify that any oils associated with asphalt production be regulated if their total volume exceeds 1,320 U.S. gallons.

b. Response to Comments

The Agency disagrees with these commenters. Unlike HMA, these materials do have the potential to discharge into navigable waters or adjoining shorelines because they are generally stored at elevated temperatures and thus, are capable of flowing if there is a release from the container. No new or compelling data was provided by commenters who disagreed with this position. However, it should be noted that the SPCC rule only applies to facilities that, due to their location, can reasonably be expected to discharge oil to navigable waters or adjoining shorelines. In determining whether there is a reasonable expectation of discharge, an owner or operator of a facility may consider the nature and flow properties of the oils handled at the facility. If a facility owner or operator determines that there is a reasonable expectation of a discharge of oil to navigable waters or adjoining shorelines from any single oil container (including a container storing oil associated with hot-mix asphalt production), and other rule applicability criteria are met, then all oil containers at the facility are subject to the rule's requirements (except as otherwise exempted).

In addition, as EPA noted in the preamble to the proposed rule, the Agency believes that the SPCC rule already provides the facility owner or operator with significant flexibility to select prevention and control measures that are appropriate and cost-effective for the facility and type of product being stored. For example, the secondary containment requirements of the SPCC rule may be satisfied if the secondary containment system, including walls and floor, are capable of containing the oil and are constructed so that any discharge from a primary containment system will not escape secondary containment before cleanup occurs (§ 112.7(c)) and diked areas are sufficiently impervious to contain the oil (§§ 112.8(c)(2) and 112.12(c)(2)). Therefore, the flow properties of Group 5 oils (as for any oil) may be considered in designing appropriate means of secondary containment. If, once cooled, the oil remains in place, an effective means of secondary containment may involve surrounding the bulk storage container with an earthen berm that will contain the oil until it can solidify.

B. Farms

The owner or operator of a farm, by virtue of storing or using oil, is potentially subject to the SPCC requirements. EPA promulgated the definition of farm at § 112.2 in the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), which defined a farm as ''* * * a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, $1,000 or more of agricultural products during a year.'' While the December 2006 amendments streamlined the requirements for most of the farms that are subject to SPCC requirements, EPA believes further amendments to the SPCC regulations are appropriate given the unique characteristics of farms (for example, their geographic scale, configuration, land ownership and lease structure, and on-farm activities). Specifically, EPA recognizes that a farm: May be privately owned and may contain the residence of the owner or operator; has a configuration that varies across the country, from farm to farm and season to season; contains low-volume oil storage that is often dispersed across different land parcels separated by roads and natural barriers; may have multiple fueling sites; may be located in a remote area; stores oil on-site for on-farm use and not for further distribution; uses oil seasonally in different quantities; and leases a significant amount of land to or from secondary parties. EPA is finalizing a number of amendments to the SPCC rule potentially affecting farms and other facilities which were proposed in October 2007 (72 FR 58378, October 15, 2007), including an exemption for pesticide application equipment and related mix containers, and providing clarification on the applicability of the mobile refueler requirements to farm nurse tanks. Additionally farms are likely to benefit

from other amendments finalized in this rule, such as clarifications to the definition of facility; the option to allow a subset of qualified facilities (''Tier I qualified facilities'') to complete the SPCC Plan template in Appendix G of this part in lieu of preparing a full SPCC Plan; exemption of residential heating oil tanks at single family residences; amendments to the security and integrity testing requirements; exemption from the loading/unloading rack requirements; and amendments to the facility diagram requirements.

In addition, EPA extended the compliance date for the owner or operator of a farm, as defined in § 112.2, to prepare or amend and implement the farm's SPCC Plan until the effective date of a rule addressing whether to provide differentiated requirements for farms (71 FR 77266, December 26, 2006). EPA believes that the amendments to the SPCC rule in this action address the concerns raised by the agricultural industry. In a separate action in the **Federal Register** of November 26, 2008, (73 FR 72016), EPA is proposing new dates by which the owner or operator of a farm that is a qualified facility must prepare or amend and implement his SPCC Plan.

1. Exemption for Pesticide Application Equipment and Related Mix Containers

EPA is adding a new paragraph (10) under the general applicability section, § 112.1(d), to exempt all pesticide application equipment and related mix containers. EPA is also modifying § 112.1(d)(2) so that the capacity of these pesticide application equipment and related mix containers is not counted toward the facility's oil storage capacity calculation. Pesticide application equipment includes ground boom applicators, airblast sprayers, and specialty aircraft that are used to apply measured quantities of pesticides to crops and/or soil. Related mix containers are those used to mix pesticides with water and, as needed, adjuvant oils, just prior to loading into application equipment. In the October 2007 (72 FR 58378, October 15, 2007), proposal, EPA proposed to limit this exemption to pesticide application equipment and related mix containers used at farms. In this final rule, however, EPA is extending the exemption to all pesticide application equipment and related mix containers, regardless of ownership or where used, because the application of pesticides through the use of this equipment is the same at any location.

EPA is taking this action consistent with its findings in evaluating the potential harm posed by pesticide containers and application equipment when promulgating the *Standards for Pesticide Containment Structures* in 40 CFR part 165, Subpart E (see 71 FR 47330, August 16, 2006). These regulations apply to retailers who repackage agricultural pesticides, custom blenders of agricultural pesticides, and commercial applicators of agricultural pesticides, but do not apply to pesticide application equipment and related mix containers, because they do not fit the definition of stationary pesticide containers. In the development of the proposed exemption to the SPCC rule (72 FR 58378, October 15, 2007), EPA indicated that pesticide formulations may contain crop oil or adjuvant oil in the mix formulations just prior to application, which could subject certain pesticide containers to the SPCC requirements. This same condition could exist at agricultural retailers that provide custom application services, as well as commercial applicators. At these facilities, pesticide application equipment, such as ground boom sprayers and aerial applicators could be loaded with pesticide mix formulations with crop oil or adjuvant oil. In these instances, similar to on-farm pesticide application equipment, this equipment could have been subject to the SPCC requirements when oil is mixed with the pesticide formulation just prior to use.

Under this amendment, containers (55 U.S. gallons or greater in capacity) storing oil prior to mixing it with a pesticide, or containers used to store pesticides that contain oil, are considered bulk storage containers and continue to be regulated as such under the SPCC rule.

a. Comments

Several commenters expressed general support for the exemption of pesticide application equipment and related mix containers on farms from the SPCC requirements. Other commenters suggested that the exemption should be extended to all users of this equipment, arguing that this would limit the potential for duplicative regulation of pesticides by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the SPCC program. For example, the energy utilities sector requested an exemption for the pesticide application equipment and related mix containers they use to maintain their right-of-way networks and to preserve treated wood poles used in electricity transmission and distribution. One commenter suggested that the Agency exempt pesticide mixtures with low concentrations of oil from SPCC regulation altogether.

b. Response to Comments

EPA evaluated the merits of extending the exemption for all pesticide application equipment and related mix containers at farms to all such equipment, regardless of ownership or where used, based on the fact that this pesticide use, and certain pesticide containers, are already subject to ''similar'' regulation under FIFRA to assure the safe use, reuse, storage, and disposal of pesticide containers. As such, EPA agrees with the commenters that it would be appropriate to extend the exemption to pesticide application equipment and related mix containers, regardless of ownership or point of use.

On the other hand, EPA does not agree that the Agency should exempt pesticide mixtures with low concentrations of oil from SPCC regulation. Pesticide mix formulations, such as those that contain crop oil or adjuvant oil, are potentially subject to the SPCC rule because they are considered oil mixtures. The statutory definition of oil includes oil of any kind and in any form (33 U.S.C. section 1321(a)(1)), and does not exclude oil mixtures. Discharges of oil mixtures to navigable waters or adjoining shorelines may be harmful as set forth in 40 CFR part 110.

2. Applicability of Mobile Refueler Requirements to Farm Nurse Tanks

In the October 2007 notice of proposed rulemaking (72 FR 58378, October 15, 2007), EPA clarified that the definition of mobile refueler, as promulgated in the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), includes a nurse tank, which is a mobile/portable container used at farms to store and transport fuel for transfers to or from farm equipment (such as tractors and combines) to other bulk storage containers (such as containers used to provide fuel to wellhead/relift pumps) at the farm. A nurse tank is often mounted on a trailer for transport around the farm; thus, EPA believes that this function is consistent with that of a mobile refueler. A nurse tank, like other types of mobile refuelers, is exempt from the sized secondary containment requirements at §§ 112.8(c)(2) and 112.12(c)(2), but is still subject to the general secondary containment requirements at § 112.7(c).

a. Comments

Several commenters supported the Agency's clarification that a nurse tank is considered a mobile refueler, and

thus exempt from the sized secondary containment requirements. Some commenters also requested that EPA clarify that the definition of mobile refuelers includes non-road licensed refueling equipment which are used to refuel farm equipment in the fields.

b. Response to Comments

EPA agrees with those commenters supporting the clarification. EPA also understands that agricultural retail suppliers may provide refueling services via non-road licensed equipment to farm equipment in farm fields. As the Agency described in the preamble to the proposed rule (72 FR 58378, October 15, 2007), a nurse fuel tank is typically used at a farm to store and transport fuel to or from farm equipment. Therefore, EPA agrees with commenters that non-road licensed equipment that is used to refuel farm equipment functions as a mobile refueler, similar to a farm fuel nurse tank. Additionally, owners and operators of these nurse tanks may benefit from other amendments in this action regarding the extension of relief from sized secondary containment to all non-transportation-related tank trucks. For example, nurse tanks containing oils other than a fuel such as lubrication or hydraulic oil, would also be eligible.

3. Differentiating the SPCC Requirements for Farms

In developing the amendments in the October 2007 proposed rule, EPA considered and took comment on a number of alternatives for differentiating the SPCC requirements for farms, but are not finalizing them, as discussed below.

a. No Further Action

EPA evaluated whether any further action was necessary specific to farms, including no further action. As described in the proposal (72 FR 58378, October 15, 2007), the Agency proposed amendments based on previous comments from agricultural stakeholders, farm-related site visits conducted by EPA and the August 16, 2006, action concerning pesticide containers (40 CFR part 165, Subpart E, 71 FR 47330). EPA is finalizing those actions; the Agency also is promulgating the following additional amendments to the SPCC regulation that could also benefit farmers: Clarifications to the definition of facility; the option to allow the owners and operators of a subset of qualified facilities (*i.e.*, ''Tier I qualified facilities'') to complete the SPCC Plan template in Appendix G of this part in lieu of preparing a full SPCC Plan; exemption of residential heating oil tanks at single family residences, including at farms; amendments to the security and integrity testing requirements; exemption from the loading/unloading rack requirements; and amendments to the facility diagram requirements.

b. Exempt Farms Below a Certain Storage Capacity Threshold

EPA considered exempting farms that stored oil below a certain oil storage capacity threshold (other than 1,320 U.S. gallons) from the SPCC requirements, but determined that there was insufficient data available to support an exemption exclusive to farms. While farming operations may be unique, the storage tanks found at farms are similar in function and design as those found at other types of facilities, and therefore have a similar potential for discharge. As a result, EPA chose not to propose this option, but did request comment on the merits of this approach.

c. Alternative Qualified Facility Eligibility Criteria for Farms

Under § 112.6, a facility that has an aggregate aboveground storage capacity of 10,000 U.S. gallons or less and has not had a single discharge exceeding 1,000 U.S. gallons or two discharges each exceeding 42 U.S. gallons within any twelve month period in the three years prior to Plan certification, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years is eligible for the qualified facility Plan requirements (*i.e.* a self-certified Plan in lieu of a PE certified Plan). The current criteria for qualified facilities, found at § 112.3(g), treat farms like all other facilities. However, EPA considered whether there are alternative criteria unique to farms that would be appropriate for identifying qualified facilities. In the October 2007 proposed rulemaking, EPA requested comment on (1) whether a change in the criteria is appropriate for farms; and (2) whether a higher threshold is appropriate for farms.

d. Comments

Several commenters recommended that the Agency provide an exemption for farms at a minimum of 10,000 U.S. gallons oil storage capacity, citing a lack of risk at such a volume and/or the potential for cost savings, although no specific data was provided to support this position. Other commenters suggested that EPA adopt a higher threshold, such as a 20,000-gallon threshold, as a criterion for qualified facility eligibility. Specifically, agricultural stakeholders requested that EPA raise the Tier I individual container threshold to 10,000 U.S. gallons and raise the Tier II total oil storage capacity threshold to 20,000 U.S. gallons. These commenters supported this threshold by citing limitations on the lower limit for bulk purchase of oil, the need to maintain empty and/or seasonal-use tanks on a farm, the lack of financial resources to hire environmental managers, the low likelihood of oil spills in the industry, and general environmental stewardship practices inherently in place.

Still other commenters provided additional comments and suggestions related to farms. One commenter requested that EPA remove the qualified facility approach so that all farmers, including small businesses and other small oil storage facilities are required to prepare a complete SPCC Plan certified by a PE based on 1,320-gallon storage capacity. Other commenters requested additional time for farms to comply with the SPCC regulation, stating that this additional time will provide farmers and others the opportunity to work with government agencies, including the U.S. Department of Agriculture (USDA), on the development of a model plan or guidelines. Finally, a commenter sought clarification that oil tanks not in use can be classified as out of service, without the need to remove the tanks from the facility.

e. Response to Comments

EPA continues to believe that there is insufficient data to support an outright exemption exclusively for farms beyond the existing aboveground storage capacity threshold of 1,320 U.S. gallons that applies to all facilities (§ 112.1(d)(2)(ii)). As noted previously, no data was provided by the commenters to support such an exemption. In addition, EPA notes that a significant number of owners and operators of farms will benefit from the amendments finalized in this action and the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006), which allow a significant number of farms to develop self-certified SPCC Plans.

With respect to an alternative ''qualified facility'' threshold, EPA considered the commenters' suggestions for modifying the existing qualified facilities threshold of 10,000 U.S. gallons total aboveground storage capacity. However, the agricultural community did not provide information that would lead the Agency to conclude that farms are sufficiently different to warrant further differentiation from other facilities that store oil. In fact, EPA believes that many non-farm facilities could have similar needs to purchase

fuel in bulk and may have similar if not identical storage needs as identified by agricultural stakeholders. Thus, EPA is not persuaded by these comments to raise the existing qualified facilities threshold solely for farms beyond 10,000 U.S. gallons. In setting the qualified facilities threshold at 10,000 U.S. gallons in the December 2006 amendments, EPA sought to provide an alternative for facilities, among other things, with simple oil storage configurations and smaller quantities of oil handled (see 71 FR 77271, December 26, 2006). EPA continues to maintain that the focus of the qualified facilities alternative should be on simple configurations and small quantities of oil stored or handled.[3]

It should also be noted that, as described in Section V.G of this notice, EPA is finalizing a multi-tiered approach to allow the owner or operator of a facility that meets the eligibility criteria for a qualified facility to self-certify his SPCC Plan, and allow the owners or operators of a subset of qualified facilities (*i.e.*, ''Tier I qualified facilities'') to complete the SPCC Plan template in Appendix G of this part in lieu of preparing a full SPCC Plan. EPA believes that the Tier I qualified facility alternative should focus on facilities with the simplest configurations and smallest oil storage containers. Commenters did not provide sufficient data to support an increase in the Tier I threshold for farms higher than proposed. For more information on Tier I and Tier II qualified facilities, see Section V.G of this notice.

EPA also disagrees that the amendments to the SPCC rule in December 2006 provide ''special treatment'' to any eligible facility. Farmers, small businesses, and other small oil storage facilities may be eligible to self-certify their SPCC Plans if they meet the eligibility criteria for qualified facilities in § 112.3(g). In providing this option for facilities handling smaller amounts of oil, the Agency sought to focus on those smaller, less complex operations that may be concerned about the impact of using a PE on their limited budget. Some of the current noncompliance with the SPCC regulation may be attributed to those concerns. The Agency believes that providing a streamlined option for owners and operators of these smaller, less complex facilities should improve the overall compliance for the SPCC regulation, ultimately resulting in greater environmental protection (71 FR 77270, December 26, 2006). The owners and operators of farms, small businesses and other small oil storage facilities may be eligible to self-certify their SPCC Plans if they meet the eligibility criteria for qualified facilities in § 112.3(g).

EPA defines permanently closed at § 112.2. Any container that meets this definition is not subject to the SPCC regulation and therefore would not be included in the facility's aggregate oil storage capacity. The definition does not require that the permanently closed container be removed from the facility. Similarly, a new, empty tank that arrives at a farm or other SPCC-regulated facility is not to be counted towards a facility's aggregate oil storage capacity until the tank is actually used to contain oil. EPA discusses this clarification further in section V.M of this notice.

In response to the commenters requesting additional time for farms to comply with the SPCC regulation, EPA believes that the amendments to the SPCC rule in this final action address the concerns raised by the agricultural industry. Farmers will benefit from many of the streamlined rule provisions including: Clarifications to the definition of facility; the option to allow the owners and operators of a subset of qualified facilities (*i.e.*, ''Tier I qualified facilities'') to complete the SPCC Plan template in Appendix G of this part in lieu of preparing a full SPCC Plan; exemption of residential heating oil tanks at single family residences, including farmsteads; amendments to the security and integrity testing requirements; exemption from the loading/unloading rack requirements; and amendments to the facility diagram requirements. Furthermore, in a separate action in the **Federal Register** of November 26, 2008, (73 FR 72016), EPA is proposing a new compliance date for the owner or operator of a farm, as defined in § 112.2, that also meets the eligibility criteria as a qualified facility, to prepare or amend and implement the farmer's SPCC Plan.

C. Residential Heating Oil Containers

Many regulated facilities, including farms, may include the residence of the owner or operator within the geographical confines of the facility. EPA did not intend to regulate residential uses of oil (that is, those at non-commercial buildings) under the SPCC rule. Therefore, EPA is exempting residential heating oil containers at single family residences from the SPCC requirements.

1. Exemption for Residential Heating Oil Containers

EPA is adding a new paragraph (9) under the general applicability section, § 112.1(d) to exempt from SPCC applicability containers that are used to store oil for the sole purpose of heating single-family residences (including a residence at a farm). EPA is also modifying § 112.1(d)(2) so that the capacity of the single-family residential heating oil containers are not counted toward facility aggregate oil storage capacity. This action removes from SPCC applicability containers (both aboveground and completely buried) located at a single-family residence that are used solely to store heating oil used to heat the residence. Under this amendment, the owner or operator is not required to count any residential heating oil container as part of the facility's aggregate storage capacity for the purpose of determining SPCC applicability, and no SPCC requirements will apply to the exempt containers. The SPCC requirements continue to apply, however, to oil containers used to heat other non-residential buildings within a facility, because the exemption covers only residential heating oil containers at single family residences.

a. Comments

Several commenters expressed support for the exemption of residential heating oil containers at single family residences from the SPCC requirements. However, some commenters suggested extending the exemption to locations beyond single-family residences. One commenter suggested that EPA exempt buildings and offices located remotely from mining operations. Another commenter suggested the exemption should include heating oil tanks at a facility occupied daily, with storage capacity not exceeding 5,000 gallons, in containers not exceeding 1,000 gallons, because these facilities are regularly occupied, and thus would not pose any more likelihood of a release than a single-family residence. One commenter suggested exempting heating oil storage containers that serve four or fewer households, consistent with the Federal underground storage tank regulations.

b. Response to Comments

EPA agrees with those commenters who supported the exemption, and is finalizing the exemption as proposed, because EPA views a single-family residence as a household that has direct ownership of the oil stored in the heating oil container. The Agency did not intend, by itself, that a single-family

[3] Although the Agency chose not to raise the threshold for farms in identifying who is eligible as a ''qualified facility,'' the Agency estimates that under the current qualified facilities eligibility criteria, greater than 90 percent of farms subject to the SPCC rule could be eligible.

residence that stores heating oil for its use be subject to SPCC applicability, particularly because such residences generally do not have significant quantities of other types of oil. The preamble to the original 1973 SPCC rule (38 FR 34164, December 11, 1973), identified containers of 660 U.S. gallons as the normal domestic code size for non-buried heating oil containers, and that buildings may have two such containers. The storage capacity thresholds for SPCC rule applicability were initially established at 660 U.S. gallons for an individual container and 1,320 U.S. gallons total aboveground capacity for the facility, based on the possible capacity of residential heating oil containers. Thus, the presence of heating oil containers at a single-family residence was generally not intended, by itself, to trigger SPCC applicability. On the other hand, EPA disagrees with those commenters who suggested extending the exemption beyond heating oil containers at single-family residences. Owners and operators of commercial facilities, such as mining operations and commercial multi-family structures (such as condominiums and apartment complexes), will generally store much larger volumes of oil, and if there is a reasonable expectation of an oil discharge to navigable waters or adjoining shorelines, EPA believes it needs to be addressed in the SPCC Plan. Of course, any facility that has an aggregate oil storage capacity of less than 1,320 U.S. gallons in aboveground containers or 42,000 U.S. gallons in completely buried tanks are not subject to the SPCC regulation (see § 112.1(d)(2)). In addition, if a commercial facility (for example, a university) includes a single-family residence on the premises, then any heating oil container associated solely with this residence is exempt from SPCC rule applicability.

2. Alternative Option Considered

EPA invited comments on an exemption only for residential heating oil containers located at farms, because farms commonly include, within the geographical confines of the facility, the residence of the farmer. Under this option, only heating oil containers associated with single-family residences on farms would benefit from an exemption from the SPCC rule.

a. Comments

One commenter supported exempting heating oil storage containers located at a farm facility's single-family residence.

b. Response to Comments

EPA agrees with the commenter that heating oil containers located at a single-family residence at a farm should be exempt from the SPCC rule and is finalizing such an exemption. However, the commenter did not provide any basis to limit the exemption solely to farms. Because EPA believes the same rationale applies to exempt heating oil containers to single-family residences at facilities other than farms, the exemption applies to all single-family residences.

D. Definition of Facility

EPA first defined both ''facility'' and ''production facility'' at § 112.2 in the July 2002 amendments to the SPCC rule (67 FR 47042, July 17, 2002). Under this action, EPA is modifying the definition of facility in three ways: (1) To clarify that this definition alone governs the applicability of 40 CFR part 112; (2) to clarify that containers can be separated or aggregated, based on various factors in defining ''facility''—that is, the owner or operator has discretion in identifying which contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines make up the facility; and (3) to add the qualifier ''oil'' before the term ''waste treatment.''

1. Revisions to the Definition of Facility

EPA is amending the definition of ''facility,'' as found in § 112.2, in the following ways:

- To show that only the definition of ''facility'' rather than the definition of ''production facility'' determines applicability for purposes of part 112, and specifically in § 112.20(f)(1) when applied to an oil production facility, EPA is adding the sentence ''Only this definition governs whether a facility is subject to this part.'' to the definition of facility. This language is consistent with the clarification on the definition of facility published in a May 25, 2004 **Federal Register** notice (69 FR 29728).
- To address concerns over how oil containers and equipment can be separated or aggregated for purposes of determining ''the facility,'' and thus, the applicability of the SPCC requirements to ''the facility,'' EPA is inserting the sentence ''Contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities.'' These revisions allow an owner or operator of a facility to separate or aggregate containers to determine the facility boundaries, based on such factors as ownership or operation of the buildings, structures, containers, and equipment on the site, and activities being conducted, property boundaries, and other relevant considerations. EPA is adding the terms ''property,'' ''parcel,'' and ''lease'' to the list of terms mentioned in the first sentence of the definition. EPA believes that adding these terms further distinguishes the attributes that can be considered in determining facility boundaries. These additions are merely examples of terms that might define a facility and are familiar to the regulated community, such as farmers or oil production facility owners. They are not meant to be exclusive.
- To clarify that the term ''waste treatment'' refers to oil waste treatment and not to treatment of any other type of waste that may be generated, EPA is amending the first sentence of the definition of facility to add the qualifier ''oil'' before the term ''waste treatment.''

a. Comments

Many commenters expressed general support for the proposed amendments. Several commenters stated that these revisions would allow them the ability to prioritize compliance activities in environmentally and economically beneficial ways (for example, being able to plan for potential discharges in areas where they are more likely to occur). Several commenters indicated that certain types of facilities, such as those in the wind power, agriculture, electrical utility, forestry, aviation, and coal mining industries, might be managed by multiple operators, and that dividing a parcel of land into facilities on the basis of these individual operations makes sense.

One commenter, however, objected to the amendment if it would result in a facility being disaggregated into more than one facility, thereby lowering the total oil capacity volume of the 'new' facility to below the regulatory thresholds.

b. Response to Comments

EPA agrees with those commenters who supported this approach. The Agency also agrees with the commenters that the owner or operator has the discretion to determine what constitutes a facility. That is, the rule may become applicable to a facility for the first time in cases of aggregation of buildings, structures or equipment and associated storage or type of activity, or the division of the facility may end applicability due to separation of buildings, structures or equipment and associated oil storage or type of activity. Thus, EPA recognizes that this

amendment may have the effect of removing a facility from being subject to the SPCC requirements. However, an owner or operator may not make facility determinations indiscriminately and in such a manner as to simply avoid applicability of the rule (for example, the division of one facility into separate facilities with one oil storage container located at each facility where all storage containers are located side-by-side or close to each other, and are used for the same purpose). For further information on the definition of facility, *see* Chapter 2 of the *SPCC Guidance for Regional Inspectors.*

2. Determining the Components of a Facility: Examples of Aggregation or Separation

The factors for determining the boundaries of a facility as listed in the definition of facility are not exclusive, but are merely examples. The *SPCC Guidance for Regional Inspectors* elaborates on additional factors that may be considered. Those factors may include, but are not limited to: Ownership, management, or operation of the containers, buildings, structures, equipment, installations, pipes, or pipelines on the site; similarity in functions, operational characteristics, and types of activities occurring at the site; adjacency; or shared drainage pathways. In the October 2007 proposed rule, EPA provided several examples and hypothetical scenarios of how a facility owner or operator may determine what is considered a ''facility'' for the purposes of an SPCC Plan (*see* 72 FR 58387, October 15, 2007).

a. Comments

One commenter stated that, for oil and gas operations, owners and/or operators often combine many leases together. These leases may not be associated with the same oil or gas field, but they are associated with the same operator. The commenter requested assurance that this practice is consistent with the amended definition of facility.

While additional comments did not focus on the specific examples provided, several commenters raised questions about how the modification to the definition of facility may affect various types of facilities. One commenter supported flexibility to prepare single or multiple SPCC Plans for wind power plants, which potentially involve many landowners spread over large areas. One commenter requested clarity that a petroleum refinery owner may determine that refinery operations are a facility and ongoing remediation activities at the same petroleum refinery location can be considered a separate facility. Another commenter from the aviation sector requested that EPA clarify whether a tank at an exempt facility may be subject to regulation by transferring fuel from the tank to a regulated mobile refueler. Several commenters suggested that operators may prepare multi-facility SPCC Plans that combine common elements (such as structures, equipment, inspections, integrity testing, secondary containment designs, and response procedures), while retaining site-specific information; these commenters urge EPA to clarify that using a single Plan for multiple locations does not force facilities to be considered a single facility for FRP purposes.

b. Response to Comments

As described in the hypothetical scenario (72 FR 58387, October 15, 2007), the Agency reiterates that an owner or operator of an oil production facility may aggregate some or all of his leases into one Plan, at his discretion, whether or not they are associated with the same oil or gas field. Thus, this practice is consistent with the amended definition of facility being promulgated by this action.

With respect to the other comments submitted on how the definition of facility may affect various types of facilities, EPA agrees that wind power plants, whether spread over large or small areas and which may involve multiple landowners, may be appropriately defined as single or multiple facilities, depending on the circumstances, at the owner or operator's discretion. Such facilities may be included in single or multiple facility SPCC Plans. EPA also generally agrees with the commenter that a petroleum refinery owner or operator may, at his discretion, decide that remediation activities at an operating petroleum refinery constitute a separate facility. Furthermore, EPA agrees with the commenter that the Agency does not regulate the transfer of fuel at an exempt facility. However, once the fuel is transferred to a regulated container at an otherwise regulated SPCC facility, the transfer activity becomes subject to the SPCC requirements.

Finally, as noted previously, the definition of facility determines the applicability for all purposes under part 112. Thus, once an owner or operator defines the extent of his facility, that definition determines applicability for both SPCC and FRP purposes. The owner or operator may, at his discretion, create a Plan that includes more than one site, and define it as one facility which pertains to both FRP and SPCC applicability. An owner or operator may also combine multiple facilities into a single SPCC Plan, combining common elements, while retaining facility-specific information (a multi-facility Plan). While the Plan may encompass multiple facilities, the applicability of SPCC and FRP requirements is determined by the extent of each individual facility. The amendment to the definition of facility and the clarifications described in this action should not be viewed as a deterrent to the use of multi-facility SPCC Plans, a concern expressed by operators in the oil production sector.

3. Alternative Options Considered

In developing the amendments finalized in this notice, EPA considered alternatives for addressing the definition of facility, including taking no action, and addressing concerns only through guidance. No comments were received on these specific alternative options. EPA also requested comments on other alternatives that could serve to address the needs of the regulated community, while at the same time maintain appropriate levels of environmental protection.

a. Comments

A commenter suggested removing the terms ''* * * property, parcel, lease * * *'' from the definition of facility because the commenter believes these terms complicate and confuse the definition. Another commenter urged EPA to state that the determination of a ''facility'' for the purpose of preparing an SPCC Plan does not preclude the operator from making a different determination of the scope of the facility for the purposes of reporting or planning under any other Federal or state statute. Other commenters recommended that EPA clarify that a lease does not necessarily define a facility. Another commenter also requested that EPA clarify that the definition of facility excludes DOT and U.S. Coast Guard (USCG) components. Still another commenter suggested that EPA codify the litigation settlement language either as rule amendments or an appendix to the rule. Finally, one commenter recommended that EPA give 120 days to a facility owner or operator to resolve any compliance concerns, including a disputed facility determination.

b. Response to Comments

EPA disagrees with the suggested edit to remove the terms ''* * * property, parcel, lease * * *'' from the definition of facility. Unlike the commenter, the

Agency believes that these terms serve as clarifying examples of what may constitute a facility.

EPA agrees that the definition of facility, as defined in § 112.2, applies only for purposes of part 112, and not for purposes of any other Federal or state statute. However, this would not prevent the owner or operator of a facility from defining the facility boundaries in the same way that he defines it to comply with other regulations.

EPA clarifies that a lease may, at the owner or operator's discretion, constitute a facility, but does not necessarily create a facility. According to the definition, contiguous or non-contiguous buildings, properties, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities. The definition further lists several site-specific factors, including, but not limited to, ownership or operation of buildings, structures, and equipment on the same site and types of activity at the site.

Generally, a facility for SPCC purposes excludes components which are not subject to EPA's jurisdiction, but are subject to the jurisdiction of other agencies, such as DOT or USCG. However, EPA and DOT recognize that in certain situations, dual jurisdiction has been applied to certain components of a facility, and that this approach can pose confusion to the regulated community. EPA and DOT thus are currently working to minimize overlapping regulation in accordance with their 1971 MOU regarding agency jurisdiction (36 FR 24080, November 24, 1971) and will publish the results of that effort in the **Federal Register** at a later date. For more information, please refer to the proposed rule **Federal Register** notice (72 FR 58419, October 15, 2007).

EPA believes that this action addresses the facility definition issue in the settlement of the 2002 SPCC rule litigation, because in the amended definition, EPA clarifies that only this definition is used to determine whether a facility is subject to 40 CFR part 112. EPA also has stated in this preamble that the positions that EPA has taken in the July 2002 SPCC rule litigation settlement are still the Agency's existing positions.

Finally, EPA disagrees that owners or operators of SPCC regulated facilities should be given 120 days to address any possible compliance concerns, including but not limited to, differences of opinion on a facility determination. Whether or not a total or partial Plan is needed, or whether an existing SPCC Plan should be amended is a compliance issue, subject to the provisions of § 112.1(f) or § 112.4(e) and (f). Both of these sections provide adequate time for appeal from an initial decision of the Regional Administrator to the Administrator. Therefore, a period of 120 days is not included in this final rule to allow the owner or operator to resolve compliance issues.

E. Facility Diagram

Section 112.7(a)(3) of the SPCC rule requires that a facility owner or operator include in his SPCC Plan a facility diagram that identifies the location and contents of oil containers, connecting piping, and transfer stations. EPA is amending the SPCC rule to provide additional flexibility to the requirement that the facility diagram include the location and contents of each container.

EPA is also requiring that certain containers and piping, exempted from SPCC requirements in this action, be identified on the facility diagram and marked as ''exempt.'' This includes intra-facility gathering lines subject to the requirements of 49 CFR part 192 or 195 as described in § 112.1(d)(11); and any produced water container, as defined in § 112.2, that meets the requirements at § 112.9(c)(6)(i) as described in § 112.1(d)(12). This will assist facility and EPA personnel in defining the jurisdictional boundaries at the facility and provide emergency response personnel with information that can be used to identify hazards during a spill response activity. EPA has not required that all containers exempted from the rule be marked on the facility diagram because in many cases it would be burdensome. For example, the mobility of motive power containers and mobile/portable containers with a capacity of less than 55 U.S. gallons would make them difficult to track on a facility diagram. For more information on these exemptions, see sections V.L and V.M of this preamble.

1. Revision to the Facility Diagram Requirement Regarding Mobile or Portable Containers

EPA is amending § 112.7(a)(3) to clarify that the facility diagram must include all fixed (that is, not mobile or portable) containers. For any mobile or portable containers (such as drums or totes), a facility owner or operator must mark the area of the facility on the diagram where such containers are stored. The facility owner or operator may mark the number of containers, contents and capacity of each container either on the facility diagram, or provide a separate description in the SPCC Plan. If the total number of mobile or portable containers changes, the owner or operator can include an estimate in the Plan of the number of containers, the anticipated contents, and capacities of the mobile or portable containers maintained at the facility.

EPA believes that the revision to the facility diagram requirements for mobile or portable containers will simplify the process for developing a facility diagram by allowing for a general description of both the area of the facility where they are located and of their contents, rather than representing each container individually.

a. Comments

Many commenters expressed general support for the amendments, while one commenter opposed the amendment because of increased cost estimates for facility diagram preparation. Several other commenters requested that EPA clarify, via rule language, which containers are considered mobile or portable (such as 55-gallon drums, intermodal bulk containers, mobile/portable maintenance tanks, and other small containers put into place and later moved). Other commenters suggested that EPA require only mobile or portable storage container locations that are ''fixed,'' ''permanent,'' or ''dedicated'' be included in the diagram. These commenters assert that internal facility tracking of these containers is sufficient for planning and emergency response purposes, that single drums are not reasonable to track on a diagram, and that their inclusion on the diagram does not provide increased environmental protection.

Several additional approaches were suggested by commenters. One commenter suggested that EPA allow facility operators to use ''range reporting'' for the number of containers and their quantities that may be in use at the facility. One commenter recommended allowing the use of an administrative alternative, such as a computerized tracking system, to provide real-time information on the quantity, type, location, and person responsible for mobile/portable containers. One other commenter suggested that § 112.5 should be amended to specify other examples of Plan changes that do not require re-certification. Finally, one commenter supported the use of facility diagrams for SPCC Plans that have already been prepared for other programs.

b. Response to Comments

The Agency agrees with those commenters that support the proposal,

and believes that clarification and simplification of these requirements will reduce costs and facilitate compliance. Thus, EPA disagrees with the commenter who argued, without any supporting data, that the facility diagram amendments would increase the cost of preparing a facility diagram. In addition, the Agency does not believe that it needs to clarify, via rule language, which containers are considered mobile or portable. The Agency has already provided examples of mobile/portable containers in *Section 4.4.4: Secondary Containment Requirements for Mobile/Portable Containers of the SPCC Guidance for Regional Inspectors* (for example, 55 gallon drums, skid tanks, totes, and intermodal bulk containers). Some oil refinery tank trucks and fueling trucks dedicated to a particular facility (such as a construction site, military base, or similar large facility) may fall under this category.

The Agency also disagrees with those commenters regarding the need to include on the facility diagram only those mobile or portable container locations that are ''fixed,'' ''permanent,'' or ''dedicated.'' The Agency believes and clearly stated in preamble to the proposed rule (72 FR 58378, October 15, 2007) that mobile or portable containers should be marked on the facility diagram in their out-of-service or designated storage area, primary storage areas, or areas where they are most frequently located, and believes that the final rule language accomplishes this purpose.

The Agency agrees with the comments supporting the flexibility of reporting an area on the facility diagram (such as a drum storage area) for these containers, as well as providing reasonable estimates (including ranges) for the potential number of mobile or portable containers, types of oil, and anticipated capacities in the SPCC Plan. The Agency believes that these estimates can be effectively used to determine the applicability of the rule thresholds and provide a general description of the mobile/portable containers in the Plan; this clarification may be particularly useful when the number of containers change frequently at the facility.

While the idea of an internal computerized tracking system, utilizing container bar codes to provide real-time information on the quantity, type, location, and person responsible for oil containers of 55 U.S. gallons or greater may suit some facilities, the Agency does not believe it can reasonably require such a system for all SPCC-regulated facilities. However, EPA believes that the amendments allow a facility owner or operator to implement such a system to assist in their tracking of mobile or portable containers, and to use it to meet the SPCC Plan requirement for these types of containers, if desired.

Also, the Agency does not believe it needs to expand the list of examples of compliance activities that do not require PE certification, as including every potential scenario is unreasonable. Owners or operators can refer to the existing list of changes that may require PE certification in § 112.5 and to the *SPCC Guidance for Regional Inspectors*.

Finally, the Agency does not require that a facility diagram be developed exclusively for the SPCC Plan, and does not agree that it needs to amend the rule language to allow for this. A facility diagram prepared for a state or Federal plan (including the FRP requirements under § 112.20) or for other purposes (for example, construction permits, facility modifications, or other pollution prevention requirements) may be used in an SPCC Plan if it meets the requirements of the SPCC rule (for example, it includes the contents and capacities of containers; transfer areas; and piping). Thus, EPA believes that the existing regulations allow for a facility diagram developed for other programs to be used, which not only facilitates compliance with this requirement, but also reduces the cost of diagram preparation.

2. Indicating Complicated Areas of Piping or Oil-Filled Equipment on a Facility Diagram

A facility diagram must also include all transfer stations and connecting pipes (§ 112.7(a)(3)). Associated piping and oil-filled manufacturing equipment present at an SPCC-regulated facility may be difficult to clearly present on a facility diagram, due to their relative location, complexity, or design. Therefore, in the October 2007 proposal (72 FR 58378, October 15, 2007), EPA requested comment on whether a rule revision is appropriate to provide further clarification on how complicated areas of piping or oil-filled equipment may be indicated on the facility diagram.

EPA believes that the *SPCC Guidance for Regional Inspectors* adequately addresses the flexibility inherent in the existing SPCC rule related to indicating these areas on a facility diagram, and that no additional rule amendment is necessary.

a. Comments

Several commenters expressed general support for an amendment to the regulations to provide further clarification on how piping or oil-filled equipment can be addressed on the facility diagram. These commenters noted the difficulties associated with including oil-filled equipment or piping detail on a diagram, and requested that EPA offer other options. Suggestions included a table identifying the oil-filled equipment and associated storage capacities; flow charts; piping inventories; summary statements; drawings; PE-required details; electrical one-line diagrams; and other means. One commenter suggested that the clarifications on flexibility provided in the *SPCC Guidance for Regional Inspectors* on the way the facility diagram can be drawn should be made part of the rule itself.

Another commenter stated that oil-filled equipment located in buildings with multiple floors, or in process areas with numerous other pieces of equipment, should not be required to be shown in the facility diagram, because including such detail is impractical for a complex site (such as a petroleum refinery or chemical plant). The commenter recommended that EPA limit the diagram requirements exclusively to fixed bulk oil storage containers. Other commenters expressed difficulties with depicting complex hydraulic and lubricant tubing; older equipment attributes; and indoor and/or outdoor piping (particularly at older facilities) that pose no risk of discharge to navigable waters or adjoining shorelines.

b. Response to Comments

The Agency interprets the requirement at § 112.7(a)(3) to allow an owner or operator of a facility to represent such systems in a less detailed manner on the facility diagram in the SPCC Plan, as long as the information is contained in more detailed diagrams of the systems or is contained in some other form and such information is maintained elsewhere at the facility and this location is referenced in the SPCC Plan. The *SPCC Guidance for Regional Inspectors* describes the Agency's interpretation of the requirements for a facility diagram that allow an owner or operator to determine the scale and level of detail shown on a facility diagram according to the needs and complexity of the facility. Thus, the Agency agrees with those commenters who believe that the guidance adequately addresses the flexibility for complying with these requirements. The guidance document illustrates how the current regulatory requirement allows flexibility in the way the facility diagram is drawn to include complex

designs of oil-filled equipment or pipelines. As noted in the guidance document, schematic representations that provide a general overview of the piping service (for example, supply/return) may provide sufficient information when combined with a description of the piping in the SPCC Plan. Alternatively, overlay diagrams showing different portions of the piping system may be used where the density and/or complexity of the piping system would make a single diagram difficult to read. For areas of complicated piping, which often include different types, numbers, and lengths of pipes, the facility diagram may show a simplified box labeled ''piping'' or show a single line that identifies the service (for example, supply/return), as long as more detailed diagrams are available elsewhere at the facility. Therefore, because the existing regulations already provide adequate flexibility, which is further described in the *SPCC Guidance for Regional Inspectors*, and because the Agency believes that amending the regulatory text will not provide any greater clarity, EPA has decided not to provide further amendment to the rule.

F. Loading/Unloading Racks

Tank car and tank truck loading/unloading racks are subject to specific requirements in § 112.7(h), including sized secondary containment. EPA is finalizing a definition for the term ''loading/unloading rack,'' which governs whether a facility is subject to § 112.7(h). Under this amendment, the requirements described at § 112.7(h) only apply to areas of a regulated facility where a loading/unloading rack, as defined in § 112.2, is located.

A loading/unloading rack can be located at any type of facility; however, the loading and unloading areas associated with oil production tank batteries and farms generally do not have the equipment described in the definition of loading/unloading rack finalized in this action. Therefore, EPA is specifically excluding oil production facilities and farms from the requirements at § 112.7(h).

1. Loading/Unloading Rack Definition

EPA is finalizing the following definition for ''loading/unloading rack'' under § 112.2: ''*Loading/unloading rack* means a fixed structure (such as a platform, gangway) necessary for loading or unloading a tank truck or tank car, which is located at a facility subject to the requirements of this part. A loading/unloading rack includes a loading or unloading arm and may include any combination of the following: Piping assemblages, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices.'' This definition is a slightly modified version of the definition proposed in October 2007. In developing the proposed definition, EPA reviewed information from a number of different sources and reviewed various types of equipment considered components of loading racks (*see* 72 FR 58378, October 15, 2007). The Agency sought comment on the proposed definition of ''loading/unloading rack'' and requested suggestions on any other definitions for ''loading/unloading rack'' that would be more suitable. EPA also requested a description of a ''loading/unloading arm.''

a. Comments

Many commenters expressed general support for the proposed definition of loading/unloading rack. However, other commenters opposed the proposed definition, suggesting that it is too broad and consequently includes many loading/unloading areas or equipment that would not normally be components of ''racks,'' such as storage containers equipped with safety platforms, piping assemblages, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices. One commenter expressed concern that the proposed definition of loading rack could include a facility ''where filling/emptying is accomplished by direct connection to the same tanks.'' Another commenter expressed concern that, by not defining ''loading arm,'' EPA might inadvertently cause hoses used at loading racks to be identified as loading/unloading arms. Still another commenter stated that, in the state of Alaska, many rural facilities do not have a gangway and a fixed loading arm, so the proposed definition would leave these facilities not subject to § 112.7(h).

Several commenters emphasized that a loading arm is an essential component of a loading/unloading rack, and that EPA's definition should be modified to reflect this fact. A commenter recommended that accessories, such as piping assemblages, valves, pumps, shut-off devices, overfill sensors, personnel safety devices be deleted from the definition, as these may or may not be a part of the rack, and one or more of these devices (for example, overfill sensors) are typically present on most tanks. The commenter also recommended that the definition of loading/unloading rack be narrowed to cover only permanently installed platforms, gangways or loading/unloading arms used in the loading or unloading of tack trucks or tank cars.

Other commenters requested that EPA more clearly define the components, such as platforms, gangways, and loading/unloading arms, and confirm that flexible hoses used at a loading/unloading rack should not be considered loading/unloading arms. Two commenters provided a suggested definition for ''loading/unloading arm.'' Specifically, these commenters suggested that ''loading/unloading arm'' be defined as ''consisting of at least two articulated parts that are connected in such a way that relative movement is feasible to transfer product via top or bottom loading/unloading to a transportation vehicle.''

One commenter suggested that the definition of loading/unloading rack be changed to identify examples of what are not loading racks (i.e., a nozzled connection to a tank, connection consisting of a flexible hose, a single connection with a valve, or a loading structure that is not overhead). This commenter also requested that EPA remove references to ''unloading'' from the definition.

Two commenters suggested a definition involving a throughput threshold for an area to be considered a loading rack (for example, limiting ''racks'' to those loading/unloading facilities with an annual average of 100 trucks, on a five-year rolling average; a throughput threshold of 800,000 gallons per month, based on the relatively low likelihood of a spill when petroleum product is transferred only occasionally). Another commenter suggested that EPA narrow the definition of loading/unloading racks by associating the definition with the flow-rate capacities of the associated pump systems, and clarify that loading/unloading racks are not typically associated with oil-filled operating equipment.

One commenter suggested that small tank transfers—that is, using a small transfer hose to fill a shop-built tank, and therefore having the potential of only a small release—should be viewed as a loading area and be subject to § 112.7(c), whereas large tank transfers—that is, using a larger hose equipped with a hose coupler and a stationary pump to transfer product at a rate greater than 50 gallons per minute, with the consequent likelihood of a larger release—should be viewed as a loading rack and be subject to § 112.7(h). Another commenter suggested a definition that would require loading/unloading racks to be used only for transportation-related tank trucks, rail cars, or vessels, not intra-facility vehicles.

Finally, one commenter suggested that EPA clarify that the requirement applies only to tank cars or tank trucks located within the loading/unloading rack and not to tank cars or trucks waiting to enter the loading/unloading rack.

b. Response to Comments

EPA agrees that the proposed definition of ''loading/unloading rack'' should be refined to provide clarity and address the concerns about the scope of the definition. Therefore, EPA has modified the proposed definition to provide more clarity by addressing concerns that a loading/unloading arm is an essential component of a loading rack, while describing other components that may be found at a loading or unloading rack.

The Agency does not intend this definition to include simple loading or unloading configurations, but rather to only include the associated equipment and structure associated with loading/unloading arms as part of a rack. Equipment present at a loading/unloading area where a pipe stand connects to a tank car or tank truck via a flexible hose, which is not equipped with a loading or unloading arm, is not considered a loading/unloading rack as defined in this action. However, the presence of flexible hoses on oil transfer equipment does not always indicate that the equipment is exempt from the definition of loading/unloading rack, as some top and bottom loading/unloading racks are made up of a combination of steel loading arms connected by flexible hosing.

EPA believes that providing the list of equipment usually associated with a loading/unloading rack in the definition will be useful for the owner or operator and the PE in determining the applicability of the rule requirements at § 112.7(h) to the facility. The Agency agrees with commenters that the key to the definition is the presence of a loading or unloading arm in association with a permanent structure and other equipment. Thus, the Agency has added the phrase ''a loading/unloading rack includes a loading or unloading arm'' in the definition to illustrate this point.

A definition for ''loading/unloading arm'' was not proposed. However, EPA understands, consistent with comments, that a loading/unloading arm is typically a movable piping assembly that may include fixed piping or a combination of fixed and flexible piping, typically with at least one swivel joint (that is, at least two articulated parts that are connected in such a way that relative movement is feasible to transfer product via top or bottom loading/unloading to a tank truck or rail car). However, certain loading/unloading arm configurations present at loading racks may include a loading/unloading arm that is a combination of flexible piping (hoses) and rigid piping without a swivel joint. In this case, a swivel joint is not present on the loading arm because flexible piping is attached directly to the rigid piping of the loading arm and the flexible hose provides the movement needed to conduct loading or unloading operations in lieu of the swivel joint.

Commenters raised concerns that, because of the new loading/unloading rack definition, many transfer operations (particularly those at rural facilities with no gangways or fixed loading arms) will not be regulated under the SPCC rule. The Agency disagrees with this assertion. Although the Agency intends the definition of loading/unloading rack to clearly delineate those facilities subject to the § 112.7(h) regulatory requirements (such as sized secondary containment), any otherwise regulated SPCC facility will still be subject to the general secondary containment requirements under § 112.7(c) for all areas where oil is transferred into or out of any regulated container.

EPA received several alternatives to the definition of loading/unloading rack contained in the October 2007 proposal. EPA considered these alternative definitions in developing the definition for loading/unloading rack promulgated in this notice. Specifically, several commenters recommended that the definition of loading/unloading rack be based on throughput, offering various throughput numbers as a method of defining transfer operations that would be subject to the § 112.7(h) requirements. However, these suggestions included limited supporting data. The complexity in determining a rack's throughput for a given time period would add additional burden on the owner and operator of a facility. Furthermore, there is no basis for deciding on a specific time period for this determination. Thus, EPA is not basing its definition of loading/unloading rack on a rack's throughput. Other commenters suggested that the definition provide examples only of equipment that should not be considered a loading or unloading rack. The Agency believes that it is much clearer to define the equipment typically associated with a loading or unloading rack than to provide a list of equipment that are not considered a loading or unloading rack. Most of the suggested definitions, however, focused on the presence of a loading arm as indicative of a loading or unloading rack. Many of the definitions focused on the presence of a structure and a list of related equipment. EPA agrees with many of the concepts illustrated in the alternative definitions received from commenters. Thus, EPA is finalizing an equipment-based definition, as proposed, as a clearer method for identifying transfer activities subject to the requirements of § 112.7(h).

Commenters suggested that EPA delete reference to the accessories, such as piping assemblages, valves, pumps, shut-off devices, overfill sensors, and personnel safety devices from the definition, as these may or may not be a part of the rack, and one or more of these devices (such as overfill sensors) are typically present on most tanks. The definition is not intended to address oil containers (such as tanks); the list of equipment specifically addresses equipment associated with loading/unloading rack structures. EPA believes that providing examples of equipment usually associated with loading/unloading racks would be useful for the owner or operator of a facility, as well as the PE, for determining the applicability of the definition.

EPA also is clarifying in this notice that tank cars and tank trucks are only subject to the requirements of § 112.7(h) when conducting loading or unloading operations associated with a loading/unloading rack as defined in this action. Otherwise, they are subject to the general secondary containment requirements at § 112.7(c). In addition, the definition finalized in this action typically will not include oil-filled equipment; however, transfers associated with oil-filled operational equipment where a rack is not present are still required to meet the general containment requirements of § 112.7(c).

2. Requirements for Loading/Unloading Racks

Although the title of § 112.7(h) refers to ''loading/unloading rack,'' the text of the requirement referred to ''loading/unloading areas.'' Therefore, to provide additional clarity, EPA is changing all references from loading/unloading ''area'' to loading/unloading ''rack.'' For example, § 112.7(h)(1) is modified as follows: ''Where loading/unloading rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading/unloading racks. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.'' Section 112.7(h)(2) is similarly

modified and includes a technical correction of the word ''break'' to ''brake'' to correct a typographical error.

In the preamble to the July 2002 amendments to the SPCC rule (67 FR 47042, July 17, 2002), EPA stated that § 112.7(h) ''applies to containers which are aboveground (including partially buried tanks, bunkered tanks, or vaulted tanks) or completely buried (except those exempted by this rule)'' (67 FR 47110, July 17, 2002). Thus, this statement seems to indicate that § 112.7(h) does not apply to a loading/unloading rack (or any other transfer area) associated with a container that is exempted from the rule, such as an Underground Storage Tanks (USTs) that are subject to all of the technical requirements of 40 CFR part 280 or a state program approved under part 281. As described in the October 2007 proposal (72 FR 58378, October 15, 2007), EPA has reconsidered this position because a transfer to or from such a container at an SPCC-regulated facility is a potential source of discharge of oil into navigable waters or adjoining shorelines. Additionally, because a loading/unloading rack, or other transfer area, associated with an UST is not typically part of the UST system, it is not subject to all of the technical requirements of 40 CFR part 280 or 281. Therefore, EPA believes that such a loading/unloading rack should be regulated under the SPCC regulations in the same manner as any other transfer equipment or transfer activity located at an otherwise regulated SPCC facility.

a. Comments

Two commenters expressed general support for the amendments to § 112.7(h). However, one commenter suggested exempting loading/unloading activity from SPCC regulation, because standard industry practice is to place the connection valve inside a secondary containment area during loading/unloading. Other commenters suggested that EPA eliminate the sized secondary containment requirements for loading/unloading racks. Another commenter requested that EPA codify the settlement language regarding loading/unloading rack (*American Petroleum Institute* v. *Leavitt*, No. 1:02CV02247 PLF and *Marathon Oil Co.* v. *Leavitt, No.* 1:02CV02254 PLF). One other commenter suggested revised text for § 112.7(h) focusing on special control measures for portions of the facility with a higher likelihood of a discharge as described in § 112.1(b) (such as transfer areas where containers are frequently open for filling, or where couplings are frequently connected and disconnected from containers).

With regard to EPA's reconsideration of the applicability of § 112.7(h) to a loading/unloading rack associated with a container that is exempted from the rule, such as USTs that are subject to all of the technical requirements of 40 CFR part 280 or a state program approved under 40 CFR part 281, a commenter disagreed and stated that the provisions associated with 40 CFR 280.30(a) address spill prevention.

b. Response to Comments

EPA did not propose: (1) To exempt (nor does the Agency agree that the final rule should exempt) loading or unloading activities conducted at loading/unloading racks from the SPCC rule or (2) that such loading/unloading racks be exempted from the sized secondary containment requirements. Although the industry practices described by the commenter may be used to meet the rule requirements that exist for loading and unloading activities, these do not provide adequate justification to exempt this equipment from the SPCC regulation.

Commenters also requested that EPA codify the settlement language on this issue. EPA has not done this; however, the modification to change the word ''area'' to ''rack'' in § 112.7(h) is consistent with EPA's notice in the **Federal Register** in May 2004, which noted that § 112.7(h) only applies at facilities with loading and unloading ''racks'' (69 FR 29728, May 25, 2004). EPA also maintains its position, as clarified in a letter to the Petroleum Marketers Association of America (PMAA), that loading and unloading activities that take place beyond the rack area are not subject to the requirements of § 112.7(h), but are subject, where applicable, to the general secondary containment requirements of § 112.7(c) (Letter to Daniel Gilligan, President, Petroleum Marketers Association of America, from Marianne Lamont Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA, May 25, 2004 and 69 FR 29728, May 25, 2004).

EPA also does not agree with the commenter who suggested that further revisions be made to the rule requirements at § 112.7(h) to address special control measures for portions of the facility with a higher likelihood of a discharge as described in § 112.1(b). The Agency believes the current requirements are appropriate to address a discharge at the loading/unloading rack. The clarifications to the language in § 112.7(h) finalized in this action address the questions that have been raised by the regulated community on how these rule provisions apply to loading/unloading racks and do not apply to areas beyond the ''rack.''

Finally, one commenter stated that the provisions associated with 40 CFR 280.30(a) address spill prevention and thus, the requirements for loading/unloading racks should not apply to exempt USTs. While EPA recognizes that this provision (40 CFR 280.30(a)) describes spill and overfill control requirements when USTs are being filled, EPA still believes that the loading/unloading requirements should apply to these exempted USTs, for the reasons described earlier. However, EPA would note that to the extent that 40 CFR 280.30(a) addresses SPCC requirements, these measures can be described in the SPCC Plan, as appropriate. Therefore, transfers at loading/unloading racks and transfer areas associated with exempted USTs are considered regulated activities at an otherwise regulated SPCC facility. In addition, exempted USTs, at an otherwise regulated SPCC facility, equipped with a loading/unloading rack as defined in this action, are subject to the requirements of § 112.7(h). Also, exempted USTs, at an otherwise regulated SPCC facility, equipped with a transfer area (for example, dispenser or other transfer equipment) are subject to the requirements of § 112.7(c). Non-rack transfer areas are required to provide only general secondary containment for the most likely discharge, as discussed in Section V.H in this action, and may include active containment measures, such as response action or sorbent deployment. This interpretation is consistent with the approach EPA has taken with other exempt containers at an otherwise regulated SPCC facility. For example, in the preamble to the December 2006 amendments, EPA noted that although the amendment provided an exemption for motive power containers, the oil transfer activities to or from motive power containers occurring within an SPCC-regulated facility continue to be regulated (71 FR 77283, December 26, 2006). Consistent with the preamble to the December 2006 amendments, the Agency is therefore clarifying that at an SPCC-regulated facility, § 112.7(h) (including the sized secondary containment provision) applies to transfers at any loading/unloading rack associated with any type of container, including one that is exempted from the rule, as long as the loading/unloading rack meets the definition finalized in this notice. A transfer not associated with a loading or unloading rack is subject to the general secondary containment provision at § 112.7(c). No

rule change is needed to clarify this point, because a rule amendment to exempt a loading/unloading rack associated with an UST was never proposed or finalized. This clarification is intended to correct preamble language that was inconsistent with the Agency's position on other exempt containers and their associated transfer activities.

3. Exclusions

EPA is specifically excluding onshore oil production facilities and farms from the loading/unloading rack requirements at § 112.7(h) because the Agency and commenters alike believe that loading and unloading racks are not typically associated with these types of facilities. EPA is exempting these facilities from the requirements of § 112.7(h) for clarity in order to avoid confusion for owners or operators of oil production facilities or farms. At other facilities that likewise do not have a loading/unloading rack, the provisions at § 112.7(h) similarly do not apply.

Oil transfer areas, such as loading/unloading areas at farms and oil production facilities that are subject to the SPCC rule, nevertheless remain subject to the general secondary containment requirements of § 112.7(c). As EPA states in the *SPCC Guidance for Regional Inspectors*, ''Areas where oil is transferred but no loading or unloading rack is present are subject to § 112.7(c), and thus appropriate containment and/or diversionary structures are required. EPA does not require specifically sized containment for transfer areas; however, containment size must be based on good engineering practice.''

a. Comments

Several commenters expressed general support for the exclusions. In addition, one commenter requested that EPA also exclude agricultural retailers from § 112.7(h) because they are already subject to FIFRA regulations.

b. Response to Comments

The Agency agrees that it is appropriate to exclude onshore oil production facilities and farms from the loading/unloading rack requirements at § 112.7(h). Commenters confirmed EPA's understanding that there are few, if any, loading/unloading racks at oil production facilities, and that agricultural oil and fuel transfers at farms are generally not associated with loading/unloading racks. However, if an agricultural retail facility conducts fuel transfers with equipment that meets the definition of a loading/unloading rack, then this facility would be subject to the loading/unloading rack requirements at § 112.7(h). The Agency disagrees with the commenter who requested that agricultural retailers also be excluded for the loading/unloading requirements of § 112.7(h), because the FIFRA requirements do not provide spill prevention requirements at a level equivalent to the SPCC rule.

4. Alternative Option Considered

EPA considered not providing any amendments to the SPCC rule related to loading/unloading racks. Under this approach, EPA would not provide a regulatory definition for loading/unloading rack or an exclusion for farms and onshore oil production facilities from the loading/unloading rack requirements at § 112.7(h), but would instead continue to follow the interpretation of loading/unloading rack, as stated in the *SPCC Guidance for Regional Inspectors* and the May 2004 **Federal Register** notice. However, EPA did not choose this approach because the Agency believes it was important to address some of the confusion and questions raised by the regulated community.

a. Comments

Several commenters indicated that no rule change is necessary.

b. Response to Comments

As noted above, EPA disagrees with the commenters and has finalized the new definition and associated editorial changes to the rule to provide additional clarity in describing the type of equipment and facilities subject to the loading/unloading rack requirements under § 112.7(h).

G. Tier I Qualified Facilities

In December 2006, EPA finalized an amendment to the SPCC rule to allow the owner or operator of a qualified facility to self-certify his SPCC Plan. The Agency is amending the SPCC rule to provide an additional option for the owners and operators of a subset of qualified facilities that meet an additional criterion to complete and implement a streamlined, self-certified SPCC Plan template (promulgated as Appendix G to 40 CFR part 112), in order to comply with the requirements of the SPCC rule. For clarity, EPA is now using the term ''Tier II qualified facility'' to describe those qualified facilities as identified by and subject to the requirements promulgated in the December 2006 SPCC rulemaking (71 FR 77266, December 26, 2006) and the term ''Tier I qualified facility'' for a new subset of these qualified facilities. To qualify as a Tier I qualified facility in addition to meeting the eligibility criteria for a Tier II qualified facility, a facility must also have no individual aboveground oil storage containers with a capacity greater than 5,000 U.S. gallons.

A Tier II qualified facility is one that meets the criteria described in the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006): a facility that has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less; and has had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b), each exceeding 42 U.S. gallons within any twelve-month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years (this criterion does not include discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism). EPA is now further streamlining the SPCC requirements for certain qualified facilities that meet an additional criterion.

The following table illustrates the tiers, criteria, and options for qualified facilities and all others as described in this notice:

Qualified facilities*		All other facilities
Tier I	Tier II	
10,000 U.S. gallons or less aggregate aboveground oil storage capacity; and		More than 10,000 U.S. gallons aggregate aboveground oil storage capacity, or

Qualified facilities*		All other facilities
Tier I	Tier II	
Within any twelve-month period, three years prior to the Plan certification date, or since becoming subject to the SPCC rule if in operation for less than three years, there has been: (1) No single discharge of oil to navigable waters or adjoining shorelines exceeding 1,000 U.S. gallons; and (2) No two discharges of oil to navigable waters or adjoining shorelines each exceeding 42 U.S. gallons**; and		Within any twelve-month period, three years prior to the Plan certification date, or since becoming subject to the SPCC rule if in operation for less than three years, there has been: (1) A single discharge of oil to navigable waters or adjoining shorelines exceeding 1,000 U.S. gallons; or (2) Two discharges of oil to navigable waters or adjoining shorelines each exceeding 42 U.S. gallons**; or
No individual aboveground oil containers greater than 5,000 U.S. gallons;	Has individual aboveground oil containers greater than 5,000 U.S. gallons; or Owner or operator eligible for Tier I qualified facility status, but decides not to take the option or chooses to develop a ''hybrid'' Plan;	Owner or operator eligible for qualified facility status, but decides not to take the option;
Then: Complete and self-certify Plan template (Appendix G to 40 CFR part 112) in lieu of a full PE-certified Plan.	Then: Prepare self-certified Plan in accordance with all applicable requirements of § 112.7 and subparts B and C of the rule, in lieu of a PE-certified Plan.	Then: Prepare PE-certified Plan in accordance with all applicable requirements of § 112.7 and subparts B and C.

* *See* Section V.M of this notice for more information on qualified facility eligibility criteria specific to the oil production sector.

** This criterion does not include discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism. Additionally, the gallon amount described in this criterion addresses the amount of the discharge that actually reaches navigable waters or adjoining shorelines.

1. Eligibility Criteria

As proposed in October 2007, a Tier I qualified facility must meet all of the eligibility criteria for qualified facilities promulgated by EPA in December 2006 (71 FR 77266, December 26, 2006) with an additional criterion: A maximum individual aboveground oil storage container capacity of 5,000 U.S. gallons. EPA developed the Tier I category based on an individual container capacity in order to link any streamlined requirements with a reduced potential for oil discharge. That is, the maximum individual aboveground container capacity threshold is set at 5,000 U.S. gallons because this volume is consistent with industry consensus standards that call for varying levels of stringency based on container size and configuration. For example, the Steel Tank Institute's SP001, *Standard for the Inspection of Aboveground Storage Tanks* allows for periodic visual inspection alone, with no requirement for the inspector to be professionally certified, for containers of 5,000 U.S. gallons or less that are equipped with a spill control measure and a continuous release detection method. Furthermore, a facility with smaller storage containers often has less complicated operations, is typically an end-user of oil (does not distribute the oil further), is involved in few oil transfers, and may have predominantly mobile or portable containers with a few low-capacity fixed oil storage containers. Smaller containers have a smaller potential maximum discharge size, and there may be little or no piping associated with these small containers.

a. Comments

Several commenters expressed general support for the eligibility criterion. However, some commenters suggested increasing the container capacity eligibility criterion to 10,000 gallons, while other commenters suggested various other capacity thresholds. Several commenters expressed support for a three-tiered approach to the eligibility criteria for qualified facilities, with the use of a PE only in cases where the tank capacity is above 20,000 gallons.

One commenter recommended that criteria be introduced that take into consideration a facility's proximity to environmentally sensitive area(s) either by distance or some other logical means. Another commenter suggested using actual oil storage volumes rather than capacity to determine eligibility. Still another commenter suggested that AFVOs that would solidify without heating be excluded from the 5,000 U.S. gallon maximum individual container capacity.

One other commenter requested that EPA confirm that oil-filled operational equipment is eligible for Tier I status. The commenter noted concern that the definition of Tier I qualified facility in § 112.3(g)(1) may cause confusion about whether facilities with oil-filled operational equipment are eligible for the Tier I alternative, and whether the 5,000 gallon cap applies to oil-filled equipment.

Several commenters provided alternative suggestions to the eligibility criteria for both tiers of qualified facilities. One commenter suggested that the criterion for discharge history should be more stringent and require that any discharge during the three-year period prior to the Plan certification date disqualify a facility from the self-certification option as either a Tier I or Tier II qualified facility. The discharge history criterion does not include discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism. One commenter requested that EPA define the term ''terrorism'' in the explanation of the criteria to ensure regional consistency.

Commenters also requested raising the Tier II threshold above the 10,000 U.S. gallons aboveground oil storage capacity promulgated in the December 2006 amendments (71 FR 77266, December 26, 2006).

Finally, commenters suggested that the qualification criteria do not benefit oil and gas production stakeholders because the oil storage capacity thresholds are too low to allow these facilities to qualify to develop either a self-certified Plan or a Plan following the template in Appendix G.

b. Response to Comments

The majority of commenters supported this approach with additional suggestions. Several commenters suggested alternative thresholds to consider for Tier I qualified facilities; however, these commenters did not provide sufficient data to support increasing the thresholds beyond the proposed Tier I threshold of 5,000 U.S. gallons for a single oil storage container. Therefore, EPA is finalizing the Tier I qualified facilities criterion to require a maximum individual oil container of 5,000 U.S. gallons.

One commenter suggested considering proximity to sensitive environments in determining eligibility as a qualified facility. However, consideration of the impact of an oil discharge to the environment is made when determining the applicability of the SPCC regulation to the facility. Because the SPCC rule only applies to a facility when it has a reasonable potential to discharge oil in quantities that may be harmful to navigable waters or adjoining shorelines, EPA does not believe that an additional criterion is appropriate for an SPCC-regulated facility that may impact sensitive environments.

EPA also disagrees with the commenter who suggested that EPA use the operational volumes of oil storage at the facility rather than the shell capacity of the oil storage containers. The applicability of the SPCC regulation to a facility has always been based on shell capacity when calculating total oil storage capacity of the facility and the same oil storage capacity is then considered in determining applicability of the self-certification SPCC Plan for the facility. The operational volume at a facility may change frequently and therefore create confusion on which SPCC requirements apply to the facility and how to certify the SPCC Plan.

Other commenters requested that EPA consider excluding from both qualified facility thresholds—that is, Tier I and Tier II, the capacity of those containers containing AFVOs that would solidify without heating. The Agency disagrees because, similar to AC and other high viscosity oils, these AFVO containers are typically maintained at elevated temperatures to keep the oil in the liquid state. The AFVO could still spill, flow, and, depending on the location of the facility, could potentially reach navigable waters or adjoining shorelines.

One commenter requested clarification as to whether the term ''oil storage container'' included oil-filled operational equipment. To clarify, the maximum individual oil storage container criterion applies to any aboveground container at the facility that contains oil. This includes bulk storage containers, such as tanks and mobile or portable containers, oil-filled operational equipment (such as transformers), and other oil-filled equipment, such as flow-through process equipment. Thus, oil-filled operational equipment is eligible for Tier I status.

EPA disagrees with the commenter suggesting that the criterion for discharge history be more stringent, based on the fact that some discharges result despite adherence to the SPCC Plan. EPA chose a discharge history criterion similar to the reporting requirement in § 112.4(a) because a discharge smaller than what must be reported to the EPA Regional Administrator (RA) under this section may result from normal handling of oil at the facility and may not indicate a recurring problem resulting from a deficiency in the Plan or improper Plan implementation. Therefore, the RA would not likely require the owner or operator to amend the Plan and the facility owner or operator should be eligible to self-certify the SPCC Plan as a qualified facility.

EPA is not defining terrorism in the final rule. However, the Agency notes that the Homeland Security Act of 2002 defines terrorism as ''any activity that involves an act that is dangerous to human life or potentially destructive of critical infrastructure or key resources; and is a violation of the criminal laws of the United States or of any state or other subdivision of the United States; and appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by mass destruction, assassination, or kidnapping.'' *See* Section 2(15), Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (2002). The Agency does not believe that vandalism and sabotage are examples of terrorism. In the December 2006 amendments to the SPCC rule, EPA identified reportable discharges caused by external factors beyond the control of the facility owner or operator such as natural disasters, acts of war, or terrorism. The Agency specifically excluded these events from consideration in the reportable discharge history criterion for qualified facilities and qualified oil-filled operational equipment. At that time, EPA excluded sabotage and vandalism from the list of reportable discharge history extreme events because these are not necessarily beyond the control or planning ability of the facility owner or operator. (*See* 71 FR 77272, December 26, 2006.) The security provisions in § 112.7(g) require consideration for acts of vandalism. The owner or operator of a facility must describe in the Plan how he controls access to the oil-handling, processing and storage areas and the appropriateness of lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

Additionally, EPA is not changing the Tier II threshold and is not amending the total aboveground oil storage capacity for Tier II qualified facilities in this final rule as requested by some commenters. The Agency maintains that the focus of the qualified facilities alternative is on facilities with simple configurations and small quantities of oil stored or handled. The Agency addressed the eligibility criteria for the Tier II qualified facilities in the December 2006 rulemaking. The Agency recognizes that regardless of the threshold quantity selected, there are likely to be facilities just above that threshold that will be excluded. To the extent that facility owners or operators want to meet the criteria for a qualified facility, they have the option of reducing oil storage capacity at their facility by either removing containers from the facility inventory, or permanently closing containers in accordance with § 112.2.

With regard to the commenter suggesting that the qualified facilities approach does not benefit the oil and gas sector, EPA has estimated that the Tier II approach does allow approximately 13 percent of the smallest oil and gas production stakeholders to qualify to self-certify their SPCC Plans based on oil storage capacities below 10,000 U.S. gallons. In addition, the Agency also is finalizing an alternative set of criteria to qualify for Plan self-certification (Tier II) specific for oil production facilities. *See* Section V.M of this preamble for further discussion on the alternative criteria for the oil and gas production sector.

2. Provisions for Tier I Qualified Facilities

Under this amendment, in lieu of preparing a full SPCC Plan that is PE- or self-certified, an owner or operator of a Tier I qualified facility will have the option to complete the SPCC Plan template found in Appendix G of 40 CFR part 112. The Plan template is designed to be a simple SPCC Plan that includes only the requirements that apply to this tier of regulated facilities. This final rule streamlines the requirements for Tier I qualified facilities by eliminating and/or

modifying several SPCC requirements (for example, facility diagram (§ 112.7(a)(3)) and certain provisions that generally do not apply to facilities that store or handle smaller volumes of oil, such as requirements for transfers taking place at loading racks (§ 112.7(h)).

The list of applicable rule provisions for Tier I qualified facilities is included in § 112.6(a)(3). For an owner or operator of a Tier I qualified facility completing the Plan template included in Appendix G of this part, the following existing requirements under § 112.7 and in subparts B and C continue to apply: (1) Introductory paragraph of § 112.7 [4]; (2) facility description (§ 112.7(a)(3)(i), 112.7(a)(3)(iv), 112.7(a)(3)(vi), 112.7(a)(4), and 112.7(a)(5)); (3) general secondary containment (§ 112.7(c)); (4) inspections, tests and records (§ 112.7(e)); (5) personnel, training, and discharge prevention procedures (§ 112.7(f)); (6) security (§ 112.7(g)); (7) qualified oil-filled operational equipment (§ 112.7(k)); (8) facility drainage (§§ 112.8(b)(1), 112.8(b)(2), 112.12(b)(1), and 112.12(b)(2)); (9) bulk storage containers (§§ 112.8(c)(1), 112.8(c)(3), 112.8(c)(4), 112.8(c)(5), 112.8(c)(6), 112.8(c)(10), 112.12(c)(1), 112.12(c)(3), 112.12(c)(4), 112.12(c)(5), 112.12(c)(6), and 112.12(c)(10)); (10) piping inspections (§§ 112.8(d)(4) and 112.12(d)(4)); (11) oil production facility requirements (§ 112.9(b), 112.9(c)(1), 112.9(c)(2), 112.9(c)(3), 112.9(c)(4), 112.9(c)(5), 112.9(d)(1), 112.9(d)(3), and 112.9(d)(4)); and (12) requirements for onshore oil drilling and workover facilities (§ 112.10(b), 112.10(c) and 112.10(d)). This list of requirements reflects a set of currently existing requirements that apply to facilities subject to the SPCC rule. EPA found no basis to remove or modify these requirements for Tier I qualified facilities. As described below, EPA is finalizing a set of revised, or streamlined, requirements applicable to Tier I qualified facilities in lieu of certain other existing requirements.

In particular:

- In lieu of the full failure analysis requirements in § 112.7(b), under new § 112.6(a)(3)(i), an owner or operator of a Tier I qualified facility must examine areas where there is a reasonable possibility for equipment failure (such as where equipment is loaded or unloaded; where tank overflow, rupture, or leakage is possible; or at the location of any other equipment known to be a source of discharge) and include in the Plan the total quantity of oil that could be discharged and a prediction of the direction of flow. This amendment removes the requirement for an owner or operator of a Tier I qualified facility to predict the rate of flow that could result from an equipment failure.
- In lieu of the separate secondary containment requirements in §§ 112.8(c)(2) and (c)(11) and 112.12(c)(2) and (c)(11), under new § 112.6(a)(3)(ii), EPA is combining mobile/portable container requirements with the other bulk storage container secondary containment requirements, and eliminating the requirement for containment to be ''sufficiently impervious.'' Because EPA expects a Tier I qualified facility to be a small, simple operation, with oil storage containers being inside buildings, inside pre-engineered secondary containment, or a double-walled tank, the requirement for containment to be specifically designed as ''sufficiently impervious'' is unnecessary. Furthermore, the requirement for secondary containment to be capable of containing oil and constructed so that any discharge will not escape the containment system before cleanup occurs (§ 112.7(c)) still applies, and is similar in nature to the ''sufficiently impervious'' requirement. Therefore, combining these requirements streamlines two similar provisions and simplifies the requirements for Tier I qualified facilities.
- In lieu of §§ 112.8(c)(8) and 112.12(c)(8), the overfill prevention requirements, under new § 112.6(a)(3)(iii), the owner or operator of a Tier I qualified facility must ensure each container is provided with a system or documented procedure to prevent overfills of containers, and that containers are regularly tested to ensure proper operation or efficacy. This modification provides more flexibility by allowing the use of alternative methods to prevent container overfills, rather than requiring an owner or operator to meet a prescribed set of overfill prevention procedures.
- As described elsewhere in this notice, EPA is extending the streamlined security and integrity testing requirements that were provided for qualified facilities in the December 2006 SPCC rule amendment (71 FR 77266) to all facilities. Both Tier I and Tier II qualified facilities are subject to the revised security (§ 112.7(g)) and integrity testing (§§ 112.8(c)(6) and 112.12(c)(6)) provisions.

The following requirements are not included in the SPCC Plan template because, for a facility with a smaller oil storage capacity or other facilities with a simple configuration, these requirements are inapplicable or unnecessary: (1) Facility diagram (§ 112.7(a)(3)); (2) facility description (§ 112.7(a)(3)(ii), 112.7(a)(3)(iii), and 112.7(a)(3)(v)); (3) loading/unloading rack (§ 112.7(h)); (4) brittle fracture evaluation (§ 112.7(i)); (5) discussion of conformance with 40 CFR part 112 or other applicable State discharge prevention and containment regulations and guidelines (§ 112.7(j)); (6) facility drainage (§§ 112.8(b)(3), 112.8(b)(4), 112.8(b)(5), 112.12(b)(3), 112.12(b)(4), and 112.12(b)(5)); (7) monitoring internal heating coils (§§ 112.8(c)(7) and 112.12(c)(7)); (8) effluent treatment facilities (§§ 112.8(c)(9) and 112.12(c)(9)); (9) facility transfer operations (§§ 112.8(d)(1), 112.8(d)(2), 112.8(d)(3), 112.8(d)(5), 112.9(d)(2), 112.12(d)(1), 112.12(d)(2), 112.12(d)(3), and 112.12(d)(5)); and (10) produced water container provisions (§ 112.9(c)(6)).

EPA believes no further differentiation is warranted for onshore oil production facilities in § 112.9 (except for the produced water container provisions in § 112.9(c)(6) which require PE certification and therefore do not apply for Tier I qualified facilities) and onshore oil drilling and workover facilities in § 112.10. An onshore oil production facility that qualifies as a Tier I qualified facility will generally have the same type of equipment as an oil production facility with larger oil storage capacity (i.e., a wellhead with a pumpjack, flowlines, oil separation equipment and oil storage containers) and therefore, no further differentiation is warranted. An onshore drilling or workover facility has three requirements under § 112.10. The facility must: position or locate mobile drilling or workover equipment so as to prevent a discharge as described in § 112.1(b); provide catchment basins or diversion structures to intercept and contain discharges of fuel, crude oil, or oily drilling fluids; and install a blowout prevention (BOP) assembly and well control system that is effective to control wellhead pressure. The presence of smaller oil storage containers does not support differentiation of these requirements; however, an onshore oil production, drilling or workover facility that is eligible as a Tier I qualified facility will benefit from the differentiated requirements under § 112.7.

EPA also believes that no further differentiation is warranted for offshore drilling, production, and workover facilities subject to § 112.11. Due to the nature of operations associated with

[4] In the proposal to this rule, EPA inadvertently omitted from this list the introductory paragraph of § 112.7, and for clarity is including it now.

these types of facilities, they are not likely to meet the criterion of a maximum individual container capacity of 5,000 U.S. gallons.

The Agency notes that under the existing SPCC requirements, the Regional Administrator (RA), after reviewing a facility's Plan, has the authority under § 112.4 to require an owner or operator of a facility to amend the SPCC Plan if the RA finds that an amendment is necessary to prevent and contain discharges from the facility. Such an amendment may include requiring PE certification in accordance with § 112.3(d). This provision also applies to Tier I qualified facilities. That is, an RA could, if warranted, require a Tier I qualified facility to prepare a full (i.e., not using the template) SPCC Plan with PE certification.

The Agency also notes that use of the Plan template approach is optional. Under this final rule, an owner or operator of a Tier I qualified facility can choose to prepare and implement either a full PE-certified SPCC Plan or a self-certified SPCC Plan according to all of the requirements of § 112.6(b) in order to comply with the requirements under 40 CFR part 112. In other words, if a Tier I qualified facility owner or operator chooses not to use the Plan template in Appendix G, he could comply with the Tier II qualified facility requirements in § 112.6(b) or choose to prepare a full PE-certified Plan instead of a self-certified one. EPA modified the introductory sentences to § 112.6 and the text of § 112.6(a)(1) slightly from the text that was proposed, in order to make this optional approach more clear.

a. Comments

Many commenters expressed general support for the amended requirements for Tier I qualified facilities. However, a few commenters indicated that more stringent requirements would be appropriate for Tier I qualified facilities. One commenter suggested that a PE certify the SPCC Plan template for Tier I qualified facilities to ensure compliance. Another commenter suggested that EPA require review and approval of the Plan by someone who is familiar with industry standards and is ''certified'' to perform inspections following industry standards; the commenter believes this would address the potential liabilities and environmental impacts associated with self-certification by inexperienced owners and operators. One other commenter suggested that Tier I qualified facilities should be required to have a facility diagram, because if Tier I qualified facilities are small and simple, a diagram should not be an excessive burden. Still another commenter requested that EPA remove the five-year review requirements; instead, the commenter suggested that the Plan should only be updated whenever there is a material change in the facility that may affect discharges.

Many commenters also requested additional relief for Tier I or other regulated facilities. One commenter suggested that ''streamlined'' regulatory provisions should be extended to all regulated facilities. One commenter suggested that Tier I qualified facilities should only be required to meet the general requirements under § 112.7 and the security and integrity testing requirements for qualified facilities. Other commenters requested that EPA confirm that an Appendix G template may be certified by a PE, and that Tier I qualified facilities may complete a full self- or PE-certified Plan should they choose. Finally, one commenter suggested that the owner or operator of a regulated facility certify under oath that he has met the SPCC requirements.

b. Response to Comments

EPA's basis for developing a self-certified Plan template which contains a streamlined set of requirements for facilities that meet the Tier I eligibility criteria is that the Agency believes that implementation of the requirements in the template can provide environmental protection and prevent the discharge of oil into navigable waters or adjoining shorelines. Therefore, EPA does not agree with commenters that a third-party representative (such as a PE or a certified inspector) should confirm compliance with the rule requirements. As stated earlier, due to the simplicity of these facilities and other factors described above, EPA believes it is appropriate to allow a facility owner or operator to self-certify the SPCC Plan. It is the responsibility of the owner or operator of any SPCC-regulated facility to ensure compliance with 40 CFR part 112 and ensure implementation of the Plan.

The Agency also disagrees with the commenter who suggested that EPA require a facility diagram for Tier I qualified facilities. Although the Agency does not intend for a facility diagram to be an excessive burden for an owner or operator to develop, EPA believes the completed template provides the same information that would be available on a facility diagram for a Tier I qualified facility. The SPCC rule requirements for a facility diagram are: (1) To mark the location and contents of each fixed oil storage container (including containers and piping that are otherwise exempted from the rule) and storage areas where mobile or portable containers are located; and (2) to include all transfer stations and connecting pipes. In the case of a Tier I qualified facility, the visual representation of the diagram is not necessary because EPA believes that these facilities would have few aboveground oil storage containers with limited transfer areas and very little piping (if any). The ''Oil Storage Containers and Capacities'' table in Appendix G, Section III (Table G–2) of the template requires that all oil storage containers (such as aboveground containers, completely buried tanks, and oil-filled equipment) be listed, including the contents and oil storage capacity of each container. The ''Containers with Potential for an Oil Discharge'' table in Appendix G, Section III (Table G–4) requests the following information for transfer areas and piping: the volume of oil that could potentially be discharged and the flow direction of an uncontained discharge (i.e., a description of where the discharge would flow if secondary containment fails). A facility diagram for a Tier I qualified facility would provide minimal additional planning benefit to prevent an oil discharge from the facility.

EPA also disagrees that it should delete the five-year review requirements. The Agency agrees that the SPCC Plan should be updated whenever there is a material change in the facility that may affect discharges. However, Tier I qualified facilities should remain subject to the same requirement to periodically review and update the Plan to include more effective prevention and control technology in order to reduce the likelihood of a discharge as described in § 112.1(b).

A commenter suggested that all facilities should be eligible for streamlined provisions. While the Agency has amended the SPCC regulations in the past (71 FR 77266, December 26, 2006) and in this action to streamline certain SPCC rule requirements (for example, security and integrity testing) for all facilities, the streamlined provisions included in the Plan template in Appendix G are limited to Tier I qualified facilities based on the Agency's judgment that eliminating and/or modifying certain SPCC requirements was appropriate for facilities that store or handle smaller volumes of oil and that meet the eligibility criteria. Other facilities contain larger volumes of oil, have large oil storage containers on-site, or are more complex, and thus, applying the streamlined requirements adopted for

Tier I qualified facilities would be inappropriate.

Another commenter suggested that EPA simplify the Plan requirements for a Tier I qualified facility to include only the general requirements under § 112.7 and the security and integrity testing requirements. However, the commenter did not provide any data to support eliminating the specific requirements under Subparts B and C, such as those pertaining to facility drainage and bulk storage containers. Therefore, EPA did not incorporate this change into the final action.

One commenter requested that EPA confirm that an Appendix G template may be certified by a PE. EPA recognizes that the owner or operator of a Tier I qualified facility may decide to obtain assistance in the development of an SPCC Plan and want to have a PE certify the Plan; however, the only required certification for a Plan following Appendix G is the self-certification completed by the owner or operator of the facility. EPA is not making the PE certification an additional option for compliance for Tier I qualified facilities because the Agency believes that this may suggest that it expects PE-certified Plans for this subset of qualified facilities. In addition, because the purpose of establishing the ''Tier I category'' was to allow facilities that met the Tier I eligibility criteria to meet the requirements of the SPCC rule in a streamlined manner, EPA believes it would complicate the rule, particularly if the owner or operator of the facility wants to request that environmental equivalence determinations be allowed for Tier I qualified facilities, such as allowed for Tier II facilities under the Tier II hybrid Plan. However, as EPA has noted previously, completion of the Appendix G template is optional. The owner or operator of a Tier I qualified facility may choose to have a PE-certified SPCC Plan following all the requirements in § 112.7 and subparts B and C, as applicable, or prepare a hybrid Plan that includes all applicable provisions under Tier II.

Another commenter suggested requiring that the owner or operator of a regulated facility certify under oath that he has met the SPCC requirements. Section § 112.6(a)(1) requires the owner or operator certify that: (i) He is familiar with the applicable requirements of 40 CFR part 112; (ii) he has visited and examined the facility; (iii) he has prepared the Plan in accordance with accepted and sound industry practices and standards; (iv) he has established procedures for required inspections and testing in accordance with industry inspection and testing standards or recommended practices; (v) he will fully implement the Plan; (vi) the facility meets the qualification criteria in § 112.3(g)(1); (vii) the Plan does not deviate from any requirement of this part as allowed by § 112.7(a)(2) and § 112.7(d) or include an exemption/measures pursuant to § 112.9(c)(6) for produced water containers and any associated piping and appurtenances downstream from the container; and (viii) the Plan and individual(s) responsible for implementing this Plan have the approval of management, and the facility owner or operator has committed the necessary resources to fully implement this Plan. EPA believes that inclusion of the self-certification statements in the Plan and signature of the owner or operator is sufficient to demonstrate that he understands his responsibilities under 40 CFR part 112.

3. SPCC Plan Template

The SPCC Plan template for Tier I qualified facilities is found in Appendix G in this final rule. To facilitate the development of SPCC Plans at Tier I qualified facilities, EPA intends to make the Plan template available on its Web site, *http://www.epa.gov/emergencies.* Once completed and certified by the owner or operator, the Plan template serves as the SPCC Plan for the facility. As for any facility subject to the SPCC rule, the owner or operator must maintain a written copy of the Plan—which in this case would be the completed and self-certified SPCC Plan template—at the facility or at the nearest field office if the facility is attended less than four hours per day (§ 112.3(e)).

The Agency emphasizes that use of the Plan template approach is optional. An owner or operator of a Tier I qualified facility can choose to prepare and implement either a full PE-certified SPCC Plan or a self-certified SPCC Plan according to all of the requirements of § 112.6(b) (for a Tier II qualified facility) in order to comply with the requirements under 40 CFR part 112.

In the October 2007 proposal, EPA sought comments on whether the SPCC Plan template addressed the concerns of owners and operators of facilities with relatively smaller volumes of oil, while maintaining the environmental protection intended by the regulation. The Agency also sought comments on the clarity and ease-of-use of the Plan template. The Agency has modified the Plan template based on specific comments received.

a. Comments

Several commenters were generally supportive of the template format and/or content. However, one commenter indicated that the template is too easy to use, provides no assurance of compliance, and will be ignored by small facilities. Another commenter suggested that the template does not provide enough instruction and will encourage facility operators that have little knowledge of part 112 to develop SPCC Plans that are meaningless. On the other hand, several commenters expressed concern that the Appendix G template would be too burdensome.

Other commenters suggested that EPA allow for a flexible Tier I qualified facility Plan format rather than require the owner or operator to use the template in Appendix G. Several other commenters suggested that EPA allow, as part of the Appendix G template, the Plan to take a ''hybrid'' approach, as allowed for Tier II qualified facilities, to provide flexibility to Tier I qualified facilities that need to deviate from the rule requirements when the owner or operator determines that secondary containment is impracticable or when there is an alternative measure that provides equivalent environmental protection to an SPCC rule requirement.

A commenter suggested that operators preparing multi-facility SPCC Plans covering multiple facilities that are individually eligible for Tier I status should also be allowed to use the template, and that the rule should be specifically modified to reflect this. Another commenter suggested that EPA publish the template as guidance or an educational primer for Tier I qualified facilities, and make it readily available on the EPA Web site. Another commenter requested that EPA provide for an online submission of the template-based Plan for increased compliance.

Finally, several commenters pointed out a number of areas where minor formatting, wording, or other corrections could be made to the template for simplification, clarity, or improved accuracy (as described in the response to comments section below).

b. Response to Comments

EPA received several comments that the Plan template in Appendix G is too burdensome for Tier I qualified facilities, while other commenters argued that it is too easy to use. The Plan template is designed to be a simple and straightforward SPCC Plan that includes only the requirements that should apply to Tier I qualified facilities. EPA intends to provide supplementary guidance on the Agency's Web site to assist owners and operators of Tier I (and Tier II) qualified facilities in the development of an SPCC Plan for these facilities. Thus, EPA

expects that such additional guidance will help those facilities that choose to utilize the Appendix G template to comply with the SPCC Plan requirement.

Several commenters suggested that EPA allow for a flexible Plan format rather than require the owner or operator to use the template in Appendix G. EPA agrees that it is appropriate to allow the use of a flexible Plan format for qualified facilities that, for example, want to combine multiple local, state or Federal regulatory requirements into one Plan, as long as a cross-reference is provided. Therefore, EPA is amending the rule language in § 112.6(a)(1) to allow for a flexible Plan format for owners or operators of Tier I qualified facilities that do not choose to use the template provided in Appendix G of the rule. The amended rule text states that the template in Appendix G may be used as the SPCC Plan to meet the 40 CFR part 112 requirements. However, if the Appendix G template is not used, then an equivalent Plan must be prepared in writing, and must be supplemented with a section that cross-references the location of requirements listed in this part. For example, the owner or operator of a facility that has developed a Stormwater Pollution Prevention Plan (SWPPP) under the National Pollutant Discharge Elimination System (NPDES) that meets all of the applicable SPCC regulatory requirements in § 112.6(a)(3) and Appendix G may use the SWPPP as the SPCC Plan. However, the SWPPP must include a cross-reference and the self-certification statements in § 112.6(a)(1) and Appendix G. An owner or operator of a Tier I qualified facility may use the template in Appendix G to comply with the regulation or use it as a model and modify it as necessary to meet the facility-specific needs, as long as all applicable rule requirements are included in the SPCC Plan. The following sample cross-reference is intended to be an example of the owner/operator's development of such a cross-reference.

SAMPLE CROSS-REFERENCE FOR PLANS USING LOCAL, STATE, OR OTHER FEDERAL REGULATIONS TO SATISFY SPCC REQUIREMENTS

SPCC provision	Description of requirement	Plan page
§ 112.4	Spill reporting requirements	
§ 112.5(b)	Five-year Plan review	
§ 112.6(a)(1)	Preparation and self-certification of the Plan	
§ 112.6(a)(2)	Certification of technical amendments	
§ 112.6(a)(3)(i)	Failure analysis	
§ 112.6(a)(3)(ii)	Bulk storage container secondary containment	
§ 112.6(a)(3)(iii)	Overfill prevention	
§ 112.7(a)(3)(i)	Address the type of oil in each container and its storage capacity	
§ 112.7(a)(3)(iv)	Address countermeasures for discharge discovery, response, and cleanup	
§ 112.7(a)(3)(vi)	Provide contact list and phone numbers for those to be contacted in case of a discharge	
§ 112.7(a)(4)	Provide NRC notification information	
§ 112.7(a)(5)	Describe procedures you will use when a discharge occurs	
§ 112.7(c)	Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b).	
§ 112.7(e)	Conduct inspections and tests in accordance with written procedures that you develop for the facility	
§ 112.7(f)	Train oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the facility Plan.	
§ 112.7(g)	Implementation of security measures to prevent unauthorized access to oil handling, processing, and storage area.	
§ 112.7(k)	Requirements related to oil-filled operational equipment	
§§ 112.8(b)(1), 112.12(b)(1).	Restrain drainage from diked storage areas	
§§ 112.8(b)(2), 112.12(b)(2).	Use valves of manual, open-and-closed design for the drainage of diked areas; if facility drainage drains into a watercourse, inspect and drain uncontaminated retained stormwater.	
§§ 112.8(c)(1), 112.12(c)(1).	Do not use a container for oil storage unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.	
§§ 112.8(c)(3), 112.12(c)(3).	Drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse.	
§§ 112.8(c)(4), 112.12(c)(4).	Protect completed buried storage tanks from corrosion and regularly leak test buried metallic storage tanks.	
§§ 112.8(c)(5), 112.12(c)(5).	Do not use partially buried or bunkered metallic tanks for the storage of oil unless protected from corrosion.	
§§ 112.8(c)(6), 112.12(c)(6).	Administer integrity testing for storage tanks	
§§ 112.8(c)(10), 112.12(c)(10).	Promptly correct visible discharges which result in a loss of oil from the container	
§§ 112.8(d)(4), 112.12(d)(4).	Regularly inspect all aboveground valves, piping and appurtenances	
§ 112.9(b)	Requirements for oil production facility drainage	
§ 112.9(c)(1)	Material compatibility requirements for containers at oil production facilities	
§ 112.9(c)(2)	Secondary containment requirements for tank battery, separation, and treating facility installations at oil production facilities.	
§ 112.9(c)(3)	Container inspection requirements at oil production facilities	
§ 112.9(c)(4)	Overfill prevention requirements at oil production facilities	
§ 112.9(c)(5)	Requirements for flow-through process vessels at oil production facilities	
§ 112.9(d)(1)	All aboveground valves and piping associated with transfer operations are inspected periodically and upon a regular schedule.	

SAMPLE CROSS-REFERENCE FOR PLANS USING LOCAL, STATE, OR OTHER FEDERAL REGULATIONS TO SATISFY SPCC REQUIREMENTS—Continued

SPCC provision	Description of requirement	Plan page
§ 112.9(d)(3)	For flowlines and intra-facility gathering lines that do not have secondary containment in accordance with § 112.7(c), prepare an oil spill contingency plan and a written commitment of resources (except when the facility has submitted a Facility Response Plan in accordance with § 112.20).	
§ 112.9(d)(4)	Prepare and implement a written program of flowline/intra-facility gathering line maintenance	
§ 112.10(b)	Position or locate mobile drilling or workover equipment so as to prevent a discharge as described in § 112.1(b).	
§ 112.10(c)	Provide catchment basin or diversion structures to intercept and contain discharges	
§ 112.10(d)	Install a blowout prevention assembly and well control system before drilling	

Commenters also suggested that EPA allow Tier I qualified facilities, as part of the Appendix G template, to use the ''hybrid'' approach, as is currently allowed for Tier II qualified facilities to provide flexibility to Tier I qualified facilities that need to deviate from the rule requirements when the owner or operator determines that secondary containment is impracticable, when there is an alternative measure that provides equivalent environmental protection to an SPCC rule requirement, or when an owner or operator wants to include an exemption/measures pursuant to § 112.9(c)(6) for produced water containers and any associated piping and appurtenances downstream from the container. EPA has decided not to allow Tier I facilities to utilize a ''hybrid approach,'' because the primary purpose of developing the ''Tier I'' category is to allow those facilities with simple oil storage configurations to have a relatively simple means to comply with the SPCC requirements. Allowing Tier I facilities to use a hybrid approach would seem to defeat that purpose. If a facility qualifies to use the Appendix G template but has site-specific factors that make it difficult to use the template as written, then the Appendix G Plan template may not be an appropriate tool for the facility to address the oil spill planning elements for the facility. Instead, the facility could elect to comply with the SPCC requirements as a Tier II qualified facility—that is, self-certify that they comply with the full set of rule requirements in § 112.7(c) and subparts B and C, as applicable, rather than the differentiated requirements designed specifically for facilities with simple oil storage configurations. For example, if the owner or operator cannot provide secondary containment for a bulk storage container at a Tier I qualified facility because it is impracticable, then it is appropriate that the Plan include a facility diagram (§ 112.7(a)(3)) to show where the container is located at the facility and a prediction of the direction, rate of flow and quantity of oil that may be discharged from the container (§ 112.7(b)). EPA believes it is appropriate to require the owner or operator to comply with requirements that would not otherwise apply to Tier I qualified facilities because this information may be necessary as part of the spill prevention practices for the facility. Therefore, the owner or operator of the facility may choose to develop a hybrid Plan following the Tier II qualified facility requirements in § 112.6(b) or a PE-certified SPCC Plan following § 112.7 and subparts B and C, as applicable.

Commenters also requested that EPA allow the owner or operator of several facilities that each individually meet the criteria for a qualified facility to develop a multi-facility SPCC Plan in accordance with the Tier I requirements. EPA agrees that this is appropriate and the final rule allows flexibility in the Plan format to accommodate a multi-facility Plan approach for Tier I qualified facilities. The owner or operator of the facility is still required to meet all applicable requirements of the rule in the Plan as described in § 112.6(a)(3) and Appendix G.

With respect to the comment that EPA allow such SPCC Plans to be submitted online, EPA does not believe that online submission of the template-based Plan will increase compliance with the SPCC regulation because there is currently no requirement for the owner or operator of a regulated facility to submit an SPCC Plan to the Agency, unless requested to do so by the Regional Administrator. The Agency requires that owners and operators maintain a copy of the Plan at the facility, in accordance with § 112.3(e).

EPA has amended the text that was proposed as Appendix G of 40 CFR part 112 to incorporate many of the suggested recommendations in the final rule. To simplify or clarify use of the template, these amendments will:

- Ensure the Table in Attachment 3.2 of Appendix G is consistent with the STI–SP001 requirements for Category I Tanks.
- Clarify which oil storage containers at the facility must be included when calculating the total facility oil storage capacity to determine eligibility of the facility for Tier I and II requirements—that is, any aboveground container at the facility that contains oil and that is not otherwise exempt from the rule. This includes bulk storage containers, such as tanks and mobile or portable containers; oil-filled operational equipment (such as transformers); and other oil-filled equipment, such as flow-through process equipment.
- Include formatting suggestions that make the template easier to use and technical corrections, such as providing letter references for the owner or operator's obligations in the certification statement; numbering tables; using numbered or lettered superscripts; identifying acronyms when they are first used in the document (for example, Regional Administrator (RA) in Section III, Part 6); and moving the spill reporting requirements to the correct section in the template (from Section III, Part 6 to Section III, Part 8.)
- Clarify that EPA means aboveground oil storage capacity in Section I, Part 6.a and 6.c of Appendix G.
- Clarify that the NRC Notification Procedures in Section III, Part 7 must be conducted immediately following identification of a discharge to navigable waters or adjoining shorelines.
- Clarify which containers are exempt from the regulation and not required to be included in the table in Section III, Part 1. Exempt containers that are not included in the capacity calculation include: Any container with a storage capacity of less than 55 U.S. gallons of oil; storage containers used exclusively for wastewater treatment; permanently closed containers; motive power containers; hot-mix asphalt containers; heating oil containers used solely at a single-family residence; and pesticide application equipment or related mix containers. Although the criteria to determine eligibility for qualified facilities focuses on the aboveground oil

storage containers at the facility, completely buried tanks at a qualified facility, unless they are otherwise exempt, such as USTs that are subject to all of the technical requirements of 40 CFR part 280 or a state program approved under 40 CFR part 281, are still subject to the rule requirements and must be addressed in the template. They are not counted towards the qualified facility threshold because they are not aboveground containers. Finally, certain produced water containers may be exempt from the rule; however, this exemption is based on certification by a PE and therefore produced water containers at a Tier I qualified facility SPCC Plan would not be eligible for the exemption. In other words, the owner or operator of a Tier I qualified facility would not be eligible to develop a self-certified SPCC Plan using the template in Appendix G and have a produced water container exempt from the regulation, because the exemption requires a PE certification. (See section V.M of this preamble for further discussion on produced water containers.)

- Amend the Onshore Facility Checklists to indicate that not all provisions may be applicable to all owners or operators, and provide instructions to indicate on the checklist when a provision is not applicable.
- Clarify the scope of the inspection requirements for bulk storage containers in the Inspection Log in Attachment 3 of Appendix G.
- Revise the discussion in Section III, Part 2 to include the word ''secondary.''

Finally, EPA considered, but did not adopt the following recommendations to amend the template to:

- *Revise the template in Appendix G to change ''navigable waters or adjoining shorelines'' to ''discharges as described in § 112.1(b).''* EPA refers to navigable waters or adjoining shorelines in the template to make the document easier to understand and more user-friendly; the Agency does not consider this to be a limitation in the scope of the rule. The language in § 112.7 also applies to these facilities and uses the term ''discharges as described in § 112.1(b).''
- *Include a section for state and local requirements.* The Agency does not believe that it is necessary for the owner or operator of a facility to address state or local requirements as part of the SPCC Plan. However, the Agency is amending the rule language to allow for a flexible Plan format for Tier I qualified facilities. This will allow a facility owner or operator to address local, state and/or other Federal requirements in one Plan for oil spill prevention planning purposes if he so chooses. The Agency will also clarify in rule text that § 112.7(j) does not apply to Tier I qualified facilities.
- *Remove mode of failure in the Secondary Containment table in Appendix G.* This table addresses rule requirements for both § 112.7(b) and (c) along with the more specific secondary containment requirements under Subparts B and C. Therefore, the Agency believes it is appropriate to have the owner or operator identify 'the mode of failure; the flow direction and quantity of the discharge; and the secondary containment method and containment capacity' for the containers listed. The owner or operator may use either active or passive approaches for complying with the secondary containment requirements (for more information, *see* the *SPCC Guidance for Regional Inspectors*).
- *Refer to the Plan format in Appendix G as document rather than ''template.''* Once the owner or operator completes the Appendix G template to include site-specific information, the resulting document is an SPCC Plan for the facility.
- *Amend the self-certification statement to specifically highlight the owner or operator's responsibility to provide secondary containment.* The elements of the Tier I self-certification requirement are similar in scope to those required for an owner or operator of a Tier II qualified facility who chooses to self-certify a Plan (as promulgated in December 2006, 71 FR 77266). Additionally, the Agency has described the secondary containment requirements of the regulation in more detail in the *SPCC Guidance for Regional Inspectors.*
- *Amend the table heading.* ''Secondary containment capacity (gallons)'' with the superscript that identifies the secondary containment requirements for bulk storage containers. The Agency believes that the table appropriately identifies the secondary containment requirements for bulk storage containers and mobile/portable containers. Additionally, the Agency has described the secondary containment requirements of the regulation in more detail in the *SPCC Guidance for Regional Inspectors.*
- *Move footnotes to the discussion preceding the tables in the Appendix.* The Agency believes it is appropriate to provide guidance to assist in the development of the SPCC Plan template in a separate document, if necessary, rather than increase the length of the template.
- *Simplify secondary containment information (Section III, Tables 1 and 2).* The Agency disagrees that additional simplification is appropriate for these tables. The tables are designed to address the various oil storage containers, equipment and oil-handling areas where secondary containment is required. For Tier I qualified facilities with only one or two oil storage containers, the tables should be easy to complete.
- *Amend the information that must be reported to the NRC in Section III, Part 7.* The bullets in the table cite the current regulatory requirements in § 112.7(a)(4), which also conforms with the type of information that is collected by the NRC.
- *Amend the Contingency Plan checklist included as an attachment to Appendix G.* EPA did not propose to amend the contingency plan requirements under 40 CFR part 109 and the checklist is intended as a reminder for the owner or operator to address these requirements when developing the contingency plan for the facility (when applicable). This contingency plan checklist is intended as a guide to assist the owner or operator of a Tier I qualified facility to prepare a contingency plan in lieu of the general secondary containment requirements for qualified oil-filled operational equipment or as an alternative to sized secondary containment for specific equipment at an oil production facility (such as flowlines).

4. Self-Certification and Plan Amendments

The elements of the Tier I self-certification requirement are similar in scope to those required for an owner or operator of a Tier II qualified facility who chooses to self-certify an SPCC Plan (as promulgated in December 2006, 71 FR 77266). An owner or operator of a Tier I qualified facility who chooses to complete an Appendix G template Plan (or some other equivalent Plan) is required to certify that: (1) He is familiar with the applicable requirements of the SPCC rule; (2) he has visited and examined the facility; (3) the Plan has been prepared in accordance with accepted and sound industry practices and standards; (4) the procedures for required inspections and testing have been established in accordance with industry inspection and testing standards and recommended practices; (5) the Plan is being fully implemented; (6) the facility meets the qualification criteria set forth under § 112.3(g)(1); (7) the Plan does not utilize the environmental equivalence or impracticability provisions under § 112.7(a)(2) and 112.7(d), or include an

exemption/measures pursuant to § 112.9(c)(6) for produced water containers and any associated piping and appurtenances downstream from the container; and (8) the Plan and the individual(s) responsible for implementing the Plan have the full approval of management and the facility owner or operator has committed the necessary resources to fully implement the Plan.

Under § 112.5 of the SPCC rule, an owner or operator must review and amend the SPCC Plan following any change in facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). Consistent with the current requirement for qualified facilities, the owner or operator of a Tier I qualified facility is allowed to self-certify any of these technical amendments to the Plan under § 112.6(a)(2), and document this certification in the Plan template (or some other equivalent Plan).

If the owner or operator of a Tier I qualified facility makes changes to the facility such that the maximum individual aboveground oil storage container capacity is greater than 5,000 U.S. gallons, the facility no longer qualifies as a Tier I facility, even if the total oil storage capacity is less than 10,000 U.S. gallons, and is not eligible to implement the self-certified Appendix G template Plan (or some other equivalent Plan). The facility owner or operator must determine whether the facility still meets the eligibility criteria for a Tier II qualified facility (i.e., total aboveground storage capacity remains below 10,000 U.S. gallons). If the facility meets the Tier II qualified facility criteria, within six months following the change in the facility, the owner or operator is required to prepare and implement an SPCC Plan in accordance with § 112.6(b) or prepare and implement an SPCC Plan in accordance with the general Plan requirements in § 112.7, and the applicable requirements in subparts B and C, including having the Plan certified by a PE, as required under § 112.3(d). If, on the other hand, the facility is no longer a qualified facility, the owner or operator is required to, within six months following the change in the facility, prepare and implement an SPCC Plan in accordance with the general Plan requirements in § 112.7, and the applicable requirements in subparts B and C, including have the Plan certified by a PE.

a. Comments

A commenter noted that the self-certification statement ''should not be modeled after what EPA desires to see a licensed PE provide.'' The commenter noted that promoting or encouraging development of qualified facility SPCC Plans by non-licensed engineers violates codes in many states.

b. Response to Comments

While the owner or operator of a qualified facility may choose to self-certify the SPCC Plan in lieu of a PE certified Plan, he is still required to comply with all of the SPCC requirements and to develop and implement a spill prevention program in accordance with good engineering practices. The owner or operator may do so by following guidance, industry standards, industry design specifications or industry recommended or best management practices. This is analogous to how a person with no accounting experience is expected to comply with applicable state and Federal tax laws. Many people choose to have a Certified Public Accountant (CPA) prepare their annual tax documents; however, the Internal Revenue Service (IRS) does not require that a CPA conduct this activity. A person that chooses to complete the tax forms on his own is not relieved from the liability to do so in accordance with all Federal and state requirements. That person is expected to understand the tax laws and regulations and prepare the documents following all applicable requirements. He may choose to use the forms and guidance provided by the IRS or state agency, or use software or other publicly available guidance to aid him in the correct completion of the tax forms.

For SPCC, the Agency believes that an owner or operator who follows guidance; standard design and operational protocols; industry standards or recommended practices; or guidance developed by professional associations is following ''good engineering practices'' to comply with the SPCC rule requirements. Where operational changes at a facility are necessary to comply with the rule requirements, the owner or operator must follow all appropriate state and local requirements (such as for permitting and construction) and, if necessary, obtain the appropriate professional assistance. However, in the case of a qualified facility, EPA believes that the development of the SPCC Plan itself is not an engineering function and an owner or operator can prepare an SPCC Plan that describes how the facility complies with the SPCC rule requirements. For a qualified facility, the Agency believes it is appropriate for the owner or operator to attest that the information in the SPCC Plan is true and accurate following the self-certification language in § 112.6. EPA modeled the certification statements after the PE certification provision in § 112.3(d) with amendments to remove language specific to engineering certification. Although EPA agrees that the owner or operator of a facility should not be making engineering determinations without proper credentials, the Agency believes that there are elements of those attestations that are appropriate for an owner or operator, such as acknowledging that they are familiar with the requirements of this part. EPA also included additional attestations for the owner or operator of the facility pertaining to the qualification criteria and management approval of the SPCC Plan.

Finally, to the extent that a state has adopted a law, regulation, or policy, such as one based on the National Council of Examiners for Engineering and Surveying, that requires a PE to perform certain functions, including certifying Plans, nothing in this action affects whether a facility owner or operator would be required to utilize a PE to meet the state or local requirements because this action does not preempt any state or local requirements. Therefore, in states where the engineer licensing boards have prohibited SPCC Plan self-certification, the owner or operator may not be able to utilize the Tier I and Tier II options to self-certify the Plan to comply with the SPCC requirements.

5. Tier II Qualified Facility Requirements

EPA is designating qualified facilities that do not meet the additional criterion for Tier I qualified facilities (i.e., no individual aboveground oil storage container with a capacity greater than 5,000 U.S. gallons) as Tier II qualified facilities. Although the organization of the regulatory text in § 112.6 has changed in order to accommodate the tiered approach, the requirements for Tier II qualified facilities remain the same as they were when these requirements were promulgated on December 26, 2006 (71 FR 77266). Tier II qualified facilities may choose to comply with the requirements in § 112.6(b) by completing and implementing a self-certified SPCC Plan, in lieu of having a PE-certified Plan. The self-certified SPCC Plan must comply with all of the applicable requirements of section § 112.7 and subparts B and C of the rule; any deviations as allowed pursuant to § 112.7(c)(2) and (d) must be certified by a licensed PE (''hybrid Plan''). Also see

section V.M.7.d of this preamble, *Overlap Between Produced Water Container Alternatives and Qualified Facilities,* for information on using the ''hybrid Plan'' approach to self-certify an SPCC Plan using one of the alternative approaches for produced water containers (exempt a produced water container or take advantage of the alternative requirements in § 112.9(c)(6)). Owners and operators of Tier II qualified facilities are not able to use the Appendix G template because it does not include all of the SPCC requirements that may apply for these facilities.

Additionally, in order to address the concerns of the oil and gas sector, EPA is finalizing an alternative set of qualified facility eligibility criteria specific for onshore oil production facilities that does not rely on facility oil storage capacities. EPA believes these alternative criteria are more appropriate to qualify the oil production facilities for Plan self-certification. See Section V.M of this document for further discussion on the alternative criteria for the oil and gas production sector.

a. Comments

Two commenters suggested that EPA allow Tier II qualified facilities to self-certify Plans. Additional commenters requested that Tier II qualified facilities be allowed to use the template.

b. Response to Comments

EPA is designating qualified facilities that do not meet the additional criterion for Tier I qualified facilities (i.e., no individual aboveground oil storage container with a capacity greater than 5,000 U.S. gallons) as Tier II qualified facilities. The requirements for Tier II qualified facilities remain the same as they were when they were promulgated in December 2006. Only Tier I qualified facilities will be able to use the template in Appendix G of 40 CFR part 112 to comply with the SPCC rule. The streamlined provisions included in the Plan template in Appendix G are limited to Tier I qualified facilities because they were specifically analyzed and designed for facilities that store limited quantities of oil, in small oil storage containers and generally have simple configurations. Other facilities contain larger volumes of oil, have large oil storage containers on-site, or are more complex and thus, applying the streamlined requirements adopted for Tier I qualified facilities would be inappropriate.

6. Alternative Option Considered

In the October 2007 proposal (72 FR 58378, October 15, 2007), EPA described an option wherein the Agency would exempt a certain subset of qualified facilities from the SPCC requirements altogether, based on a lower facility storage capacity threshold (such as 5,000 U.S. gallons).

a. Comments

One commenter supported this option.

b. Response to Comments

EPA did not receive any data to support an exemption of a subset of qualified facilities. Therefore, the Agency is not finalizing this amendment.

H. General Secondary Containment

At a facility subject to the SPCC rule, all areas with the potential for a discharge as described in § 112.1(b) are subject to the general secondary containment provision, § 112.7(c). These areas may have loading/unloading areas (also referred to as transfer areas), piping, and/or mobile refuelers, and may include other areas of a facility where oil is present. The general secondary containment requirement requires that these areas be designed with appropriate containment and/or diversionary structures to prevent a discharge of oil in quantities that may be harmful (that is, as described in 40 CFR part 110; *see* § 112.1(b)). EPA is amending the general secondary containment provision to provide additional clarity, consistent with the guidance published in the *SPCC Guidance for Regional Inspectors.* EPA is also amending § 112.7(c) to provide an alternative to the sized secondary containment requirements for flowlines and intra-facility gathering lines at oil production facilities, as described in Section V.M of this notice.

1. Revisions to the General Secondary Containment Requirement

EPA is amending the general secondary containment requirement at § 112.7(c) in three ways: (1) By adding text regarding the method, design and capacity of secondary containment; (2) by specifically allowing both active and passive measures of secondary containment; and (3) by including additional examples of prevention systems. Section V.M of this notice describes an additional modification to the provision to address flowlines and intra-facility gathering lines at oil production facilities.

Specifically, EPA is amending § 112.7(c) by adding the text ''In determining the method, design, and capacity for secondary containment, you need only to address the typical failure mode, and the most likely quantity of oil that would be discharged. Secondary containment may be either active or passive in design.'' This addition is intended to make clear that the scope of the general secondary containment requirement takes into consideration the typical failure mode, and most likely quantity of oil that would be discharged, consistent with current EPA guidance *(SPCC Guidance for Regional Inspectors).*

EPA is also amending § 112.7(c) to make it clear that the requirement allows for the use of both active and passive secondary containment measures to prevent a discharge to navigable waters or adjoining shorelines. Active containment measures are those that require deployment or other specific action by the operator. These measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a discharge, so long as the active measure is designed to prevent an oil discharge from reaching navigable waters or adjoining shorelines. Passive measures are permanent installations and do not require deployment or action by the owner or operator.

EPA is further amending the general secondary containment provision at § 112.7(c)(1) to include the following additional examples of prevention systems for onshore facilities: Drip pans, sumps, and collection systems. Drip pans are typically used to isolate and contain small drips or leaks until the source of the leak is repaired. They are commonly used with product dispensing containers (such as drums), uncoupling of hoses during bulk transfer operations, and for pumps, valves, and fittings. Sumps and collection systems generally involve a permanent pit or reservoir and the connected troughs/trenches that collect oil. By expanding the list of examples of secondary containment methods found in § 112.7(c)(1), EPA intends to increase the clarity and better represent current prevention practices. EPA emphasizes that the list of prevention systems are examples only; other containment methods may be used, consistent with good engineering practice.

a. Comments

Many commenters expressed general support for the amendments to § 112.7(c). However, one commenter suggested that allowing secondary containment for the most likely quantity of oil discharged instead of worst case discharge contradicts § 112.7(c) and is inconsistent with 33 U.S.C. 1321(j)(5)(D).

In addition, some commenters indicated that this amendment would increase the number of calculations

necessary to determine likely release scenarios. The commenter requested that EPA provide latitude to the certifying PE in developing the different release scenarios and secondary containment requirements that are appropriate for the facility, stating that calculations should not have to be included. A commenter also suggested that EPA allow the use of a common collection area or containment area, rather than individual containment when there are several tanks located in close proximity to each other. Another commenter suggested that EPA should clarify in the rule text whether general secondary containment is required for buried piping. Other commenters suggested changes to a sentence in § 112.7(c) to replace the word ''tank'' with ''piping or oil-filled equipment.''

Additionally, a commenter requested further examples on the elements that can comprise an acceptable secondary containment system, and commenters suggested that EPA clarify that the list of examples is not all-inclusive.

b. Response to Comments

The Agency's authority to promulgate the SPCC rule is found in 33 U.S.C. 1321(j)(1)(C) and requires the Agency to promulgate regulations establishing procedures, methods, equipment and other requirements for equipment to prevent discharges of oil and to contain those discharges. The statutory provision gives the Agency broad discretion to establish the requirements under the SPCC rule. Nowhere in this statutory provision is a requirement that the SPCC regulations address worst case discharges. Section 1321(j)(5)(D), however, directs the Agency to issue regulations to require owners or operators to prepare and submit plans to respond to worst case discharges. Consistent with this statutory provision, EPA has promulgated facility response plan regulations in 40 CFR part 112 Subpart D. Therefore, EPA does not agree with the commenter who suggested that this amendment is inconsistent with 33 U.S.C. 1321(j)(5)(D).

Commenters also requested clarification on how much supporting documentation is necessary (for example, calculations) to demonstrate compliance with the general secondary containment requirements. In order to determine that the facility has provided appropriate secondary containment that complies with § 112.7(c), an EPA inspector may review the supporting documentation in the SPCC Plan (*see* the *SPCC Guidance for Regional Inspectors*, Chapter 4). If calculations are not included with the SPCC Plan, and the inspector suspects the general secondary containment is inadequate, the inspector may request supporting documentation from the owner or operator. Industry guidance recommends that facility owners or operators include any secondary containment capacity calculations and/or design standards with the Plan. API Bulletin D16, ''Suggested Procedure for Development of Spill Prevention Control and Countermeasure Plans,'' contains example calculations to which inspectors may refer (see Exhibit E of ''Suggested Procedure for Development of Spill Prevention Control and Countermeasure Plans,'' API Bulletin D16. Third Edition, December 2002). Calculations may be provided as part of the documentation to support the adequacy of containment measures employed at the facility, although they are not required. Nevertheless, the Plan preparer must include enough detail in the SPCC Plan to describe the efficacy of the measures used to comply with the general secondary containment requirements in § 112.7(c).

With respect to the use of common containment systems, the Agency wants to make clear that it is not necessary to provide separate containment systems for each individual container or equipment. Instead, the Plan preparer may choose to design facility drainage to provide a common collection area for multiple containers, piping or oil-filled equipment located at the facility. In order to comply with the general secondary containment requirements, the owner or operator must first identify the typical failure mode and quantity of oil that could be discharged. Based on site-specific conditions, he can determine what capacity is needed and design the secondary containment system accordingly.

Commenters also requested clarification on the type of equipment subject to the general secondary containment requirements. The general secondary containment provision in § 112.7(c) is intended to address the potential for oil discharges from all regulated parts of a facility. Containment method, design, and capacity are determined by good engineering practice to contain an oil discharge until cleanup occurs. This determination should consider all areas of the facility with a potential to discharge oil, including, but not limited to, piping (both aboveground and buried), transfer areas and oil-filled operational equipment.

The Agency does not agree that it is necessary to replace the word ''tank'' with ''piping or oil-filled equipment'' in § 112.7(c), as suggested. Tanks, piping and oil-filled equipment are all examples of primary containment systems and the Agency does not believe it is necessary to replace one example with another in the rule language. However, the word ''secondary'' is being added for clarity and accomplishes the point raised by the commenter.

EPA also is amending the language in § 112.7(c)(1) to include additional examples of secondary containment methods, as proposed. One commenter requested additional clarification on other methods that may be used to comply with the secondary containment requirements, such as surface impoundments, on their own, or in connection with other elements, such as oil/water separators or water treatment. Section 112.7(c) states that ''at a minimum, you must use one of the following prevention systems or its equivalent * * *.'' EPA clarified in Chapter 4 of the *SPCC Guidance for Regional Inspectors* that the list of secondary containment methods in § 112.7(c) are examples only and not meant to be all-inclusive. Other containment methods may be used, consistent with good engineering practice. For example, a facility could use an oil/water separator, combined with a drainage system, to collect and retain discharges of oil within the facility. Surface impoundments, oil/water separators, and wastewater treatment systems that are designed and maintained in a way to meet the requirements of § 112.7(c) to prevent a discharge as described in § 112.1(b) would also serve as equivalent prevention systems. Additionally, certification of the SPCC Plan verifies that secondary containment methods are appropriate for the facility and that they follow good engineering practice.

I. General Secondary Containment for Non-Transportation-Related Tank Trucks

In the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), EPA exempted mobile refuelers from the sized secondary containment requirements applicable to bulk storage containers. EPA recognizes that other non-transportation-related tanker trucks may operate similarly to mobile refuelers, though not specifically transferring fuel (*i.e.*, transformer oils, lubrication oils, or certain AFVOs). Therefore, they may have the same difficulty in complying with the sized secondary containment requirements. EPA is now extending the amendment provided to mobile refuelers in the December 2006 amendments (*i.e.*, an exemption from the sized secondary

containment requirements) to non-transportation-related tank trucks at a facility subject to the SPCC rule. Specifically, §§ 112.6(a)(3)(ii), 112.8(c)(2), 112.8(c)(11), 112.12(c)(2), and 112.12(c)(11) have been amended to include the phrase ''except mobile refuelers and other non-transportation-related tank trucks.'' Such non-transportation-related tank trucks include those used to store (for short periods of time) and transport fuel, crude oil, condensate, non-petroleum, or other oils for transfer to or from bulk storage containers; for example, a truck used to refill oil-filled equipment at an electrical substation or a pump truck at an oil production facility. Under this approach, the general secondary containment requirements at § 112.7(c) will still apply.

1. Comments

Commenters generally supported extending the exemption for mobile refuelers from the sized secondary containment requirements in §§ 112.8(c)(6) and 112.12(c)(6) to non-transportation-related tank trucks. However, a number of commenters requested that EPA expand the scope of the relief or clarify its applicability. Specifically, commenters requested that the relief be given to various other types of vehicles and equipment, including tank cars or rail cars; mobile refueling tank trucks at drilling and workover facilities; vehicles associated with oil-filled electrical/operational equipment; mobile/portable tanks used for maintenance activities associated with oil-filled electrical equipment; vehicles involved in transloading (as defined in 49 CFR 171.8); and small truck-mounted refueling and oil tanks, up to 220 gallons, that are used to transport oils and fuels to various remote facilities and construction sites.

One commenter opposed extending the regulatory relief to non-transportation-related tank trucks because there are technically-feasible methods for facility owners or operators to conform with the requirements, such as double-lined tanks, and that regulatory relief would effectively punish those facilities that have already incurred the costs of conforming with the sized secondary requirements for tank trucks. The commenter further stated that tank trucks are high-risk oil containers and that to relax the SPCC requirements would not serve to protect the environment.

2. Response to Comments

EPA agrees with the commenters who argued that non-transportation-related tank trucks at a facility subject to the SPCC rule should be exempted from the sized secondary containment requirements, but should remain subject to the general secondary containment requirements. EPA also agrees with commenters who suggested that the exemption from the sized secondary containment requirements should cover small truck-mounted oil tanks and other tank trucks, such as bulk chemical trucks and vacuum trucks. These trucks are similar to mobile refuelers and are included in the exemption from sized secondary containment when the truck-mounted oil tank is used to refill a fuel container, an electrical transformer, or a hydraulic reservoir on a combine or piece of mining equipment. Similarly, mobile refueling tank trucks at drilling and workover facilities are included in the exemption from the sized secondary containment requirements.

However, EPA disagrees with commenters that the exemption should be extended to tank cars or rail cars. EPA believes that tank cars and rail cars typically operate in fixed areas of a facility where sized secondary containment can be provided, given the land area that is generally dedicated to a rail spur. Similarly, the exemption is not being extended to mobile/portable containers because the Agency believes that sized secondary containment can be provided for containers that generally operate in fixed locations at a facility, but are occasionally moved to other fixed locations within the facility for similar service.

One commenter suggested that transloading activities, as defined by DOT at 49 CFR 171.8, should be exempted from the sized secondary containment requirements. ''Transloading'', which for the purposes of hazardous materials regulations means the transfer of a hazardous material from one packaging to another packaging for contained shipment of the material (see 49 CFR 171.8). This rulemaking, however, focuses on clarifying SPCC requirements applicable to non-transportation-related trucks and the specific topic of ''transloading'' falls outside this scope.

EPA also disagrees with the commenter who opposed extending regulatory relief to non-transportation-related tank trucks. EPA believes that sized secondary containment is not necessary, and in some cases, not appropriate, for the same reasons the Agency exempted mobile refuelers from the sized secondary containment requirements. In addition, the general secondary containment requirement in § 112.7(c) still applies, which provides adequate flexibility for the prevention of oil discharges as described in § 112.1(b). For example, active measures to respond to an oil discharge from a vehicular accident may be used to comply with the general secondary containment requirement.

J. Security

EPA is amending the facility security requirements at § 112.7(g) to allow an owner or operator of a facility to tailor his security measures to the facility's specific characteristics and location. Thus, this amendment extends the streamlined security requirements that EPA provided to qualified facilities in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) to all facilities subject to the security requirements.

1. Revisions to the Security Requirements

The application of the SPCC security requirements is often determined by the facility's geographical/spatial factors, such that there is no ''one-size-fits-all'' method to comply with this requirement. Therefore, EPA is modifying the security requirements at § 112.7(g) to allow the owner or operator to design the security arrangements at the facility to address the specific circumstances that apply. Thus, this amendment allows an owner or operator to describe in his SPCC Plan how he will:

- Secure and control access to all oil handling, processing and storage areas;
- Secure master flow and drain valves;
- Prevent unauthorized access to starter controls on oil pumps;
- Secure out-of-service and loading/unloading connections of oil pipelines; and
- Address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

A facility owner or operator is required to document in his SPCC Plan how these security measures are implemented. These requirements replace the more prescriptive fencing and other requirements, previously found in § 112.7(g)(1) through (5), and allow the facility owner or operator to determine how best to secure and control access to areas where a discharge to navigable waters or adjoining shorelines may originate.

EPA believes that this amendment will eliminate the need for PE-certified environmentally equivalent alternatives to the specified security requirements, because the provision provides the flexibility for the owner or operator to provide whatever measures are most appropriate for the facility, as long as

they accomplish the stated security goals. For example, with this rule revision, the Agency allows the facility owner or operator to determine how lighting and/or fencing can be used to deter intruders and to assist in the discovery of oil discharges, or whether taking a different, site-specific approach is most appropriate. The Agency believes the added flexibility will not have a negative impact on the protection of the environment, and that it will assist the regulated community to better tailor the security requirements to their particular situation.

Because the revised requirements at § 112.7(g) apply to all facilities (excluding oil production facilities), EPA is removing the security requirements previously found at § 112.6(c)(3) for qualified facilities; the provision would be redundant.

a. Comments

Many commenters expressed general support for the amendments to the security requirements. One commenter noted that it is important to allow the operator to determine the security and lighting needs for safety reasons. Another commenter agreed that flexibility is warranted given increased security measures due to the requirements from the Department of Homeland Security (DHS) or DOT.

Still another commenter suggested that EPA should not establish security requirements because DHS has recently published a rule affecting the security of farms and is expected to promulgate additional rules; EPA's efforts may be duplicative. Several other commenters suggested that EPA avoid duplication of security requirements if existing security plans are in place as required by other Federal or state regulations. Finally, one commenter requested that EPA provide additional clarification to identify the security benefits of fencing.

b. Response to Comments

The Agency agrees with the commenters' general support for the amendment and is finalizing the amendment to the security requirements, as proposed. With this amendment, the Agency recognizes that there is no one single approach to ensure proper facility security. The Agency believes that replacing the more prescriptive fencing and other security requirements, previously found at § 112.7(g), will allow the facility owner or operator to determine how best to secure and control access to oil handling and storage areas at the facility. This approach provides the flexibility suggested by several commenters to prevent unauthorized access to the facility using whatever method is most appropriate. Thus, the owner or operator of the facility can comply with DHS security requirements, other existing Federal, state or local security requirements, or an industry recommended practice and describe these measures in the Plan to comply with the SPCC security requirement.

The Agency does not believe it needs to provide additional clarification to identify the security benefits of fencing, as the flexibility in this rule allows that determination to be made by the owner or operator based on his facility's specific circumstances.

K. Integrity Testing

EPA is amending the requirements at §§ 112.8(c)(6) and 112.12(c)(6) to provide flexibility in complying with the bulk storage container integrity testing requirements. Specifically, EPA is modifying the provision to allow an owner or operator to consult and rely on industry standards to determine the appropriate qualifications for tank inspectors/testing personnel and the type and frequency of integrity testing required for a particular container size and configuration. Thus, this action extends the streamlined bulk storage container integrity testing requirement that EPA provided to qualified facilities in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) to all facilities subject to the integrity testing provision.

1. Amendments to Integrity Testing Requirements

EPA is replacing the previous regulatory requirements at §§ 112.8(c)(6) and 112.12(c)(6) with the integrity testing requirements promulgated in December 2006 for qualified facilities (§ 112.6(c)(4)). This amendment requires a facility owner or operator to:

- Test/inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made.
- Determine, in accordance with industry standards, the appropriate qualifications of personnel performing tests and inspections and the frequency and type of testing and inspections, which take into account container size, configuration, and design.

Because the revised requirements at §§ 112.8(c)(6) and 112.12(c)(6) apply to all facilities (excluding oil production facilities), EPA is removing the integrity testing requirements previously found at § 112.6(c)(4) for qualified facilities; this provision is redundant. These revised provisions allow, for example, an owner or operator to adopt integrity testing requirements that are outlined in industry standards in lieu of integrity testing without the need for environmental equivalence determinations certified by a PE. An owner or operator is still required to keep comparison records (records of inspections and tests kept under usual and customary business practices will suffice) and to inspect the container's supports and foundations. The owner or operator also is still required to conduct frequent inspection of the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas.

Under the revised provision, a facility owner or operator may still deviate from the rule provision, or from an industry standard, if the alternate measure is equivalent to the environmental protections provided by the rule requirement (as provided in § 112.7(a)(2)). In this case, a PE would need to certify the reason for the deviation and that the alternate measures are environmentally equivalent.

These amendments apply only to the integrity testing requirements in §§ 112.8(c)(6) and 112.12(c)(6). The bulk storage container inspection requirements for onshore oil production facilities in § 112.9(c)(3) are not affected by this amendment.

a. Comments

Many commenters expressed general support for the amendments to the integrity testing provisions. Some commenters suggested that a requirement for visual inspections with weekly or monthly frequency would be inappropriate because such a schedule is impracticable; they agreed that the frequency and documentation of visual inspections should be based upon PE judgment and site-specific conditions. Other commenters agreed that the PE should determine the appropriate testing/inspection requirements for each container and that industry standards should be used as appropriate.

Two commenters suggested that the amendments are too prescriptive, and not performance-based, and that the amendment detracts from a PE's ability to assess site-specific conditions. Other commenters disagreed with EPA's reference to industry standards in setting environmental regulations and objected to the use of the term ''industry standards'' for inspector qualifications and integrity testing methods because these standards are unnecessarily strict.

In addition, several other approaches were suggested by commenters. One commenter suggested that tank integrity testing criteria should be limited to

visual inspections. One commenter suggested extending ''environmental equivalence of visual-only testing to all elevated tanks and tanks on release prevention barriers (RPBs), regardless of volume.'' One commenter suggested that EPA should allow the owner or operator of a facility with indoor tanks to adopt different inspection requirements (not outlined by industry standards); the facilities would still have to keep records and perform monthly visual inspections, but not be required to hire third-party inspectors.

One commenter suggested that EPA should codify the PMAA standards; these standards allow operators, who are not certified tank inspectors, but who have training and experience to visually inspect tanks at petroleum production facilities, refineries, and terminals, to conduct such inspections. Several other commenters specifically recommended using standards, such as Steel Tank Institute (STI) SP001 and American Petroleum Institute (API) Standard 653. One commenter suggested that EPA should eliminate the phrase ''qualified personnel'' from the amended rule text. A few other commenters recommended that EPA incorporate API/EPA litigation settlement language concerning inspection requirements for smaller containers, specifically allowing visual inspection in certain site-specific circumstances, into the regulation at § 112.12(c)(6).

b. Response to Comments

EPA agrees with those commenters who supported amending the integrity testing requirements at §§ 112.8(c)(6) and 112.12(c)(6). EPA disagrees that the amendments are too prescriptive. The amended integrity testing requirements are intended to provide more flexibility to the owner or operator of an SPCC-regulated facility in the selection of the appropriate scope and frequency of integrity testing for all classes of bulk storage containers, including indoor and outdoor tanks and portable containers (such as 55-gallon drums and totes). The July 2002 rule revisions (67 FR 47042, July 17, 2002) amended the integrity testing requirements in §§ 112.8(c)(6) and 112.12(c)(6) to require visual inspections, plus some other form of testing, for each bulk storage container 55 U.S. gallons or greater; this amendment modifies this requirement to allow the owner or operator to determine the frequency and type of testing and inspections that are appropriate, according to site-specific conditions (for example, type and age of tanks, condition of tanks, and overall tank/secondary containment configuration), while also considering relevant integrity testing standards.

EPA maintains that inspection of containers storing oil in accordance with recognized industry inspection (integrity testing) standards is an important aspect of oil spill prevention. Industry standards are technical guidelines created by experts in a particular industry for use throughout that industry. These guidelines assist in establishing common levels of safety and common practices for manufacture, maintenance, and repair. Created by standard-setting organizations using a consensus process, the standards establish the minimum accepted industry practice. EPA recognizes that some industry standards now provide differentiated inspection requirements for various container sizes and configurations that may allow for visual inspection of certain types of oil storage containers, such as drums and totes and certain tanks up to 5,000 U.S. gallons. EPA's amendments to the integrity testing requirements are intended to allow the use of these industry standards without the need for environmental equivalence discussions in an SPCC Plan when a recognized industry standard is followed. EPA notes that use of a particular standard is voluntary; however, when a standard (or any part of a standard) is incorporated into a facility's SPCC Plan, then adherence to that standard (or part of a standard) is mandatory for implementation of the SPCC Plan.

It should also be noted that these amendments do not restrict the use of environmental equivalence, including establishing differentiated inspection requirements for shop-built tanks versus field-erected tanks, and other alternatives suggested by commenters. Owners or operators still have the ability to develop alternative, environmentally equivalent integrity testing procedures for bulk storage containers in accordance with § 112.7(a)(2). These equivalent measures must be in accordance with good engineering practice and are subject to certification by a PE.

EPA described the environmental equivalence flexibility available to a PE with respect to integrity testing in a letter to the PMAA.[5] While the policy and approach for the use of environmental equivalence described in this letter is still valid, the approach taken in this final rule amending the integrity testing requirements allows inspection requirements outlined in industry standards to be used without the need for environmental equivalence determinations certified by a PE. A major industry standard for integrity testing (STI SP001) was modified since the letter to PMAA was written to outline ''good engineering practice'' for integrity testing of shop-built containers. This may affect a PE's decision whether to certify an environmentally equivalent approach as described in the PMAA letter, or to follow the industry standard as provided by the amendment finalized in this rule.

In response to the comment that EPA should clarify acceptable industry standards for all integrity testing procedures, the Agency provided a list of organizations that may be helpful in the identification and explanation of industry standards in the **Federal Register** notice for the July 2002 SPCC rule revisions (67 FR 47058, July 17, 2002). In addition, EPA also provided an overview and description of the scope and key elements of pertinent industry standards in Chapter 7 of the *SPCC Guidance for Regional Inspectors*. While the Agency is allowing industry to rely on industry standards to assess the inspection and integrity testing scheme, EPA does not believe that any specific industry standards should be incorporated, by reference, into the rule. As EPA noted in the preamble to the July 2002 SPCC rule revisions (67 FR 47070, July 17, 2002), while facility owners or operators should look to specific industry standards as a guide for preparing SPCC Plans, EPA does not believe that incorporating specific standards into this rule is appropriate. Such incorporation freezes standards into rules, which may become outdated or obsolete. The decision in every case as to the applicability of any industry standard will be one for the PE, or the owner or operator of the facility who self-certifies an SPCC Plan.

Finally, commenters suggested allowing the use of alternative inspection techniques and the qualification requirements for inspectors; however EPA believes that these amendments are consistent with industry standards related to integrity testing.

L. Animal Fats and Vegetable Oils

Under this final rulemaking, EPA is differentiating the integrity testing requirements at § 112.12(c)(6) for an owner or operator of a facility that handles certain types of AFVOs.

EPA is providing the PE or an owner or operator self-certifying an SPCC Plan with the flexibility to use a visual

[5] Letter to Daniel Gilligan, President, Petroleum Marketers Association of America, from Marianne Lamont Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA, May 25, 2004.

inspection program for integrity testing that is appropriate for containers that store AFVOs that meet certain criteria. This flexibility applies to those bulk storage containers that are subject to the applicable sections of the Food and Drug Administration (FDA) regulation 21 CFR part 110, *Current Good Manufacturing Practice in Manufacturing, Packing or Holding Human Food*, and that meet the following additional criteria: (1) The containers are elevated; (2) the containers are made from austenitic stainless steel; (3) the containers have no external insulation; and (4) the containers are shop-built. That is, an owner or operator with containers meeting these criteria can use visual inspection of these containers equivalent to industry standards, in lieu of the revised integrity testing requirements found at § 112.12(c)(6), without having to make an environmental equivalence determination in accordance with § 112.7(a)(2). The owner or operator is required to document the procedures for inspections and testing in their SPCC Plan, including those for AFVO bulk storage containers that are eligible for the differentiated requirements described in this amendment.

1. Differentiated Requirements for AFVOs

Stakeholders have commented that AFVOs merit differentiated requirements under the SPCC regulation. In particular, the regulated community has pointed to differences between the toxicity and biodegradation profiles of AFVOs and those of petroleum oils. Because of these claims, and in response to the Edible Oil Regulatory Reform Act (EORRA), the Agency has on several occasions formally requested information and supporting scientific data that would inform such a determination. (*See* 72 FR 58400, October 15, 2007, for a discussion of EPA's data review.) EPA then considered whether an alternative approach to differentiation that is not based on the oil's toxicity and its inherent physical/chemical properties, but rather based on the way these oils are stored and handled at a facility would be appropriate. EPA focused specifically on the integrity testing requirements for bulk storage of AFVOs to address concerns raised by the regulated community. As a result, this final rule establishes differentiated integrity testing requirements for certain bulk storage containers that store AFVOs and that meet specific design and operational criteria.

Because this is an alternative, EPA is not requiring that an owner or operator use this option. The alternative provides additional flexibility in meeting the provisions set forth in § 112.12(c)(6) to address stakeholder concerns. In addition, an owner or operator may make an environmental equivalence determination, in accordance with § 112.7(a)(2) for integrity testing of a bulk storage container.

a. Comments

Several commenters expressed support for EPA's efforts to reduce the regulatory burden to facilities storing AFVOs because these substances are different from petroleum oils. One commenter appreciated EPA's clarification regarding reasonable expectation of discharge for AFVOs that are solid or semi-solid at ambient temperature and pressure. However, one commenter suggested the current criteria are too limiting to provide relief, because many AFVO storage containers would not meet the criteria and thus, would not be eligible. Another commenter, on the other hand, indicated the proposal was overly lax and should be reconsidered.

b. Response to Comments

EPA notes that this alternative option is based not on the differences between petroleum oil and AFVOs, but on the way these oils are stored and handled at a facility. With regard to the comment about certain AFVOs solidifying at room temperature, EPA notes that the applicability of the SPCC rule must be made in accordance with the provisions set forth in § 112.1. The Agency notes that the SPCC rule only applies to facilities that, due to their location, can reasonably be expected to discharge oil to navigable waters or adjoining shorelines. In determining whether there is a reasonable expectation of discharge, an owner or operator of a facility may consider the nature and flow properties of the oils handled at the facility. However, if a facility owner or operator determines that there is a reasonable expectation to discharge oil to navigable waters or adjoining shorelines for any single oil container, all oil containers at the facility are subject to the rule's requirements, except as otherwise exempted.

The Agency acknowledges comments on the criteria being both too limiting and also overly lax, but EPA believes that the criteria developed strikes the appropriate balance between regulatory requirements and environmental protection.

2. Differentiation Criteria: Containers Subject to FDA Regulations—21 CFR Part 110

The differentiated integrity testing requirements finalized in this action are available only to those bulk storage containers that are subject to the applicable sections of the FDA regulation at 21 CFR part 110. When developing an integrity testing program for AFVO bulk storage containers, FDA rule requirements may substitute for an industry standard. Applicable requirements within 21 CFR part 110, when taken together with the additional criteria in this amendment, serve as equivalent alternative measures that include the main elements of an integrity testing program under the SPCC regulation. The minimal elements for an integrity testing program can be separated into three main structural integrity areas: (1) Container foundations, (2) container support structures, and (3) the container itself.

- *Container foundations.* FDA requires that facilities be constructed in such a manner that the floor, walls, and ceilings be adequately cleaned and kept clean and in good repair (21 CFR 110.20(b)(4)). Bulk storage containers that sit atop floors that fall under this requirement are expected to be maintained and kept in good repair.
- *Container support structure.* FDA requires all plant equipment, including the container's structural supports, to be designed of such material and workmanship as to be adequately cleanable, and for it to be properly maintained (21 CFR 110.40(a)). Periodic maintenance of the structural support(s) of a bulk storage container is also an oil spill preventive measure.
- *Container itself.* FDA requires the design, construction, and use of equipment to preclude the adulteration of food with, among other potential contaminants, metal fragments (21 CFR 110.40(a)). FDA further requires that food contact surfaces be corrosion resistant when in contact with food. FDA also requires equipment that is in the manufacturing or food-handling area and that does not come into contact with food must be constructed and kept in a clean condition (21 CFR 110.40(c)). The exterior surface of bulk storage containers that are located in the manufacturing or food-handling area and that are subject to this requirement are expected to be maintained to a higher standard than other bulk storage containers, which are not subject to a similar requirement.

a. Comments

One commenter agreed with the logic that container foundations and support structures meeting the FDA requirements may also meet the intent and practicality of the SPCC requirements. Another commenter agreed that offering options for environmental equivalence is a good step, but suggested that the options should go beyond the FDA standards and include other industry standards that offer equivalent protection.

b. Response to Comments

EPA agrees with those comments supporting the use of FDA's regulations as a basis for establishing a qualifying criterion for differentiated integrity testing requirements for AFVOs. The Agency also agrees that compliance with industry standards and requirements other than 21 CFR part 110 may also meet the SPCC inspection, evaluation, and testing requirements. In the preamble to the July 2002 SPCC rule amendments, EPA provided examples of industry standards that may constitute good engineering practice for assessing the integrity of different types of containers for oil storage (67 FR 47120, July 17, 2002). Additionally, the SPCC rule provides flexibility regarding the integrity testing requirements of bulk storage containers, as long as the alternatives provide equivalent environmental protection per § 112.7(a)(2).

3. Differentiation Criteria: Elevated Bulk Storage Containers

The differentiated integrity testing requirements finalized in this action are available only to those bulk storage containers that are elevated. Food equipment, by design, is generally elevated above the floor using legs or another means of support so that the space between the equipment and the floor can be cleaned. For the purposes of oil spill prevention, elevated bulk storage containers allow visual inspections for oil discharges all around the container. An elevated bulk storage container used for food oils also facilitates complete drainage because they are designed such that the oil is withdrawn from the lowest point in the container, so that foreign substances or materials do not accumulate and contaminate the food oil. For the purposes of oil spill prevention, self-draining containers operating using gravity flow allows complete drainage and prevents substances other than oil (such as water) from accumulating at the bottom of the container, thus minimizing corrosion. EPA believes that the self-drainage design, in conjunction with the applicable regulatory requirements, is likely to prevent the corrosion of the internal contact surface in food-grade AFVO bulk storage containers.

a. Comments

Several commenters suggested including non-elevated containers in EPA's criteria for the integrity testing provision. Commenters reference non-elevated food industry tanks that are positioned on pads so long as the area can be adequately cleaned and kept in good repair, and vessels that incorporate a bottom-discharge design which eliminates the build-up of water and materials in the bottom of the tank and prevents corrosion.

b. Response to Comments

While EPA recognizes similarities between elevated and bottom-discharge designs, the Agency does not agree with the request to expand the scope of the AFVO alternative criterion to include non-elevated bulk storage containers. Although some food industry facilities may use non-elevated tanks, food equipment is generally designed to be elevated (for example, to stand on legs); this elevated design allows the space between the plant equipment and the floor to be easily cleaned. FDA also recommends that all equipment should be so installed and maintained so as to facilitate cleaning of the equipment and of all adjacent spaces.

Bottom-discharge designs similarly eliminate the build-up of water and materials in the bottom of the tanks. However, the Agency believes that having the tanks elevated facilitates maintenance, inspections, and monitoring for oil discharges all around the bulk storage container, all of which are critical in allowing for the differentiated integrity testing requirements. It is important to note that the differentiated requirements are an available alternative. The owner or operator may choose to include bulk storage container designs that provide equivalent environmental protection in their SPCC Plan, in accordance with § 112.7(a)(2). For example, bulk storage containers built according to industry standards (such as 3–A Sanitary Standards) may provide additional features that facilitate visual inspection (such as manholes for internal inspection) that may provide comparable environmental protection.

4. Differentiation Criteria: Containers Made From Austenitic Stainless Steel

The differentiated integrity testing requirements finalized in this action are available only for those bulk storage containers that are made of austenitic stainless steel. EPA believes that non-homogenous container systems (for example, containers with external insulation, an external coating, a mild-carbon steel shell, an internal liner) are more complex than homogenous container systems (such as containers constructed solely of austenitic stainless steel) and may require additional inspection measures to ensure the integrity of the container. Furthermore, austenitic stainless steel containers are often used because cleaning agents and acidic detergents used to clean food and non-food contact surfaces can be corrosive if used on incompatible surfaces. Therefore, EPA is limiting this alternative approach for integrity testing to AFVO bulk storage containers made of austenitic stainless steel.

a. Comments

A commenter agreed with EPA to limit the alternative integrity testing requirements to austenitic stainless steel tanks and vessels. However, several commenters suggested that EPA consider including carbon steel tanks in the eligibility criteria for the flexibility to determine the scope of integrity testing, especially considering the widespread use of these containers and the consistency with EPA's current SPCC guidance. A commenter also cited the cost difference between a mild steel tank (commonly used in the industry) and a stainless steel tank.

b. Response to Comments

EPA agrees with the commenter who supported limiting the alternative integrity testing requirements to bulk storage containers made of austenitic stainless steel for the reasons stated above. As one commenter noted, carbon steel tanks that are interior-lined may pose more significant inspection requirements because the interior lining may fail to adhere to the tank, and not provide the intended protection of the carbon steel. Other commenters believed that limiting alternative testing requirements to austenitic stainless steel would limit the usefulness of the alternative option. While this assertion may be correct, the Agency nevertheless believes that expanding this alternative to include carbon steel containers is not appropriate, because non-austenitic stainless steels, including but not limited to carbon steel, are not as inherently corrosion resistant as austenitic stainless steel to the materials stored or handled in them (that is, they are more susceptible to internal corrosion) or to the operating environment (that is, they are more

susceptible to external corrosion). Furthermore, non-austenitic stainless steel containers may require a liner; these liners can fail or delaminate, promoting the potential for internal or external corrosion. Thus, the Agency believes the austenitic stainless steel criterion is an integral part of the criteria for differentiated requirements. Again, these differentiated requirements are an available alternative that the owner or operator may choose to include in their SPCC Plan. The owner or operator may choose to make an environmental equivalence determination, in accordance with § 112.7(a)(2), for similar corrosion resistant materials.

5. Differentiation Criteria: Containers With No External Insulation

The differentiated integrity testing requirements finalized in this action are available only to those bulk storage containers with no external insulation. The Agency believes that inspections based on frequent monitoring of the exterior surface of a bulk storage container for corrosion and/or other mechanisms that can threaten a container's integrity is a minimum criterion for an alternative measure that provides equivalent environmental protection. External insulation covering the outside of a bulk storage container acts as a physical barrier to effective visual examination of the exterior surface. If not properly sealed, insulating materials covering the exterior surface of a bulk storage container and/or any associated equipment and piping can become damp. Insulation that retains moisture and that is adjacent to a container's exterior surface can cause significant corrosion, which may threaten the integrity of the container.

EPA is unaware of any sanitation provision or regulatory requirement that requires an inspection between the insulation and the exterior surface of a bulk storage container. Furthermore, the Agency does not know of any established industry methods or procedures, or industry standards specific to AFVOs, to evaluate the exterior surface of a bulk storage container that is covered by insulation. Therefore, EPA believes only containers with no external insulation should be eligible for this alternative for integrity testing.

a. Comments

One commenter stated that effective visual examination is difficult for tanks with external insulation; therefore, the commenter agreed that the alternative integrity testing requirements should only be applied to tanks with no external insulation. However, several commenters suggested that EPA revise its AFVO alternate integrity testing criteria to allow insulated or jacketed tanks to be used under this amendment, as long as there are sufficient access ports installed in key locations to observe an appropriate quantity of the exterior of the tank. Commenters cite the need for this type of tank to maintain product viscosity. Commenters also note that there is an established industry practice allowing for visual inspection of insulated tanks. In addition, one commenter suggested insulation is very prevalent in the industry and the increased energy cost for non-insulated containers would be prohibitive.

b. Response to Comments

The Agency agrees with those commenters that supported limiting the alternative criterion to bulk storage containers that have no external insulation because external insulation is a barrier to visual examination, making effective visual inspection difficult. At the same time, EPA recognizes that some AFVO bulk storage containers need insulation to maintain temperatures. However, the Agency disagrees with the commenters that suggested this criterion should be expanded to include jacketed tanks that have sufficient access ports installed at key locations.

The Agency believes it is important that the criteria for differentiated requirements account for the effect of corrosion under the thermal insulation, including but not limited to, the effect of moisture, chloride leaching, and/or temperature. The effects of corrosion under thermal insulation are well documented in the technical literature. (*See*, for example, National Association of Corrosion Engineers (NACE) Standard RP0198–2004.) Thus, because external insulation covering the outside of a bulk storage container acts as a barrier to effective visual examination, EPA believes this is a minimum criterion for this alternative, the Agency is limiting the alternative criterion to those containers that have no external insulation. However, bulk storage containers that store food oil and are built according to industry standards (such as 3–A Sanitary Standards) may have additional design features that provide equivalent environmental protection and thus meet the intent of the criteria. For example, container configurations built according to 3–A Sanitary Standards typically include ''manholes'' that facilitate complete access for examination of the entire internal surface. These containers also typically have an outer shell (that is, a double wall) that is sealed completely (for example, with completely welded seams) so that the container integrity is maintained by removing any potential for the insulation to be exposed to moisture. In addition, some AFVO bulk storage containers that are refrigerated may suppress corrosion potential, whereas containers that are heated to facilitate oil flow may promote corrosion potential. The Agency believes the rule provides the facility owner or operator with significant flexibility to make an environmental equivalence determination, in accordance with § 112.7(a)(2), which may be used to address those insulated bulk storage containers that have alternative configurations, including access ports.

Finally, the Agency disagrees with those commenters who suggested that the alternative criterion should include insulated containers because they are prevalent in the industry or because the increased energy cost for non-insulated containers would be prohibitive. The Agency is not mandating the use of any type of container, but rather is allowing flexibility for the owner or operator of facilities that have containers that meet the alternative criterion.

6. Differentiation Criteria: Shop-Fabricated Containers

The differentiated integrity testing requirements finalized in this action are available only to shop-fabricated containers (i.e., shop-built). Shop-fabricated containers are those containers that are shop-assembled in one piece before they are transported to the installation site; this limits the maximum capacity of the container so that it can be transported over the road by truck. Shop-fabricated containers generally have lower volume capacities, smaller tank diameters, and a fewer number of welds than field-erected containers, and they are typically comprised of a single type of material with a single wall thickness.

Field-erected (i.e., field-constructed) containers, on the other hand, can store much larger volumes of oil. They have larger container capacities because individual pieces of the container can be transported to and assembled at the installation site. Because of their greater size and complexity, field-erected containers generally have more stringent engineering requirements than shop-fabricated containers, which would need to be considered in developing an appropriate integrity testing program. For example, field-erected containers may have variable shell-wall

thicknesses, and/or be comprised of different materials to account for variations in the stresses caused by hydrostatic pressure. These field-erected containers generally have a significantly greater number of welds as compared to a shop-fabricated container because they are fabricated on-site from individual pieces. The stress on the container walls and joints is greater as the diameter and/or height of the container increases. A brittle fracture evaluation of a field-erected container may be necessary if the thickness of the shell wall is above a certain value and the container undergoes a repair, alteration, reconstruction, or a change in service that might affect the likelihood of a discharge or failure (§ 112.7(i)).

This option, therefore, is limited to shop-fabricated containers because they are simpler in design and construction (they are typically subject to less stress, have fewer welds, and are less likely to be subject to brittle fracture failure) than field-erected containers. The Steel Tank Institute's (STI) SP001, *Standard for the Inspection for Aboveground Storage Tanks*, establishes the scope and frequency for visual inspections of shop-fabricated containers. This rule amendment is consistent with past regulatory guidance and current industry best practices for this particular class of bulk storage containers.

a. Comments

One commenter suggested that EPA should not limit consideration of alternative integrity testing to only shop-fabricated containers. The commenter indicated that while field-erected tanks are larger than shop-fabricated tanks, they are designed to meet industry standards; there are no data to support a higher failure rate; and industry standards for visual inspections apply to field-erected tanks.

Two commenters also suggested that EPA modify the rule to clarify that tanks that are pre-fabricated in sections, and then field-erected in a limited number of places, should qualify for the alternative provisions, since many AFVO facilities utilize these tanks and there are fewer field welds than for a completely field-erected tank. In addition, one commenter suggested that these partial field-assembled tanks are not necessarily the large capacity containers that EPA may seek to exclude from the integrity testing provision.

b. Response to Comments

For the reasons stated above, EPA believes it is appropriate to limit the alternative integrity testing criterion to shop-fabricated containers: They are simpler in design and construction in relation to field-erected containers, including those bulk storage containers that are partially field assembled. EPA believes this criterion distinguishes between more complex bulk storage containers, which may require greater integrity testing scrutiny, and smaller, less complex containers.

EPA disagrees with the commenter who questioned whether this criterion was relevant, by asserting that the industry standards for visual inspection apply to field-erected tanks. While visual inspection may be a component of an integrity testing program for field-erected tanks, EPA is unaware of any industry standard which limits integrity testing for a field-erected bulk storage container to visual inspection only. Industry standards typically incorporate visual inspection into a broader integrity testing program which typically also includes non-destructive testing on a regular schedule and includes inspection of the tank's shell and bottom plate. EPA believes this criterion, in combination with the others, limits the applicability of the integrity testing relief to those AFVO containers that, because of equipment design and handling requirements already provide environmentally equivalent protection. In contrast, containers that are partially shop-fabricated and then finalized in the field may be subject to additional inspection requirements to bring these containers into service and for continued service beyond fully shop-fabricated containers. It should also be noted that the rule provides sufficient flexibility to make an environmental equivalence determination, in accordance with § 112.7(a)(2), which may be used to address fielded-erected containers that may vary in complexity, including field-erected containers comprised of pre-fabricated sections.

7. Required Recordkeeping

The SPCC regulations require that inspections and tests be conducted in accordance with the written procedures that the owner or operator or the certifying PE develop for the facility and that records of inspections and testing be kept with the SPCC Plan in accordance with the recordkeeping provisions of § 112.7(e). EPA believes that visual inspection that is part of the periodic maintenance of the bulk storage container's support and foundation must be documented. Records of inspections and tests kept under usual and customary business practices will suffice. To take advantage of this alternative option for AFVOs, the owner or operator or PE should refer to the appropriate requirements under 21 CFR part 110 to develop an appropriate inspection, evaluation, and testing program for an SPCC-regulated facility.

No comments were submitted in reference to this requirement.

8. Other Suggested Criteria and Options

EPA received a number of comments with suggestions for other approaches to provide integrity testing relief to certain AFVO containers.

a. Comments

Two commenters suggested extending the testing frequency for AFVO containers based upon the internal corrosion differences between AFVO and petroleum-based oils. Other commenters suggested that EPA exempt from the integrity testing requirements storage containers used for AFVO in compliance with the secondary containment provisions and that undergo visual inspection on a routine basis. The commenters noted that a leak would be discovered before it could escape into the environment due to the inspection frequency.

Another commenter requested that EPA use the same approach for AFVO as detailed in the *SPCC Guidance for Regional Inspectors* (Chapter 7) where it is explained that other design approaches, other industry standards, or other good engineering practices may be used alone or as a 'hybrid' program where equivalent results in meeting the SPCC requirements is obtained. The commenter suggested that the language should be expanded to allow the same alternatives for similar containers of all oil covered by the regulation.

One commenter recommended that EPA require a certified external tank and vessel inspection every ten years for tanks/vessels greater than 10,000 gallons capacity when non-hazardous substances are stored and annual inspections are conducted by a preventive maintenance inspector who is familiar with the equipment and the FTPI 2007–1 standard.

Several commenters suggested exempting milk storage containers from SPCC requirements based on additional regulations which address storage for on-farm milk storage containers. Specifically, these commenters identified the Grade ''A'' Pasteurized Milk Ordinance (PMO), which addresses milk intended for human consumption.

b. Response to Comments

Regarding the comment on extending inspection frequency for AFVO containers, the rule does not establish a required frequency and the owner or

operator of the facility or PE can establish an inspection schedule to account for the chemical and physical characteristics of the oil being stored and for any other factors which may affect the integrity of a bulk storage container. In response to the comment requesting that EPA allow visual inspection and secondary containment instead of integrity testing on AFVO storage containers, EPA notes that the revisions to § 112.12(c)(6) may allow the owner or operator to conduct visual inspections to satisfy the integrity testing requirements, as long as they are conducted in accordance with industry standards.

EPA is also finalizing changes to § 112.12(c)(6) incorporating industry standards into an integrity testing program for AFVO bulk storage containers (consistent with the provision finalized at § 112.8(c)(6) for other oils). EPA also believes there is sufficient flexibility provided in § 112.7(a)(2) to make an environmental equivalence determination with respect to developing a hybrid integrity testing program. Therefore, EPA believes that the rule already allows other design approaches, other industry standards, or other good engineering practices to be used alone or as a 'hybrid' program where equivalent results in meeting the SPCC requirements are obtained.

Regarding the comments suggesting that integrity testing should follow specific fiberglass tank and pipe industry standards (FTPI 2007–1), the SPCC rule requires that the Plan be prepared in accordance with good engineering practices, including consideration of applicable industry standards (§ 112.3(d)(1)(iii)). An owner or operator may follow the fiberglass tank and pipe standards, if appropriate for the particular facility's characteristics. Thus, the rule already provides for this. However, it should be noted that when a standard (or any part of a standard) is incorporated into a facility's SPCC Plan, then adherence to that standard (or part of a standard) is mandatory for implementation of the Plan.

In response to the proposed differentiated integrity testing requirements for certain AFVO bulk storage containers, several commenters requested an exemption for bulk storage containers holding milk. The Agency considered comments supporting an exemption of certain milk bulk storage containers from the SPCC requirements. PMO is a model ordinance maintained through a cooperative agreement between the states, the FDA, and the regulated community. States typically adopt it either by reference or by directly incorporating its requirements into statutes or regulations. EPA agrees with commenters that milk containers merit further consideration with respect to SPCC rule applicability and the PMO. Thus, in the near future, EPA intends to publish a proposed rule on alternative regulatory approaches for milk, including an exemption based upon the PMO.

M. Oil Production Facilities

Since its original promulgation in 1973, the SPCC rule has included differentiated requirements for oil production facilities (§ 112.9), as compared to other types of facilities (§§ 112.8, 112.10, 112.11, and 112.12). Based on issues presented by the regulated community, EPA is finalizing certain revisions that further streamline, tailor or clarify the SPCC requirements for oil production facilities. Specifically, EPA is finalizing the following modifications for oil production facilities: excluding oil production facilities from the loading/unloading rack requirements at § 112.7(h), as described in Section V.F of this action; revising the definition of ''production facility''; extending the timeframe by which the owner or operator of a new oil production facility must prepare and implement an SPCC Plan; providing an alternative option for flow-through process vessels at oil production facilities to comply with the general secondary containment requirement and additional oil spill prevention measures in lieu of sized secondary containment requirements; providing an exemption for certain intra-facility gathering lines from the SPCC requirements; providing an alternative option for flowlines and intra-facility gathering lines at oil production facilities for contingency planning in lieu of all secondary containment requirements, while establishing more prescriptive requirements for a flowline/intra-facility gathering line maintenance program; providing compliance alternatives for certain produced water containers that do not contain oil as certified by a PE; providing compliance alternatives to sized secondary containment for produced water storage containers that are not otherwise exempt; establishing alternative criteria for an oil production facility to be eligible to self-certify an SPCC Plan as a qualified facility; and clarifying the definition of ''permanently closed'' as it applies to an oil production facility.

1. Definition of Production Facility

As described in Section V.D of this action, EPA is modifying the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to specify that the ''facility'' definition governs the applicability of 40 CFR part 112. To provide clarity consistent with these revisions, EPA is also finalizing modifications to the definition of ''production facility.'' A ''production facility'' is a type of ''facility'' as defined in § 112.2. The revised definition reads as follows: ''*Production facility* means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or intra-facility gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil (including condensate) and associated storage or measurement and is located in an oil or gas field, at a facility. This definition governs whether such structures, piping, or equipment are subject to a specific section of this part.''

With these revisions, EPA is adding a sentence at the end of the definition to clarify that while only the definition of ''facility'' governs the overall applicability of 40 CFR part 112, the definition of ''production facility'' is used to determine which sections of the rule may apply at a particular facility. (The sections for administrative and general rule requirements continue to apply to all facilities under 40 CFR part 112.) This change to the definition of production facility addresses concerns raised during litigation challenging the 2002 rule amendments and discussed in the May 25, 2004 **Federal Register** notice (69 FR 29728). EPA has also modified the phrase ''and located in a single geographical oil or gas field operated by a single operator'' to clarify that a production facility ''is located in an oil or gas field.'' This is consistent with this rulemaking's revisions to the definition of ''facility'' that emphasize the flexibility in how a facility owner or operator can determine the boundaries of a facility.

a. Comments

Several commenters expressed general support for EPA's proposed amendments to the definition of ''production facility.'' However, one commenter stated that the reference to '* * * property, parcels, leases * * *' in the definition of ''facility'' causes uncertainty because leases regularly extend beyond the size of a production facility. Several commenters also

suggested that the proposed addition of the phrase ''may be,'' would cause the definition to become ambiguous.

The Agency also received comment on various other suggested options. For example, operators of facilities producing AFVO requested that EPA clarify that this section applies only to petroleum oil production by adding the word ''petroleum'' to the definition of production facility, while several other commenters suggested removing the reference to ''a single geographical oil or gas field'' to reduce confusion. Several commenters expressed concerns regarding multi-facility Plans for production facility operations. Another commenter requested EPA remove the phrase ''gathering line'' from the definition of production facility to avoid dual jurisdiction. Two commenters requested additional clarity regarding natural gas and the definition of production facility. Finally, two commenters suggested that EPA include additional infrastructure, activities and equipment that support production operations under the specific requirements of § 112.9, or requested use of a ''primary function'' test of a facility to determine the facility's applicability to specific sections of the SPCC regulation.

b. Response to Comments

EPA agrees with those commenters who supported the modifications to the definition, and is finalizing revisions to the definition of ''production facility,'' with certain changes as described in this section. The Agency disagrees that the revised definition leads to industry uncertainty. The changes clearly indicate that the definition of production facility specifically identifies which rule requirements apply to a facility. For example, oil production facilities are excluded from the rule requirements in § 112.8: ''*Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities),*'' whereas the rule requirements in § 112.9: ''*Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities*'' specify that these requirements only apply to production facilities.

EPA also disagrees with the commenter who suggested that the addition of the term ''petroleum'' to the definition of production facility is necessary. The addition of the term ''petroleum'' is unnecessary because the definition itself indicates that the type of facilities addressed in the definition is one that is involved with petroleum crude oil production and not any other type of oil production, such as AFVO production. EPA's intent has always been that the definition of production facility addresses petroleum crude oil production, extraction, recovery, lifting, stabilization, separation or treatment and associated storage or measurement. For example, the definition includes terms associated with petroleum crude oil production, such as gathering lines and flowlines which are exclusively associated with upstream petroleum crude oil/gas production, not AFVO production or processing facilities. The term ''oil or gas field'' is used exclusively in upstream crude oil and gas production, not in AFVO production. This language further clarifies that the definition of production facility is specific to petroleum crude oil and gas production operations rather than AFVO production.

Several commenters expressed concern regarding multi-facility Plans for oil production operations. The Agency does not intend to require an owner or operator who uses one SPCC Plan to address multiple SPCC-regulated facilities to aggregate the storage capacity of the individual facilities covered in the multi-facility SPCC Plan. However, the method in which an owner or operator defines the boundaries of individual facilities must be consistent in determining both FRP and SPCC applicability. The Agency believes that the changes to the definitions of ''facility'' and ''production facility'' will not discourage the use of multi-facility Plans because the Agency does not require the aggregation of individual facility capacities covered under a multi-facility Plan. To provide further clarity, EPA has removed the limiting term ''single geographic'' from the production facility definition. This change together with the other modifications finalized in this action, make it clear that an owner or operator is not compelled, by the definition of production facility, to aggregate separate facilities located in a ''single geographic'' oil production field into a single facility. If an owner or operator has several distinct operations in one oil field, he is not required to consolidate these operations into a single facility. On the other hand, the owner or operator does have the flexibility to consolidate these operations if he so chooses.

To address the commenter's concerns that EPA is adding the terms ''intra-facility'' in front of the term gathering line, the Agency notes that the addition of this term clarifies that EPA only regulates those gathering lines located within a facility, as determined by the owner or operator. The Agency disagrees with commenters who suggested removing the term ''gathering lines'' from the production facility definition to avoid dual jurisdiction. Gathering lines that are located within the boundaries of an SPCC-regulated facility are considered to be ''intra-facility gathering lines'' and are subject to EPA's jurisdiction. However, EPA is exempting intra-facility gathering lines subject to the regulatory requirements of DOT's pipeline regulations in 49 CFR parts 192 or 195 from this regulation. See section V.M.4 of this notice for more information.

EPA does agree that clarification on how these rules address natural gas facilities is appropriate. In some cases, a natural gas production facility may store condensate (petroleum oil) in quantities that meet the applicability criteria for the SPCC requirements and should be considered a production facility when determining applicability of specific requirements in the rule (such as § 112.9). In this final rule, therefore, EPA is adding the phrase ''(*including condensate*)'' to the definition. This clarification is consistent with the current definition and provides additional clarity. Gaseous phase hydrocarbons, such as natural gas, present at SPCC-regulated facilities are not regulated under the SPCC rule. A detailed explanation of this interpretation can be found at 69 FR 29729–29730, May 25, 2004.

EPA does not agree with the ''primary function'' approach to determine the applicability to specific sections of the SPCC regulation or the commenters' interpretation that, where geographic considerations warrant, the definition of production facility should include all infrastructure associated with activities and equipment that support operations (such as base camps, airports, vehicle/equipment repair operations, electrical generating facilities, construction equipment). The definition of ''production facility'' is used to determine which of the sections of the rule apply for these support operations. The definition of production facility extends to all containers and equipment directly related to the production of crude oil; it does not include infrastructure (containers and equipment) not uniquely associated with or in support of crude oil production. This is consistent with the approach the Agency has taken in other EPA regulations, such as the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations for oil and natural gas exploration, development and production (53 FR 25447, July 6, 1988).

Thus, the Agency is clarifying in this notice that only the infrastructure, containers and equipment uniquely associated with the production of crude oil is subject to the specific requirements for a production facility (§ 112.9). Containers, equipment and piping containing crude oil used in the production, extraction, recovery, lifting, stabilization, separation or treatment of oil or gas condensate, or their associated storage or measurement is considered part of an oil production facility and subject to the specific requirements of § 112.9. Specific examples of containers, piping or equipment uniquely associated with or in support of the production of crude oil include, but are not limited to: Well heads; flowlines and intra-facility gathering lines; manifolds; heater treaters, free-water knockout or other primary separation vessels; bulk storage containers for crude oil or condensate; produced water containers; containers or pits storing drilling fluids; drilling oil storage/use; containers used for drilling completion operations; and hydraulic, dielectric, and lubrication oils used exclusively to support oil production operations. All other infrastructure or equipment that indirectly support crude oil production must meet the specific bulk storage requirements under § 112.8 or specific AFVO requirements under § 112.12, as applicable. (Any infrastructure and equipment at a facility subject to the SPCC rule, whether in direct support of crude oil production operations, or not, are also subject to the general rule requirements of §§ 112.1–112.7.)

For example, containers storing oil that support vehicle repair or maintenance (such as gasoline, lubricating oil) at a production facility are subject to both the general rule requirements and the specific requirements of § 112.8 because they are not directly or uniquely associated with crude oil production. Similarly, heating oil storage containers that support offices, oil storage to support construction activities, oil storage in transformers or electrical utility stations, or oil storage/processing to support refining operations (for example, topping facilities) and other bulk storage or the operational use of oil in containers, equipment and piping not used in the production, extraction, recovery, lifting, stabilization, separation or treatment of oil or gas condensate, or their associated storage or measurement are not considered part of an oil production facility and therefore are subject to both the general rule requirements and the rule requirements for onshore facilities under § 112.8 (or § 112.12 for AFVO).

The 1971 MOU memorialized the agencies' intent to minimize overlapping regulation by ''assign[ing] one agency the responsibility for regulating a complete operation at any one facility.'' EPA and DOT will revise the 2000 guidance memorandum, acknowledging that it has not provided a clear basis for implementing the 1971 MOU or delineating EPA and DOT jurisdiction (36 FR 24080, November 24, 1971). EPA will continue its work to improve SPCC guidance for pipeline operators and will communicate the results of discussions in a manner that affords further opportunity for public comment.

2. Modifications to § 112.9 for Drilling and Workover Facilities

To clarify that drilling and workover activities are not subject to the provisions at § 112.9, EPA is amending the title of § 112.9 to read ''Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities (excluding drilling and workover facilities).'' EPA is also amending the introductory sentence of the section accordingly.

As described in the October 2007 proposed rule (72 FR 58378, October 15, 2007), during the life of an oil well, maintenance or remedial work may be necessary to improve productivity. A specialized workover rig, and associated containers and equipment are brought on-site to perform maintenance or remedial activities on the well. Workover operations that perform maintenance or remedial activities on oil wells are distinct from the normal production operations, and as such are not subject to the requirements of § 112.9, but are subject to the applicable requirements in § 112.10 (for onshore facilities) or § 112.11 (for offshore facilities). Workover activities are a distinct operation and, if conducted by a separate owner or operator, may be considered a separate mobile facility. Workover facilities may have a different SPCC Plan, separate from the production facility. EPA notes that although production activities may temporarily cease during workover, if the production equipment and containers (such as those found in a tank battery) remain in operation or storing oil (that is, they are not ''permanently closed''), then the production facility owner or operator must maintain his own SPCC Plan during workover activities.

a. Comments

Two commenters expressed support for EPA's clarification excluding drilling and workover facilities from the provisions of § 112.9.

b. Response to Comments

The Agency agrees with the commenters and is finalizing the amendment as proposed.

3. SPCC Plan Preparation and Implementation

As described in the October 2007 proposed rule (72 FR 58378, October 15, 2007), the variables associated with the start of operations at new oil production facilities could lead to significant changes in necessary storage capacity and facility design. In this rulemaking, EPA is finalizing an amendment to allow a new oil production facility (that is, one that becomes operational after July 1, 2009) a period of six months after the start of operations to prepare and implement an SPCC Plan. EPA is excluding oil production facilities from the current requirements at § 112.3(b)(1), and is adding a new paragraph at § 112.3(b)(3) to require the owner or operator of a new oil production facility to prepare and implement an SPCC Plan six months after the start of operations.

The rule amendment applies at a new oil production facility that begins operating after July 1, 2009. The amendment does not apply to drilling or workover activities at a production facility. Drilling and workover operations are subject to the requirements at § 112.3(c) for mobile facilities and may implement a general SPCC Plan. Therefore, both during the initial drilling of the well, as well as during any workover activity, there are measures required for spill prevention and response for any oil discharges that occur from a drilling or workover facility subject to this rule. This amendment would not apply to an existing production facility in which a new well is drilled, and added to the existing tank battery/facility. In this case, the facility owner or operator must amend the SPCC Plan in accordance with § 112.5(a), which requires the Plan to be amended within six months of the facility change, and implementation within six months of the amendment.

With this amendment, EPA recognizes that for some oil fields, based on the often variable conditions of the oil reservoir, the type and proportion of products may be uncertain until after the process of extraction has started. During this timeframe, additional equipment may be added or removed

from the facility which would require an amendment to the SPCC Plan and the owner or operator of a new oil production facility may need to make multiple revisions to the Plan. The Agency believes that allowing a new oil production facility six months after the start of operations to prepare and implement an SPCC Plan properly addresses these concerns. The ''start of operations'' for an oil production facility is indicated by the start of well fluid pumping, transfer via flowlines, separation, treatment or storage of crude oil, or the storage of other oils in capacities that exceed the rule's current oil storage capacity thresholds for applicability.

a. Comments

Several commenters expressed support for EPA's proposed amendment to allow new oil production facilities six months to prepare and implement an SPCC Plan. Two commenters, however, suggested that EPA allow owners and operators one year for sufficient time for Plan preparation and implementation. Another commenter suggested that EPA provide an automatic extension for a facility owner or operator based on his inability to obtain the services of a PE.

b. Response to Comments

The Agency agrees with those commenters supporting an extension of six months to the timeframe by which an oil production facility must prepare and implement an SPCC Plan. The Agency disagrees with the suggested alternative of one year for the owner or operator to prepare and implement an SPCC Plan after the start of production operations. The Agency recognizes the unique characteristics of an oil production facility, but given that an oil production facility is likely to stabilize operations within six months from start-up, a one-year time period for Plan preparation and implementation is inappropriate. If a facility owner or operator needs additional time to prepare and implement the SPCC Plan, the existing rule already provides the owner or operator the opportunity to request an extension of time to come into compliance in accordance with § 112.3(f) when circumstances are beyond his control. This may occur, for example, when there are no qualified personnel available or if there are equipment delivery delays.

4. Flowlines and Intra-Facility Gathering Lines

EPA is finalizing a conditional exemption from secondary containment requirements under the SPCC rule for flowlines and intra-facility gathering lines. That is, in lieu of general secondary containment, an owner or operator may opt to prepare a contingency plan and written commitment of manpower, equipment, and materials. Additionally, EPA is finalizing specific requirements for a flowlines and intra-facility gathering lines maintenance program. EPA is also exempting intra-facility gathering lines that are subject to the regulatory requirements at 49 CFR parts 192 or 195 from the SPCC requirements. EPA is not promulgating definitions of flowlines and intra-facility gathering lines in this action.

a. Definition of Flowline and Intra-Facility Gathering Line and Exemption

In the October 2007 proposal (72 FR 58378, October 15, 2007), EPA requested comments as to whether regulatory definitions for ''flowline'' and ''intra-facility gathering line'' are necessary, and if so, suggestions for appropriate definitions. This request was intended to determine whether clarification of the scope of the terms and their applicability under the SPCC rule was necessary. EPA indicated in the proposal that the Agency did not believe that such definitions were necessary because there is a common understanding of these terms within the affected industry. The Agency is clarifying the scope of the SPCC rule's applicability to gathering lines and finalizing an amendment that exempts the ''intra-facility'' gathering lines that are subject to both EPA and DOT regulatory requirements from the SPCC rule in response to comments on the proposed conditional exemption from secondary containment requirements for flowlines and intra-facility gathering lines. The Agency believes that this exemption is a logical outgrowth of the proposal and the comments received. In the October 2007 proposal, EPA acknowledged that given the characteristics of certain intra-facility gathering lines, these pipelines may be regulated under requirements of both EPA and DOT (72 FR 58407, October 15, 2007). EPA also recognized in the proposal that DOT requirements for pipelines may be similar in scope to SPCC regulations, so that compliance with DOT requirements may be considered environmentally equivalent to certain SPCC requirements. EPA also recognized in the proposal that DOT requirements for pipelines may be similar in scope to SPCC regulations, so that compliance with DOT requirements may be considered environmentally equivalent to certain SPCC requirements. DOT has promulgated regulations for pipelines under 49 CFR parts 192 (*Transportation of Natural and Other Gas by Pipeline*), 194 (*Response Plans for Onshore Oil Pipelines*) and 195 (*Transportation of Hazardous Liquids by Pipeline*). DOT has the statutory authority over gas or hazardous liquid pipelines of any diameter within environmentally sensitive rural areas (defined as ''unusually sensitive areas''), and liquid pipelines above six inches in diameter operating at low pressure. While many gathering lines are under DOT's statutory authority, only a subset of them has DOT regulatory requirements.

EPA recognizes that gathering lines can be outside the Agency's jurisdiction because they ''transport'' oil outside of an oil production facility. EPA has jurisdiction only over non-transportation-related facilities, which includes pipelines that transport oil within a facility. Any inter-facility pipeline, including a gathering line, that transports oil between facilities or from a facility to a vessel, or from a facility to a transportation-related pipeline facility, such as a transmission line, or a pipeline breakout tank, is considered transportation-related and is therefore outside the jurisdiction of EPA and not subject to the SPCC rule. However, the definition of ''facility'' as it applies to the SPCC rule is flexible. Depending upon how an owner/operator defines his facility under the SPCC rule, an oil production facility may also include gathering lines. While gathering lines within the SPCC facility boundaries are intra-facility piping, EPA is maintaining the term intra-facility gathering lines because it is a term that is well recognized within the production sector. For those intra-facility gathering lines that are regulated by both EPA and DOT, EPA is exempting them from the SPCC requirements. In other words, the exemption is for intra-facility gathering lines present at a facility where the piping is subject to both EPA and DOT jurisdiction and regulations. EPA's focus with the SPCC rule is the regulation of oil storage at facilities engaged in activities related to drilling, producing, gathering, processing, refining, transferring, distributing and use of oil, while DOT's focus is in the area of pipeline regulation; therefore, EPA believes it is appropriate to defer to DOT's technical regulation in lieu of EPA's intra-facility gathering line requirements. EPA believes this change is appropriate and is a logical outgrowth of the proposal and several comments received regarding jurisdiction of intra-facility gathering lines.

Only those lines that are subject to DOT regulations are eligible for the exemption finalized in this action.

Those intra-facility gathering lines located at a facility that are not subject to the regulatory requirements at 49 CFR parts 192 and 195 remain subject to the requirements in 40 CFR part 112. Other equipment and piping at an oil production facility (such as flowlines), remain subject to the SPCC requirements. In addition, this exemption requires that owners or operators of a facility identify and mark as ''exempt'' the location of exempt piping on the facility diagram. This requirement will assist facility and EPA personnel in defining the boundaries of EPA and DOT jurisdiction and provide response personnel with information used to identify hazards during a spill response activity.

As discussed in Section V.D of this notice, an owner or operator has the flexibility under the definition of facility to determine the boundaries of their SPCC facility; thus, the facility may include intra-facility gathering lines. DOT defines a production facility under 49 CFR parts 195 as ''piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum or carbon dioxide, or associated storage or measurement. (To be a production facility under this definition, piping or equipment must be used in the process of extracting petroleum from the ground, and preparing it for transportation by pipeline.)'' (49 CFR 195.2) This definition is similar in scope to EPA's definition of production facility described above. However, DOT provides additional specificity regarding the endpoints of a production operation for the purpose of defining a gathering line. Under 49 CFR part 192, DOT clarifies that the beginning of gathering may not extend beyond the furthermost downstream point in a production operation (49 CFR 192.8(a)(1)).

Comments. Two commenters suggested clarifications of the term flowline, one of whom suggested a definition. Two other commenters stated that definitions for flowline or intra-facility gathering line were not needed, while several commenters suggested that the references to ''gathering lines'' with flowlines be eliminated, citing the confusion of using the term and noting the MOU with DOT, which specifically limits EPA's jurisdiction of these lines. Another commenter requested that EPA clarify that post-separation gas gathering lines are exempt from the SPCC rule. One other commenter suggested that EPA modify § 112.1(d)(1)(ii) to include an exemption for all gathering lines.

Response to comments. EPA disagrees with those commenters that suggest there is a need to define the terms ''flowline'' and ''gathering line.'' EPA believes the oil production sector has a common understanding of these terms and that specific definitions are not needed. ''Flowlines'' are piping that transfer crude oil and well fluids from the wellhead to the tank battery where separation and treatment equipment are typically located. Flowlines may also connect a tank battery to an injection well. Depending on the size of the oil field, flowlines may range in diameter and run from hundreds of feet to miles between the wellheads and the tank batteries or primary separation operations. The term ''gathering lines'' refers to piping or pipelines that transfer crude oil product between tank batteries, within or between facilities. Gathering lines often originate from an oil production facility's lease automatic custody transfer (LACT) unit, which transfers oil to other facilities involved in gathering, refining or pipeline transportation operations.

EPA considers gathering lines subject to EPA's jurisdiction if they are located within the boundaries of an otherwise regulated SPCC/FRP facility (that is, intra-facility gathering lines). Therefore, to address the concerns raised by commenters, the Agency is including the phrase ''intra-facility'' in front of the term gathering lines to clarify that EPA only has the authority to regulate piping, in this case intra-facility gathering lines, which are located within a facility boundary. The Agency also is finalizing an amendment that excludes from regulation those ''intra-facility'' gathering lines subject to both EPA and DOT regulatory requirements. Specifically, one commenter suggested that EPA modify § 112.1(d) to include an exemption for all gathering lines. While EPA does not agree that all intra-facility gathering lines, located within a production facility, should be excluded from the SPCC requirements, the Agency does agree that minimizing dual regulation, where appropriate, is beneficial to the regulated community. Therefore, EPA is finalizing a new exemption under § 112.1(d)(2)(i) and 112.1(d)(11) for intra-facility gathering lines subject to DOT regulation. The Agency believes this change is appropriate and is a logical outgrowth of the proposal and several comments received regarding jurisdiction of intra-facility gathering lines.

However, the Agency does not want to create a regulatory ''gap'' with this action. Gathering lines, as well as flowlines are a source of oil spills, as demonstrated in EPA's study of the exploration and production sector, ''Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation (May 30, 2007; located in the docket for this rulemaking: EPA–HQ–OPA–2007–0584–0015). Currently, EPA has only a limited set of requirements for flowlines and intra-facility gathering lines, whereas DOT has more comprehensive requirements for pipelines (which are only applicable to a subset of gathering lines within DOT jurisdiction). Additionally, there are no industry standards for flowline or gathering line maintenance. Therefore, intra-facility gathering lines located at a facility that are not subject to the regulatory requirements under 49 CFR parts 192 or 195 remain subject to EPA's SPCC regulations under 40 CFR part 112. These lines also remain subject to EPA jurisdiction and the Agency, if appropriate, can use existing rule mechanisms under § 112.1(f) to bring exempted intra-facility gathering lines back under the SPCC rule requirements.

One commenter requested that EPA clarify that post-separation gas gathering lines are exempt from the rule. EPA maintains its position that hydrocarbons in a gaseous phase under ambient temperature and pressure, such as natural gas, are not regulated under the SPCC rule. However, production facilities can include piping with both oil and gas phases. In this instance, such a facility's dual-phase flowlines and intra-facility gathering lines (that is, those carrying both gas and liquid phase hydrocarbon) are subject to the SPCC requirements (unless they are subject to 49 CFR parts 192 or 195 and are therefore exempt) because if the lines were to rupture or leak, they may discharge oil to navigable waters or adjoining shorelines in quantities that may be harmful as defined in 40 CFR part 110.

b. Exemption From Secondary Containment

EPA believes that secondary containment is, in most cases, impracticable for flowlines and intra-facility gathering lines. Therefore, the Agency is amending § 112.7(c) to provide an alternative (which is optional) to the general secondary containment requirements for flowlines and intra-facility gathering lines (unless they are exempt from regulation). In lieu of secondary containment, the Agency will require the implementation of an oil spill contingency plan in accordance with 40 CFR part 109 (Criteria for State, Local and Regional Oil Removal Contingency Plans) and a written

commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful, without having to make an impracticability determination for each piece of piping. The Agency is tailoring the requirements in an effort to improve compliance and enhance environmental protection.

Comments. Several commenters expressed support for EPA's proposed amendment to remove the secondary containment requirements for flowlines and intra-facility gathering lines at oil production facilities. Several commenters requested, however, that EPA acknowledge the option for owners or operators to select sized secondary containment based on site conditions and recommendations of the PE under certain circumstances. One commenter suggested a modification to allow collection areas rather than individual containment along gathering lines. Another commenter, however, stated that the proposed amendment to exempt flowlines and intra-facility gathering lines at oil production facilities from the secondary containment requirements is inconsistent with 33 U.S.C. 1321(j)(5)(D).

Response to comments. EPA agrees with the majority of commenters that secondary containment for flowlines and intra-facility gathering lines is, in most cases, impracticable and that providing secondary containment for these lines can be difficult and expensive for an owner or operator. Flowlines and intra-facility gathering lines are often several miles long, can be buried, can extend far from the main facility, and are often placed across land that is not owned by the owner or operator of the oil production facility. Providing secondary containment structures for these lines may result in soil erosion and negative impacts to the land (such as when they are located in farm fields). Buried flowlines present additional difficulty, because their exact location may be uncertain, especially at an oil production facility that has changed ownership since the original installation of the lines.

The Agency also recognizes that some facilities have already installed containment for flowlines and intra-facility gathering lines and therefore should not be required to provide a contingency plan in addition to secondary containment. Therefore, EPA agrees with those commenters who suggested that the requirement for a contingency plan in lieu of secondary containment should be an option.

Contingency planning is one of the many tools that the Agency has provided in the SPCC regulatory requirements. The Agency disagrees with the comment arguing that a contingency plan requirement is inconsistent with the intent of 33 U.S.C. 1321(j)(5)(D). The Agency's authority to promulgate the SPCC regulations is found in Section 311(j)(1)(C) of the Clean Water Act, 33 U.S.C. 1321(j)(1)(C). Section 311(j)(1)(C) requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil to navigable waters or adjoining shorelines from vessels and facilities and to contain such discharges. The statutory provision gives the Agency broad discretion to establish the requirements under the SPCC rule. Also, Section 311(j)(5)(D), 33 U.S.C. 1321(j)(5)(D), lists the requirements for facility response plans. The Agency has promulgated regulations for facility response plans in 40 CFR 112.20 and 112.21. The purpose of the SPCC program is to prevent and control oil discharges from reaching navigable waters or adjoining shorelines. However, it is important to recognize that despite best prevention efforts, discharges may occur. The contingency plan requirements under the SPCC program have dual purposes. They include components to prevent oil that has escaped its container or secondary containment from reaching navigable waters or adjoining shorelines, and also include components that address the timely and appropriate response actions to be implemented when an oil discharge does impact navigable waters or adjoining shorelines.

c. Contingency Plan in Lieu of Secondary Containment

EPA is amending §§ 112.7(c) and 112.9(d)(3) to provide an alternative to the secondary containment requirements for flowlines and intra-facility gathering lines at an oil production facility. In lieu of secondary containment, a facility owner or operator may opt to implement an oil spill contingency plan in accordance with 40 CFR part 109 (Criteria for State, Local and Regional Oil Removal Contingency Plans) and prepare a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful, without having to make an impracticability determination for each piece of piping. The Agency is amending this provision in an effort to improve compliance and enhance environmental protection. The use of a contingency plan does not relieve the owner or operator of liability associated with an oil discharge to navigable waters or adjoining shorelines that violates the provisions of Section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3). EPA is also amending § 112.7(a) to make it clear that the contingency plan provisions under § 112.9(d)(3) are not subject to the environmental equivalence provision.

Comments. Several commenters expressed support for EPA's proposal to require an oil spill contingency plan in lieu of secondary containment. One commenter, however, suggested an option to require annual physical inspections and the installation of isolation valves. Two other commenters requested that EPA reduce the burden of using this alternative option, because the documentation effort for a contingency plan is extensive.

Response to comments. The Agency does not agree that annual physical inspections and the installation of isolation valves are appropriate, because this could prove to be impracticable for some lines, specifically those that are buried.

With respect to the comments regarding the additional burden that a contingency plan requirement would impose on facilities, the Agency recognizes that this amendment would require additional documentation. However, EPA believes that a contingency plan is necessary when secondary containment is not provided. This final rule allows the owner or operator of the facility to develop a contingency plan as an option to general secondary containment. The contingency plan required when secondary containment is not practicable for flowlines and intra-facility gathering lines should rely on strong maintenance, corrosion protection, testing, recordkeeping, and inspection procedures to prevent and quickly detect discharges from such lines. It should also ensure quick availability and deployment of response equipment. The complexity or simplicity of a facility's contingency plan is subject to good engineering practice as determined by the certifying PE. EPA developed a model contingency plan as part of the SPCC Guidance for Regional Inspectors. This model plan is intended only as an example and inspectors should only use the document for this purpose. Additionally, EPA acknowledges that given the characteristics of certain intra-facility gathering lines, these pipelines may be regulated under requirements of both EPA and DOT. Because DOT requirements for pipelines may be similar in purpose and scope, EPA

recognizes that compliance with the DOT requirements (for example, 49 CFR part 194) for these gathering lines may be considered to satisfy the contingency planning requirement. Therefore a contingency plan developed for 49 CFR part 194 may serve to meet the SPCC Plan requirements. In addition, as previously discussed, the Agency is exempting intra-facility gathering lines that are subject to the regulatory requirements under 49 CFR part 192 or 195 from 40 CFR part 112. Furthermore, the owner or operator of an oil production facility who has prepared an FRP under § 112.20 satisfies the contingency planning requirement for flowlines and intra-facility gathering lines because an FRP is more comprehensive than a contingency plan under 40 CFR part 109. If such a facility owner or operator has already developed an FRP to comply with § 112.20, then he does not need to develop a contingency plan in accordance with 40 CFR part 109. The certifying PE must ensure that the FRP is adequate for the facility and prepared in accordance with good engineering practice. Similarly, the owner or operator of an oil production facility who has prepared a state spill or pollution prevention contingency plan that meets the requirements of 40 CFR part 109 may opt to use this state plan to comply with the SPCC contingency plan requirements.

It should also be noted that the contingency planning requirement is an alternative to the requirement for general secondary containment for flowlines and intra-facility gathering lines and the facility owner or operator can decide which option to comply with. The purpose of this action is to provide options and streamlined requirements that should improve compliance with the rule. The Agency recognizes that flowlines and intra-facility gathering lines are a source of oil discharges and believes that this action provides an alternative method for owners/operators to develop spill prevention and response practices for this equipment to maintain environmental protection.

d. Requirements for a Flowline and Intra-Facility Gathering Line Maintenance Program

EPA is amending the requirement for an owner or operator to prepare and implement a written flowline and intra-facility gathering line maintenance program under § 112.9(d)(4). This action specifies that the requirements apply to intra-facility gathering lines, as well as flowlines at an oil production facility. Intra-facility gathering lines pose the same potential for discharge as flowlines. EPA never intended to regulate the two types of piping differently. Under the amended provisions, a maintenance program must address procedures to:

- Ensure that such flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids, their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment.
- Visually inspect and/or test flowlines and intra-facility gathering lines and associated appurtenances on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b). The frequency and type of testing must allow for the implementation of a contingency plan as described under part 109 of this chapter, if there is no secondary containment.
- Take corrective action or make repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly scheduled visual inspections, tests, or evidence of a discharge.
- Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.

Comments. Several commenters expressed support for EPA's proposed revisions to the flowline/intra-facility gathering line program, although some commenters suggested the addition of corrosion protection for these lines. A number of commenters expressed concern that the requirement for a contingency plan and maintenance program would be burdensome. Some of these commenters suggested using a maintenance program based on risk levels and good industry practices, as determined by a PE. Another commenter requested that the current language be maintained for a program of flowline maintenance.

Other commenters provided suggested other revisions. Specifically, some commenters provided alternative language for the provisions under § 112.9(d)(4). One commenter stated that the proposed requirement under the design and development requirements of § 112.9(d)(4)(i) is vague and unnecessary given the responsibility of a PE certifying the Plan. Other commenters also suggested adding language that would acknowledge that other methods of immobilizing hydrocarbons in soil matrices such as physical, chemical and/or biological treatment methods to address oil accumulations associated with flowlines rather than ''prompt removal.'' Finally, commenters expressed concern with the phrase ''promptly remove'', as associated with actions to stabilize and remediate any accumulations of oil discharges. Commenters suggested replacing this phrase with ''upon discovery''.

Response to comments. EPA is finalizing the amended requirements for a flowline and intra-facility maintenance program under § 112.9(d)(4), specifying that the requirements apply to intra-facility gathering lines, as well as flowlines at an oil production facility. The Agency believes that an effective flowline maintenance program is necessary to detect a discharge in a timely manner so that the oil discharge response operations described in the contingency plan may be implemented effectively. Additionally, eliminating the requirement for secondary containment necessitates more prescriptive requirements for discharge prevention to ensure the integrity of the primary containment of the pipe itself.

EPA is finalizing requirements under § 112.9(d)(4) to require a performance-based program of flowline and intra-facility gathering line maintenance that addresses the facility owner or operator's procedures, that must be documented in their SPCC Plan. EPA agrees with several comments on the language associated with these requirements and has made several changes to the proposed rule in response to these comments. EPA is finalizing the requirement under § 112.9(d)(4)(iv) with some modifications to the proposed regulatory text. The finalized rule states: ''Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.'' This measure is intended to ensure the removal of oil accumulations in order to prevent a discharge. The Agency disagrees with the comment that suggested replacing ''Promptly remove'' with ''Upon discovery.'' ''Promptly remove'' indicates that the owner or operator of the facility has both the responsibility and flexibility to outline an inspection program under § 112.9(d)(4)(ii) which puts the timeframe for ''prompt removal'' in the context of the inspection frequency. Commenters also suggested, however, that language be added that would acknowledge that other methods of immobilizing

hydrocarbons in soil matrices, such as physical, chemical and/or biological treatment methods can be used. The Agency agrees that other methods may be used to stabilize and remediate, and thus, the regulatory text has been revised by adding the phrase, ''remove or initiate actions to stabilize and remediate'' to the rule. EPA considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil must be in accordance with applicable Federal, state, and local requirements; under § 112.7(a)(3)(v), a facility owner or operator is required to describe the methods of disposal of recovered materials in accordance with applicable legal requirements. For the purposes of this provision, EPA believes that the removal of recoverable oil can be combined with physical, chemical, and/or biological treatment methods to address any residual oil. These treatment methods must be consistent with other Federal, state or local requirements as applicable, and must be properly managed to prevent a discharge as described in § 112.1(b).

EPA believes that the variations in production facility piping design, layout and location makes flexibility important in order to encourage compliance with this requirement, and believes that this flexibility is already available. However, the flowline and intra-facility gathering line maintenance program requirements also are subject to the environmental equivalence provision found at § 112.7(a)(2). That is, the facility owner or operator may deviate from the requirements if an environmentally equivalent alternate measure is implemented. EPA recognizes that other Federal or state requirements may be environmentally equivalent to certain SPCC requirements, including the flowline and intra-facility gathering line maintenance program requirement. An environmental equivalence determination is subject to review and certification by a PE.

5. Flow-Through Process Vessels

EPA is modifying the requirements at § 112.9(c) to provide an alternative to the sized secondary containment requirements for flow-through process vessels at oil production facilities. Flow-through process vessels, such as horizontal or vertical separation vessels—for example, heater-treater, free-water knockout, gun-barrel, etc.—have the primary purpose of separating the oil from other fractions (water and/or gas) and sending the fluid streams to the appropriate container. Specifically, in lieu of sized secondary containment, a facility owner or operator may opt to provide general secondary containment, inspect or test flow-through process vessels and components for leaks, corrosion or other conditions that could lead to a discharge, as described in § 112.1(b), promptly remove or initiate actions to stabilize and remediate any oil accumulations, and take corrective action should a discharge occur. EPA also would require that sized secondary containment be installed if the facility discharges more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharges more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b) within any twelve month period, from flow-through process vessels (excluding discharges that are the result of natural disasters, acts of war, or terrorism) within six months of such a discharge.

EPA is taking this action because the Agency agrees with concerns regarding the requirement to provide sized secondary containment around flow-through process vessels, such as heater-treaters, due to a potential fire hazard if spilled oil collects around such equipment. EPA also recognizes that similar flow-through process equipment (i.e., oil-filled manufacturing equipment, such as reaction vessels, fermentors, high pressure vessels, mixing tanks, dryers, heat exchangers, and distillation columns) at non-production facilities are not subject to the more stringent sized secondary containment and inspection requirements required for bulk storage containers; only the general secondary containment requirements at § 112.7(c) apply. However, EPA recognizes that process equipment at non-production facilities, such as at manufacturing facilities, is typically attended during hours of operation and there is a greater potential to immediately discover and correct a discharge at non-production facilities than at oil production facilities, which are generally unattended. Therefore, EPA is requiring additional measures for flow-through process vessels at oil production facilities that do not have sized secondary containment, including inspection or testing of components, prompt removal or initiation of actions to stabilize and remediate any oil accumulations, and corrective action.

a. Exemption From Sized Secondary Containment

EPA is amending the requirements in § 112.9(c)(2) to add the phrase ''Except as described in paragraph (c)(5) of this section for flow-through process vessels'' at the beginning of the provision. This amendment removes the requirement to provide sized secondary containment for flow-through process vessels at oil production facilities without making an impracticability determination, and allows the facility owner or operator the option to comply with the alternate requirements in § 112.9(c)(5) instead.

The general secondary containment requirement of § 112.7(c) still applies to flow-through process vessels; they must be provided with secondary containment so that any discharge does not escape the containment system before cleanup occurs. As described in Section V.H of this notice, EPA is amending § 112.7(c) to clarify that the provision allows for the use of both active and passive secondary containment measures to prevent a discharge to navigable waters or adjoining shorelines. Active containment measures are those that require deployment or other specific action by the operator. These measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a discharge, so long as the active measure is designed to prevent an oil discharge from reaching navigable waters or adjoining shorelines. However, active measures would generally have limited applicability at oil production facilities because these facilities are typically not attended and owners or operators may not be able to detect a discharge in a timely manner to successfully implement the active measures. In contrast, passive measures are installations that do not require deployment or action by the owner or operator and may be more appropriate for unattended production operations. The *SPCC Guidance for Regional Inspectors* provides several examples of the use of active and passive measures at an SPCC-regulated facility.

With this action, owners or operators of oil production facilities are no longer required to locate flow-through process vessels within a secondary containment system sized for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. However, EPA believes that oil production facility owners and operators may want to provide secondary containment (such as berms) around the entire tank battery, as many oil production facilities currently do. These batteries can include flow-through process vessels, such as separators, along with oil stock tanks and other bulk storage containers. Such a facility design would provide the maximum environmental protection.

Comments. Several commenters expressed support for EPA's alternative option for flow-through process vessels

in lieu of sized secondary containment. Two commenters, however, requested that EPA clarify whether secondary containment is an alternative to the proposed option, while one commenter requested clarification on whether EPA means containment would hold the single largest process vessel and not containment sized to hold all vessel fluids. Another commenter expressed concern that the proposed requirements are burdensome; DOE generally supported that position and encouraged EPA to consider existing state regulatory programs in lieu of additional requirements.

Another commenter expressed concern that flow-through process vessels at production facilities cause pollution that can not be remediated to the pre-spill condition. Still another commenter was concerned that more oil than the contents of the vessels may be discharged because oil may be constantly flowing into these vessels from the wells. Finally, one commenter expressed concern that the proposed exemption from sized secondary containment is inconsistent with 33 U.S.C. 1321(j)(5)(D), which the commenter believes requires every SPCC Plan to identify the resources necessary to ''mitigate or prevent a substantial threat of'' a worst case discharge. The commenter expressed concern that general secondary containment for a ''most likely'' spill would fail to prevent the worst case discharge.

Response to comments. EPA recognizes that some facilities have already provided sized secondary containment in accordance with § 112.9(c)(2) for flow-through process vessels at productions facilities. EPA agrees with commenters that facility owners or operators who have installed such containment should not be required to comply with the additional requirements for these vessels. Therefore, EPA is amending the rule to indicate that flow-through process vessels equipped with sized secondary containment in accordance with § 112.9(c)(2) and (c)(3) are not required to comply with the alternate requirements under § 112.9(c)(5).

In response to the commenter who asked about the size of containment required, EPA notes that in determining how to provide appropriate general secondary containment for flow-through process vessels, a production facility owner or operator may consider the typical failure mode and most likely quantity of oil that would be discharged (*see* § 112.7(c)). Based on these site-specific conditions, the owner or operator can determine what capacity of secondary containment is needed, and design the containment method accordingly. The design for general secondary containment should address site-specific factors, including, but not limited to, frequency of site visits, rate of flow of the wells, capacity of the containers, and whether the facility is equipped with automatic shut-off devices to prevent an overflow. However, as discussed elsewhere in this preamble, general secondary containment is based on the most likely discharge, not the worst case discharge. EPA agrees with the commenter who expressed concern regarding the effects of a discharge from flow-through process vessels, but the Agency believes that this alternative approach, which requires general secondary containment in accordance with § 112.7(c) and the additional requirements to inspect, repair equipment, and address oil accumulations that may occur following a discharge from flow-through process vessels, addresses this concern. The Agency also believes the alternative requirements for flow-through process vessels address the concern that these facilities are constantly operating and have constant flow of fluids through this equipment because the owner or operator must inspect the equipment and take corrective action to address a discharge following procedures described in the SPCC Plan.

As part of this action, EPA considered whether existing state regulatory programs could satisfy the amended requirements. Although a number of states do have requirements for oil production facilities to prevent spills, they do not provide a comprehensive, national approach that would be equivalent to the SPCC requirements, as these programs have been developed to meet states' individual goals. Therefore, EPA believes that relying solely on state programs would not provide nationwide consistent requirements for spill prevention. However, the Agency recognizes the benefits of allowing the owner or operator of a regulated facility to take credit for compliance with state program requirements when these serve to meet certain SPCC requirements and can be referenced in accordance with 40 CFR part 112.

The Agency also disagrees with those commenters who characterized the amended requirements as excessive, and the requests for EPA to reconsider the necessity of additional measures in lieu of sized secondary containment. The amendment allows an owner or operator to provide general secondary containment for flow-through process vessels and requires new prevention measures as an alternative to the rule's existing sized secondary containment requirement. The alternative measures are optional—that is, the owner or operator may still choose to comply with the sized secondary containment requirement, and the facility owner or operator decides which option is best suited to the design and operation of the facility. The Agency believes that the alternative approach finalized in this rule for flow-through process vessels allows the owner or operator of an oil production facility flexibility in how to design secondary containment for this equipment and in how to comply with the additional requirements that maintain environmental protection.

The Agency disagrees with the commenter who argued that the revised option for flow-through process vessels at production facilities is inconsistent with the intent of 33 U.S.C. 1321(j)(5)(D). The Agency's authority to promulgate the SPCC regulations is found in Section 311(j)(1)(C) of the Clean Water Act, 33 U.S.C. 1321(j)(1)(C). Section 311(j)(1)(C) requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil to navigable waters and adjoining shorelines from vessels and facilities and to contain such discharges. The statutory provision gives the Agency broad discretion to establish the requirements under the SPCC rule. The purpose of the SPCC program is to prevent and control oil discharges from reaching navigable waters or adjoining shorelines. Also, Section 311(j)(5)(D), 33 U.S.C. 1321(j)(5)(D), lists the requirements for facility response plans. The Agency has promulgated regulations for facility response plans in 40 CFR 112.20–21and this action does not impact the requirement for an owner/operator to prepare and implement an FRP when the facility meets the substantial harm criteria in § 112.20(f). Therefore, this amendment does not conflict with the requirements under 33 U.S.C. 1321 (j)(5)(D).

b. Additional Requirements

Because oil production facilities are typically unattended while operating, EPA is adding a provision at § 112.9(c)(5) to provide additional requirements for flow-through process vessels at those facilities that do not provide sized secondary containment. These additional requirements include periodic inspection and/or testing for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b); corrective action or repairs to flow-through process vessels and any associated components as indicated by

regularly scheduled visual inspections, tests, or evidence of an oil discharge; and prompt removal or initiation of actions to stabilize and remediate any accumulations of oil discharges associated with flow-through process vessels.

Comments. One commenter recommended not mandating routine inspection of flow-through vessels, because oil and gas operators routinely visit tank batteries and wells and the lease operator would observe leaks from the vessels. The commenter also stated that weather conditions require aerial inspections during the winter months, which may not be possible given the proposed requirement. Another commenter expressed concern with the burden of complying with the additional inspection requirements.

Several commenters provided alternative language for promptly removing any accumulations of oil discharges as described under § 112.9(c)(5). Specifically, commenters suggested adding language that would acknowledge other methods of immobilizing hydrocarbons in soil matrices (such as physical, chemical and/or biological treatment methods) to address oil accumulations associated with flowlines. Commenters also expressed concern with the phrase ''promptly remove'' and suggested replacing it with the phrase ''upon discovery.''

Response to comments. The requirement of periodic inspection and/or testing of flow-through process vessels and associated appurtenances on a regular schedule for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b) is intended to increase the likelihood that a discharge will be prevented or detected promptly. This is especially true for components that typically cause discharges, such as dump valves. These requirements are consistent with the inspection requirements for bulk storage containers under § 112.9(c)(3). EPA recognizes that because oil production facilities are typically unattended, remote, and have a constant flow of oil and well fluids, sized secondary containment measures provide environmental protection for any potential discharge. EPA does not intend for inspections to create a public safety concern for personnel conducting inspections and EPA expects that the SPCC Plan will include provisions to address weather-related concerns that may impact the inspection schedule. Because EPA is revising the rule such that flow-through process vessels are subject to the general secondary containment requirement (§ 112.7(c)) instead of the sized secondary containment requirement, the Agency seeks to ensure that any leak, or potential for a leak, is detected promptly enough to prevent a discharge of the entire contents of the separation or treating equipment. Therefore, EPA believes it is important to require that inspections be completed and documented in accordance with the requirements in § 112.7(e).

EPA is amending the requirement under § 112.9(c)(5)(iii) with some modifications to the proposed language, in response to comments regarding removal of oil accumulations. Specifically, commenters suggested adding language that would acknowledge that other methods of immobilizing hydrocarbons in solid matrices, such as physical, chemical and/or biological treatment methods should be allowed. EPA agrees that other methods may be used to stabilize and remediate and thus, the Agency is adding the phrase, ''remove or initiate actions to stabilize and remediate'' to address this concern. EPA considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil must be in accordance with applicable Federal, state, and local requirements; under § 112.7(a)(3)(v), a facility owner or operator is required to describe the methods of disposal of recovered materials in accordance with applicable legal requirements. For the purposes of this provision, removal of recoverable oil may be combined with physical, chemical, and/or biological treatment methods to address any residual oil. These treatment methods must be consistent with other Federal, state or local requirements as applicable, and must be properly managed to prevent a discharge as described in § 112.1(b). However, the Agency disagrees with the comment that suggested replacing ''Promptly remove'' with ''Upon discovery.'' ''Promptly remove'' indicates that the owner or operator of a facility has both the responsibility and flexibility to outline an inspection program under § 112.9(c)(5)(i) which puts the timeframe for ''prompt removal'' in the context of the inspection frequency.

Finally, EPA believes that variations in oil production facility piping design, layout, and location make flexibility important in order to encourage compliance with these additional measures. However, such flexibility is already available in that these requirements for flow-through process vessels are subject to the environmental equivalence provision found at § 112.7(a)(2). For example, other Federal or state requirements may be environmentally equivalent to certain SPCC requirements. Thus, the facility owner or operator may deviate from the requirements if an environmentally equivalent alternate measure, subject to review and certification by a PE, is implemented. The environmental equivalence provision found at § 112.7(a)(2) cannot be used for any containment provision associated with flow-through process vessels.

c. Reportable Discharge

EPA is finalizing a provision at § 112.9(c)(5)(iv) to require that a production facility owner or operator ensure that all flow-through process vessels subject to this subpart (that is, are using the new alternative to sized secondary containment) comply with § 112.9(c)(2) and (c)(3) within six months from the discovery of a discharge from a flow-through process vessel of more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b), occurring within any twelve month period. When determining spill history, the amount specified in the criterion (either 1,000 or 42 U.S. gallons) refers to the amount of the discharge that actually reaches navigable waters or adjoining shorelines, and not the total amount of the discharge. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism are not considered toward this requirement. A flow-through process vessel using this alternative approach must already comply with § 112.9(c)(1) and § 112.9(c)(4) and therefore these requirements were not added to § 112.9(c)(5)(iv).

Comments. Two commenters expressed concern with the reportable discharge criterion because § 112.4 already requires a facility with a discharge as described in this provision to submit a report to the Regional Administrator within 60 days.

Response to comments. While the Agency acknowledges that EPA continues to require a facility that has had a discharge as described in § 112.1(b) to submit a report to the Regional Administrator within 60 days, EPA believes that the owner or operator of a facility that has had such a discharge, as described in this criterion, should be required to comply with the sized secondary containment requirement because it would appear that the facility was not able to prevent discharges to navigable waters or adjoining shorelines by complying with the alternative standard—that is, general

secondary containment with additional measures. If a facility owner or operator is unable to successfully prevent oil discharges using general containment requirements and additional measures, EPA believes that requiring sized secondary containment provides a fail-safe method to address the risk of discharges. The Agency's preferred method for preventing discharges from flow-through process vessels at these constantly-flowing, unattended facilities is the use of sized secondary containment. Sized secondary containment provides a buffer to allow for containment of fluids from these vessels until a discharge is discovered. Thus, the owner or operator would be required to automatically amend the SPCC Plan and provide sized secondary containment for all flow-through process vessels at the production facility within six months of the discharge. This containment must be sized to contain the contents of the single largest container, with sufficient freeboard for precipitation. Additionally, the owner or operator must submit a report to the EPA Regional Administrator as required under § 112.4(a).

The discharge criterion is a well-established threshold in the SPCC rule. This discharge criterion is similar to the provision in § 112.4(a) for discharges that must be reported to the EPA Regional Administrator. Under § 112.4, a facility owner or operator must report certain information to the Regional Administrator whenever the facility experiences a discharge reportable under § 112.4. The Agency has used this criterion for eligibility for alternative measures in the past, such as to allow the owner or operator of a qualified facility to self-certify the SPCC Plan and to allow the use of contingency planning and other measures in lieu of secondary containment for qualified oil-filled operational equipment (see 71 FR 77266, December 26, 2006). The Agency believes that finalizing this criterion to trigger the requirement to redesign secondary containment is consistent with other spill history criteria used elsewhere in the SPCC rule.

6. Alternative Qualified Facility Eligibility Criteria for Oil Production Facilities

In December 2006 (71 FR 77266, December 26, 2006), EPA promulgated an amendment to the SPCC rule to allow the owner or operator of a qualified facility to self-certify his SPCC Plan, which in this final rule EPA identifies as a Tier II qualified facility. Furthermore, as described in Section V.G of this notice, EPA is establishing an additional option for a subset of qualified facilities (designated as Tier I qualified facilities) that meet an additional criterion. The owner and operator of a Tier I qualified facility may complete and implement a streamlined, self-certified SPCC Plan template (promulgated as Appendix G to 40 CFR part 112).

The following table illustrates the tiers, criteria, and options for production facilities meeting the qualified facilities eligibility criteria and all other production facilities, as described in this notice:

Production facilities that are qualified facilities		All other production facilities
Tier I	Tier II	
Oil production facility and: (1) No more than two producing wells per single tank battery / ten barrels or less of crude oil per well per day / if the facility has an injection well; or (2) No more than four producing wells per single tank battery / ten barrels or less of crude oil per well per day / no injection wells; or (3) The facility has10,000 U.S. gallons or less aggregate aboveground oil storage capacity; and		Oil production facility with an aggregate aboveground oil storage capacity greater than 10,000 gallons and: (1) More than two producing wells per single tank battery with one or more injection wells; (2) More than four producing wells per single tank battery; or (3) More than ten barrels of crude oil produced per well per day; or
Within any twelve-month period, three years prior to the Plan certification date, or since becoming subject to the SPCC rule if in operation for less than three years, there has been: (1) No single discharge of oil to navigable waters or adjoining shorelines exceeding 1,000 U.S. gallons; and (2) No two discharges of oil to navigable waters or adjoining shorelines each exceeding 42 U.S. gallons*; and		Within any twelve-month period, three years prior to the Plan certification date, or since becoming subject to the SPCC rule if in operation for less than three years, there has been: (1) A single discharge of oil to navigable waters or adjoining shorelines exceeding 1,000 U.S. gallons; or (2) Two discharges of oil to navigable waters or adjoining shorelines each exceeding 42 U.S. gallons*; or
No individual aboveground oil containers greater than 5,000 U.S. gallons;	Has individual aboveground oil containers greater than 5,000 U.S. gallons; or Owner or operator eligible for Tier I qualified facility status, but decides not to take the option or chooses to develop a ''hybrid'' Plan;	Owner or operator eligible for qualified facility status, but decides not to take the option;
Then: Complete and self-certify Plan template Appendix G to 40 CFR part 112) in lieu of a full PE-certified Plan.	Then: Prepare a self-certified Plan in accordance with all applicable requirements of § 112.7 and subparts B and C of the rule, in lieu of a PE-certified Plan.	Then: Prepare a PE-certified Plan in accordance with all applicable requirements of § 112.7 and subparts B and C.

* This criterion does not include discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism. Additionally, the gallon amount described in this criterion addresses the amount of the discharge that actually reaches navigable waters or adjoining shorelines.

In the October 2007 proposed rule, EPA solicited comment on whether the Agency should consider alternative criteria in identifying a ''qualified facility,'' and thus, allow the owner or operator of an oil production facility to self-certify the SPCC Plan, notwithstanding the tank storage capacity at the facility. Specifically, EPA requested comment on an approach that was suggested by EPA and two approaches that were suggested by DOE (*see* 72 FR 58411, October 15, 2007 for a more detailed description of the specific approaches on which EPA solicited comment.) Based on the comments received, and the Agency's evaluation of this industry sector, EPA is finalizing in this rule an amendment that provides alternative criteria for identifying qualified facilities in the oil production sector for onshore facilities. EPA believes that alternative eligibility criteria for identifying a qualified facility for certain onshore oil production facilities is appropriate because, notwithstanding their simple configurations, many of these small oil production facilities cannot meet the 10,000 gallon aggregate aboveground oil storage capacity threshold for Tier I and II qualified facility designation. Given (1) the large number of marginal or stripper wells in the U.S.[6]; (2) that they contribute a significant portion of the country's oil production; and (3) EPA's understanding of the particular aboveground oil storage container capacities and the nature of the fluids handled at certain small oil production facilities, other criteria beyond oil storage container capacity are more appropriate in determining whether an owner or operator of such a facility should self-certify his SPCC Plan. These other criteria, unique to small oil production facilities, serve to identify a qualified facility consistent with the intent of this approach as promulgated on December 26, 2006 (71 FR 77266), by identifying the simplest operations by factors other than strictly capacity.

A qualified oil production facility is one that meets all of these conditions: (1) No more than two producing wells per single tank battery if the facility has an injection well; or no more than four producing wells per single tank battery with no injection wells at the facility; (2) each well produces no more than ten barrels of crude oil per day; and (3) the facility has not had a single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to Plan certification, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years. Facilities with no more than two producing wells are eligible to be a qualified facility regardless of whether they have injection wells. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism do not disqualify a facility owner or operator from the alternative option described above.

The Tier II qualified facility eligibility criteria at § 112.3(g)(2) have been amended to include these criteria for oil production facilities. The owner or operator of a qualified oil production facility may choose to prepare a self-certified SPCC Plan in lieu of a Plan certified by a PE. An oil production facility owner or operator exercising this option may be required to make production or shipping records available to support his eligibility. Records kept under usual and customary business practices will suffice, and must be kept for a period of three years, in accordance with § 112.7(e).

Owners or operators of oil production facilities may meet Tier II qualified facility eligibility through either criterion—has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less (§ 112.3(g)(2)(i)); or the criteria described above for an onshore oil production facility (§ 112.3(g)(2)(ii)). An oil production facility that also meets the Tier I qualified facility eligibility criteria in § 112.3(g)(1) (that is, the facility has no individual oil storage container with a capacity greater than 5,000 U.S. gallons) would be eligible to develop an SPCC Plan following the template in Appendix G to the SPCC rule finalized in this rulemaking (see Section V.G of this notice).

Elsewhere in today's preamble, EPA clarified that a natural gas production facility storing condensate (petroleum oil), in quantities that meet the SPCC applicability criteria, is considered an oil production facility. Since such an onshore natural gas production facility, as described above, is considered an onshore oil production facility, it may be eligible for the qualified facility relief for marginal wells if it meets the other new criteria finalized today in § 112.3(g)(2)(ii). Additionally, since a natural gas production facility can often store smaller quantities of oil, the facility may already meet the existing ''capacity based'' qualified facility criteria in § 112.3(g)(2)(i), available to all facility types.

Additionally, in order to provide the owner or operator of a production facility that meets the qualified facility criteria with the necessary time to fully understand the new regulatory options finalized in today's action, EPA is proposing, in a separate action in the **Federal Register** of November 26, 2008 (73 FR 72016), a new compliance date to prepare or amend and implement the production facility's SPCC Plan.

a. Alternative Qualified Facility Eligibility Criteria for Oil Production Facilities

This approach is intended as an alternative to the existing 10,000 gallon aggregate aboveground oil storage capacity eligibility criteria. It provides tailored qualified facility eligibility criteria based on process operating conditions and equipment unique to oil production facilities rather than static oil storage capacity. The owner or operator of an oil production facility that meets the 10,000 gallon threshold may already self-certify his SPCC Plan and does not also need to meet the differentiated criterion for oil production facilities finalized in this action.

Ten barrels or less of crude oil produced per well per day. The ten barrels or less per well per day criteria was chosen because this production rate is consistent with the definition of a ''stripper well.'' EPA established differentiated requirements for ''stripper wells'' under the CWA, which were codified in 1979 (see 40 CFR 435.60). The Interstate Oil and Gas Compact Commission (IOGCC) also defines ''stripper wells'' as wells that produce ten barrels of oil per day or less.[7] This production rate limits the qualified oil production facility approach to those facilities with smaller quantities of oil and associated fluids.

Maximum of two producing wells per single tank battery (if the facility has an injection well) or maximum of four producing wells per single tank battery (with no injection wells at facility). In the October 2007 proposal, EPA suggested that the criterion used to identify qualified oil production facilities should be a maximum of four wells at a single tank battery producing no more than ten barrels of oil per day (72 FR 58378, October 15, 2007). The Agency requested comment on this approach. While commenters expressed

[6] The Interstate Oil and Gas Compact Commission estimates that there are 422,255 marginal oil wells as of January 1, 2007 (IOGCC Marginal Wells: 2007 Report).

[7] *See* Interstate Oil and Gas Compact Commission, 2006: ''Marginal Wells: Fuels for Economic Growth'', p. 4 (defining ''stripper wells'' as wells that produce 10 barrels of oil per day or less).

support generally for a definition of ''qualified facility'' specific to the oil production sector, they also argued that limiting the definition to those facilities with four wells or fewer would not allow many facilities to take advantage of this approach. However, the Agency analyzed comments provided on the original proposal that established qualified facilities (70 FR 73524, December 12, 2005) together with the comments provided on the approach described in the October 2007 proposed rule (72 FR 58378) relative to the overall reason for identification of a qualified facility; that is, that owners and operators of facilities that handle small oil quantities, with simple, straightforward processes and equipment, should be capable of developing, implementing, and self-certifying an SPCC Plan without the services of a PE. With this underlying principle in mind, EPA considered the type and scale of operations and the equipment involved at small, marginal well oil production facilities and concluded that when there are no injection wells at the facility, four producing wells per single tank battery is an appropriate criteria to define a simple oil production facility configuration.

One or more injection wells are typically used to inject produced water underground for disposal or to enhance recovery of oil from production wells. The underground injection process can add additional piping to the design of an oil production facility. Consequently, EPA has included a ''no injection wells'' criterion for qualified oil production facilities with more than two wells per single tank battery. The injection well process typically consists of piping extending from a produced water container to the injection wellhead, valves, and pumps and may include tank level indicators, floats, flow controls, and actuators/switches that add additional equipment to the oil production facility. EPA believes the integration of such injection equipment and its operation into the design and operation of the production facility calls for PE certification rather than the owner or operator self-certifying of the SPCC Plan at facilities that have more than two production wells and injection wells. EPA also does not believe it is reasonable or appropriate for an owner or operator to designate the injection well and its associated piping a separate facility just to meet the alternative qualified facility eligibility criteria. However, as noted in section V.M.7, an injection well that injects fluids that were stored in a container that is exempt from the SPCC regulation under § 112.9(c)(6)(i) will not preclude a facility from being eligible for treatment as a qualified facility under § 112.3(g)(2)(ii). Therefore, the Agency believes that at a facility with no injection wells and a maximum of four producing wells per single tank battery, each of which produce ten barrels or less of crude oil per well per day, captures the oil production operations targeted by the self-certification option because these facilities, with a limited number of producing wells per tank battery operating at a low flow rate, and no injection wells or associated equipment, are less complex than other oil production facilities.

Commenters also argued that ''no injection wells'' is not part of an established definition and that small facilities that utilize injection for secondary or tertiary recovery would not qualify. As EPA considered the type and scale of operations, and the likely quantities of oil handled, EPA also analyzed whether marginal well oil production facilities with an injection well that handle small oil quantities could be similarly less complex than other oil production facilities. The Agency established the threshold of two wells per single tank battery if there is one or more injection wells at the facility because field observation and professional judgment suggests that with two wells, the tank battery is typically situated near the well head to minimize the length of flowlines. As the number of wells flowing to a single tank battery decreases to two wells, the footprint of the facility potentially decreases and the lesser area encompassed by a facility with fewer wells flowing to the tank battery means that significantly shorter flowlines are needed to move well fluids to separation and storage processes. EPA also understands that as the number of wells in a lease (the term used for the area of wells run by an owner or operator) decreases, the number of tanks and separators typically decreases. Depending on the flow rates and well locations, separate tank batteries serving widely separated wells may be installed on one lease. Fewer valves, smaller separation equipment and fewer or smaller storage tanks in the tank battery are also expected at a facility with two wells than those with four wells per single tank battery. Finally, based on the Agency's best professional judgment and experience in the field, pumpers and well service operations typically occur once or twice per week; on this basis, the likely quantities of well fluids and marketable oil generated by a two-well operation per single tank battery is more consistent with the quantities expected at qualified facilities that are not oil production facilities. By limiting the overall number of producing wells, and therefore the associated equipment and piping at an oil production facility, the Agency is targeting those production facilities that should be eligible to self-certify SPCC Plans. In order to strike a balance between those operations with injection wells and those without, EPA is allowing oil production facilities with no more than two producing wells that also have injection wells an option to self certify the Plan. Regardless of the presence of injection wells at these facilities, the overall number of wells and associated equipment is still limited by this approach. In addition, the likely smaller oil quantities stored at a two-well facility with injection wells captures the smaller operators targeted by the self-certification option because these facilities are similar in complexity to an oil production facility with four producing wells per tank battery with no injection wells. Similarly, the specification of ''per single tank battery'' is intended to make clear that the self-certification option for production facilities does not extend to a central processing area (a production treatment and separation operation that receives fluids from a qualified facility tank battery).

Although the criterion limits the number of wells per single tank battery, it does not limit the number of tank batteries located at the oil production facility. That is, EPA believes that tank batteries within an oil production facility may still have simple configurations and the presence of multiple tank batteries does not add complexity to the overall oil production facility. As EPA discussed previously in Section V.D of the preamble, the owner or operator of a production facility has the flexibility to define the facility's boundaries such that it can include multiple tank batteries. Therefore, if the oil production facility meets one of the two alternative criteria described in this section (that is, it has no more than two producing wells per single tank battery each of which produce ten barrels or less of crude oil per well per day if there are injection wells; or the facility has no more than four producing wells per single tank battery, each of which produce ten barrels or less of crude oil per well per day, and has no injection wells at the facility; and meets the reportable discharge history criterion) the owner or operator can self-certify the SPCC Plan.

Comments. Many commenters expressed general support that EPA

utilize other relevant criteria in identifying a ''qualified facility'' in the oil production sector, although most of the commenters did not support the approach EPA is promulgating in this final rule. However, other commenters questioned why oil production facilities would have different criteria than facilities in other industries when they already have less stringent requirements under the SPCC rule. Two commenters opposed any alternative eligibility criteria for production facilities, arguing that the basis of the qualified facility approach is to provide an alternative for the truly small operator to avoid the cost of PE certification of his SPCC Plan. Commenters questioned why EPA would reduce requirements for oil production facilities given the sector's spill history and operational complexity. These commenters requested that all facilities above 1,320 gallons of total aboveground oil storage capacity should be certified by a PE.

Still other commenters questioned the number of wells and other conditions that EPA described in the preamble to the proposal. One commenter stated that limiting the option to facilities with four wells is of concern because the number is not well-established and would restrict the applicability of this option. Several commenters also expressed concern with the ''no injection wells'' criterion, noting that injection does not add complexity to the facility, is a common practice, and the produced water that is reinjected is of low oil content. Commenters also stated that ''no injection wells'' is not part of an established definition and that small facilities that utilize injection for secondary or tertiary recovery would not qualify.

Other commenters suggested other approaches or options that EPA could pursue. For example, one commenter suggested the alternative eligibility criteria should be a production rate less than five barrels per day per well, and very simple operations consisting of no more than three wells flowing to one tank battery and no injection wells. Two other commenters provided support for oil production facilities to qualify for Tier I, although some commenters suggested that the Tier I qualified facility threshold discussed in the October 2007 proposal would be too limiting, and suggested that a facility with one 400 barrel (16,800 U.S. gallons) oil tank should be eligible for the Tier I category.

Response to comments. EPA agrees in principle with the commenters who supported alternative qualified facility eligibility criteria for oil production facilities and is finalizing the option described in the proposal with some modifications. The Agency does not agree that PE certification should be required for all facilities with more than 1,320 U.S. gallons oil storage capacity, given that the Agency has already promulgated an approach allowing owners and operators of facilities that meet certain criteria, including a total aboveground oil storage capacity of 10,000 U.S. gallons or less to self-certify Plans. A number of commenters pointed out that oil production facilities are already subject to a differentiated set of requirements under the SPCC rule. While the Agency recognizes this, it continues to believe that a differentiated alternative for facilities with simple configurations has merit, and that providing the added flexibility of self-certification for the smaller oil handlers/simpler operations, along with the other streamlined requirements tailored to the unique features of this sector (as described elsewhere in the preamble to this final rule) should improve overall spill prevention and environmental protection.

Because the configuration of an oil production facility is variable, complexity depends upon a number of factors, including, but not limited to: The oil field, production rate, type of fluid, operating equipment and conditions, and viscosity of the oil. Because oil production facilities do not have a ''typical'' configuration, the Agency has finalized eligibility criteria intended to minimize the complexity of the operations where self-certification seems appropriate. By setting the maximum number of wells at four producing wells if there are no injection wells at the facility, or two producing wells if there are injection wells at the facility, there is a greater likelihood that those wells are located near the tank battery. EPA believes that the four-well criterion targets those oil production facilities with less complex operations and configurations, consistent with other qualified facilities. Similarly, the criterion that excludes underground injection for a facility with four producing wells eliminates the complexity associated with injection related equipment. By limiting the number of producing wells per single tank battery to two producing wells at facilities that have injection, EPA believes that because of the smaller oil storage capacities and the greater likelihood that those wells are located near the tank battery, a marginal well oil production facility with two producing wells is consistent with other qualified facilities. In addition, the reduced complexity in decreasing from four to two producing wells is similar to the change in complexity associated with injection wells. As noted above, EPA believes a PE need not be involved in the SPCC Plan at facilities with a limited number of wells and associated equipment and piping.

A number of commenters noted that by limiting the number of wells per tank battery and not allowing injection wells to be utilized in designating a qualified facility for the oil production sector, it would limit the number of oil production facilities that could self-certify their SPCC Plan. First, it should be noted that in designating a ''qualified facility'' in the oil production sector, the purpose is to identify those facilities that should be eligible to self-certify their SPCC Plan without the involvement of a PE-that is, those facilities that handle small quantities of oil, with simple and straightforward processes and equipment, and not to maximize the number of oil production facilities that could be eligible to self-certify their SPCC Plan. However, EPA also estimated the number of facilities that would meet the eligibility criteria for a qualified facility under the eligibility criteria promulgated today for the oil production sector. Based on our analysis (which can be found in the Regulatory Impact Analysis for this action, located in the docket for this rulemaking), EPA estimates that approximately one third of oil production facilities would meet the alternative eligibility criteria. If those oil production facilities that meet the eligibility criteria for self-certification based on the 10,000 gallon threshold are also included, EPA estimates that almost half of oil production facilities could take advantage of self-certifying their SPCC Plan. Thus, EPA does not agree with commenters that the eligibility criteria being promulgated today for defining a qualified facility in the oil production sector is too narrow.

The Agency also agrees that oil production facilities should also be eligible as Tier I qualified facilities. Thus, the owner or operator of an oil production facility that meets the criteria finalized under this rulemaking and additionally meets the Tier I qualified facility eligibility criteria in § 112.3(g)(1) (that is, the facility has no individual oil storage container with a capacity greater than 5,000 U.S. gallons) is also eligible to use the streamlined Tier I qualified facility SPCC Plan template (Appendix G to the SPCC rule). The Agency also does not agree that the eligibility criteria for Tier I are too limiting, as the relief provided by the SPCC Plan template and other streamlined requirements are targeted to

a specific segment of the universe of facilities based upon simplicity of configuration and a 5,000-gallon limit on the total aboveground storage capacity for any single container. EPA believes that facilities that qualify for Tier I have a reduced risk of discharge in harmful quantities due to this limit on aboveground single container total storage capacity. Thus, the Agency does not agree that a 400-barrel container (16,800 U.S. gallons) should qualify for Tier I, as this quantity is three times the container threshold for other Tier I qualified facilities (with a maximum aboveground oil storage container of 5,000 U.S. gallons). Commenters did not provide data to support the larger tank size or demonstrate how this would maintain environmental protection. Larger containers have the potential for a larger discharge, may have more stringent requirements for inspection and maintenance in accordance with industry standards, and therefore, EPA believes should not be eligible for the Tier I streamlined requirements.

b. Alternative Approaches for Addressing Small Oil Production Facilities as Suggested by the Department of Energy (DOE): Alternative Eligibility Criteria

In the proposal to this rulemaking (72 FR 58378, October 15, 2007), the Agency sought input on different eligibility criteria, as suggested by DOE, to identify a small oil production facility as a qualified facility. The criteria would allow for the development of a self-certified SPCC Plan, and allow the use of a streamlined SPCC Plan template for a certain set of facilities, similar to that found in proposed Appendix G to the SPCC rule. Under the qualified facility criteria at § 112.3(g), a facility that has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less and has not had a single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve-month period in the three years prior to Plan certification, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years is eligible for the qualified facility Plan requirements at § 112.6 (i.e., a self-certified Plan in lieu of a PE certified Plan). DOE suggested that because of the unique characteristics of small oil production facility operations, such facilities may merit the establishment of small oil production facility-specific eligibility criteria, including a different aggregate oil storage capacity threshold or stripper well definition for identifying qualified facilities. For example, DOE suggested that a stripper well be defined using the IRS tax code definition of 15 barrels or less of oil per day equivalence (see 26 U.S.C. 613A). In light of this request, EPA sought comment on whether there are unique circumstances at small or marginally economic oil production facilities and the alternative criteria based on these circumstances for the possible establishment of a ''qualified facility'' provision specific to small oil production facilities that would serve to increase SPCC spill prevention and reduce the likelihood of a harmful oil discharge.

Comments. Several commenters argued that the current threshold requirements are too low to provide significant benefit for marginal oil production facilities. For example, one commenter suggested a total aboveground oil storage capacity of 50,000 gallons where no single container is greater than 21,000 gallons, whereas another commenter suggested removing consideration of this approach unless produced water storage is eliminated from the threshold calculation.

Concerning the stripper well definition, two commenters supported DOE's suggestion to use the IRS tax code definition for marginal production to ease compliance. One commenter indicated that the EPA definition remains linked to facility storage capacity, and storage capacity at marginal wells is not sized based on current production levels and in fact decreases over time.

Concerning other regulatory programs addressing the objectives of the SPCC rule, one commenter suggested that state spill prevention regulatory programs should serve small production facilities rather than one Federal program. However, another commenter noted that states in general simply do not address equivalent requirements of the SPCC regulations and especially not to the extent of the SPCC regulations with respect to prevention of oil discharges. Two commenters suggested that EPA consider other regulatory requirements, including DOT Carrier Requirements for Spills, Spill Reporting, Transportation Security Planning, and EPA's Stormwater Discharge Permitting program, the National Pollutant Discharge and Elimination System (NPDES) program, and Underground Injection Control (UIC) program. Another commenter suggested allowing all SPCC facilities to have the option of using other equivalent prevention plans to meet SPCC planning requirements. Finally, one commenter suggested that EPA remove the self-certification provision from the rules so that all farmers, small businesses and other oil storage facilities are required to prepare a complete SPCC Plan certified by a PE to ensure ''equal and fair treatment for all owners and operators.''

Response to comments. The Agency disagrees with commenters who suggest establishing a new capacity based Tier II criterion for oil production facilities greater than the already established 10,000-gallon threshold for all facilities. While the Agency received a number of comments regarding a wide variety of thresholds for defining a Tier II qualified facility in the oil production sector, the comments did not provide sufficient data to support the threshold numbers other than it would increase the number of facilities that would be eligible as a qualified facility and thus, self-certify their SPCC Plan. More importantly, the commenters did not demonstrate how these new thresholds would maintain environmental protection. EPA does not agree with the commenters to base a new Tier II qualified facility threshold for oil production operations solely on an increased capacity threshold, as there was no justification for providing oil production facilities with a higher threshold than non-production facilities or for how the higher threshold relates to simplicity in facility configuration or operations.

Nevertheless, EPA agrees with commenters that the oil production sector has unique characteristics and that other criteria may better serve in defining a Tier II qualified facility. For example, the fact that oil production facilities have flow-through process vessels suggests that flow rate (in the form of an oil production rate) may be a better approach for setting a new criterion for identifying the simplest oil production facility operations. However, EPA disagrees with commenters who argued that the IRS tax code definition of 15 barrels or less of oil per day should be used in defining flow rate. Specifically, the IRS definition of 15 barrels of oil or less per day equivalent is calculated by dividing the average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year by the number of such wells. Thus, under this approach, a facility will contain wells with marginal production, such as 15 barrels of oil per day, but also will likely contain wells that produce much greater quantities of oil, because the IRS definition calculates the average daily production of oil over all producing wells, as opposed to the amount of oil

that flows from any individual well. EPA believes that using such a definition defeats the purpose of identifying a qualified facility, which is to allow those small facilities that have relatively simple operations to self-certify their SPCC Plans. Thus, the Agency has adopted a per well approach that places a flow rate cap of ten barrels or less of oil produced per well per day, as this is consistent with the definition of ''stripper well'' codified at 40 CFR 435.60.

Additionally, because the source of the oil for production facilities is through extraction wells, the number of wells better identifies the complexity of a production operation. Finally, some of these facilities are unique as they reinject fluids in the reservoir for disposal purposes or for enhanced oil recovery. The presence of these injection wells is a characteristic unique to oil production facilities that can help to determine the complexity of the operation. These characteristics, unique to the oil production sector, provided the Agency with the basis for a tailored set of criteria to identify oil production facilities with simple configurations. Developing a criterion based solely on raising the oil storage capacity criterion would be inconsistent with the rationale established for the original 10,000-gallon criterion and would not necessarily maintain environmental protection. Thus, while EPA does not agree that raising the oil storage capacity threshold is appropriate, the Agency does agree with commenters that the unique characteristics of an oil production facility allow EPA to establish alternative criteria for a Tier II qualified facility, and EPA has finalized provisions to that effect.

Finally, EPA disagrees with commenters who suggested that the SPCC regulations are not needed because of other regulatory programs, such as state programs, or the NPDES or UIC programs. EPA conducted a comparison of a number of these programs with the SPCC program and found that they were not nationally uniform (*see Review of State Regulations Pertaining to Oil Spill Prevention at Onshore Production Facilities and Produced Water Containers,* prepared by Abt Associates Inc., June 6, 2008, and found in the docket for today's rulemaking). Further, under the Oil Pollution Act and CWA, EPA is required to promulgate oil spill prevention regulations, and it cannot delegate its responsibilities to other Federal or state programs, but has streamlined SPCC requirements or provided targeted exemptions from SPCC regulation when such regulations provide comparable or equivalent environmental protection. However, EPA has stated previously that if a facility owner or operator must comply with a state or Federal requirement that also satisfies an SPCC requirement, the owner or operator can include and reflect such effort in his SPCC Plan and not duplicate it solely for SPCC. EPA wants to minimize duplicative requirements where possible and is working to tailor requirements, where appropriate.

c. Alternative Approaches for Addressing Small Oil Production Facilities as Suggested by the Department of Energy (DOE): Exempt Existing Stripper Oil and Natural Gas Wells From all SPCC Requirements

The other approach that DOE requested that EPA solicit comment on in the proposal to this rulemaking (72 FR 58378, October 15, 2007) was to exempt stripper oil and natural gas wells from all SPCC requirements, except those applicable to crude oil and condensate tanks (e.g., tanks which store gas condensate (which is an oil) at oil and gas production facilities). The eligibility criteria for the exemption would include those facilities that meet the IRS tax code definition of stripper well property at 26 U.S.C. 613A. In addition, the eligibility criteria would not be limited, for example, to those facilities that did not have injection wells or used injection wells as secondary or tertiary recovery techniques, which DOE has indicated may be regulated under existing Federal and state regulatory programs. DOE believes that such criteria have no direct relationship to the spill risk posed by marginal wells facilities and may serve as a disincentive to enhanced oil and gas recovery and well maintenance.

Comments. Many of the commenters expressed support for an exemption of stripper oil and natural gas wells from all SPCC requirements. Commenters expressed concerns that implementation of the SPCC rule may cause oil production wells to be shut in. One other commenter suggested regulating only crude oil and condensate containers, given that the releases reported to the NRC from this industry sector are low and EPA ''has never conducted a comprehensive environmental analysis of the risks associated with these proposed regulations and whether they significantly change from the current regulatory program to this proposed one.''

Response to comments. While the majority of comments the Agency received supported an outright exemption for stripper oil and natural gas wells from the SPCC requirements, the commenters did not provide sufficient data to justify an exemption or demonstrate how an exemption would maintain environmental protection. EPA also disagrees with the commenters that the SPCC requirements and compliance costs alone would cause small oil production facilities to shut down, reducing U.S. oil production (*see* memorandum dated April 11, 2008, *Preliminary Assessment of SPCC Compliance Costs and Energy Impacts on Oil Exploration and Production*). As EPA has noted elsewhere, these facilities, which are generally unattended, can store large quantities of oil and oil/water mixtures in a variety of containers that may have large capacities. These factors, as well as others, highlight the hazard potential posed by these operations (*see Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasures Regulation,* May 30, 2007, in the docket for this rulemaking (EPA–HQ–OPA–2007–0584–0015)). Thus, based on this hazard, and without sufficient rationale, the Agency believes it inappropriate to grant an outright exemption for such stripper oil and natural gas wells from the SPCC requirements. However, EPA does agree that performance-based requirements tailored to the unique characteristics of marginal oil production facilities are justified, as EPA has described previously, which the Agency believes will lead to the prevention of oil spills.

7. Produced Water Containers

In the proposal for this rulemaking (72 FR 58378, October 15, 2007), EPA requested comment including appropriate rationale, information, and data, on three approaches related to produced water containers. The first approach required general secondary containment combined with additional requirements in lieu of sized secondary containment. The second approach, advanced by DOE, required inspection, maintenance, and periodic oil skimming of produced water containers in lieu of both sized and general secondary containment. Finally, comment was requested on a third approach, again advanced by DOE, that exempted produced water treatment facilities altogether.

Produced water containers are typically located within a tank battery at

an oil production facility[8] where they are used to store well fluids that result after marketable crude oil is separated from fluids extracted from the reservoir and prior to subsequent use (e.g., re-injection or beneficial reuse), further treatment, or disposal. Under normal operating conditions, a layer of oil may be present on top of the fluids in these containers. The amount of oil by volume observed in produced water containers varies, but based on EPA's understanding, is generally estimated to range from less than one to up to ten percent, and can be greater. However, the Department of Energy (DOE) and the oil production sector indicate that the oil layer may be much less, depending on the type of oil/water separation technology used, if any. Many commenters claim that the SPCC oil spill prevention requirements are inappropriately applied to produced water containers, arguing that in certain cases these containers hold mostly water with very low concentrations of oil or that produced water containers should be exempt under the exemption for wastewater treatment. EPA agrees that the SPCC regulations should not regulate the storage of oil if the discharge of that oil is not prohibited under section 311 of the Clean Water Act. Section 311(b)(3) prohibits the discharge of oil into or upon navigable waters of the United States or adjoining shorelines in such quantities as may be harmful, as determined by the President. That determination is made in 40 CFR part 110. EPA does not agree that produced water containers are eligible for the wastewater treatment exemption. However, the Agency recognizes that, depending on the use, some produced water containers may serve as oil/water separators, rather than bulk storage tanks, and such containers should be regulated in a similar fashion as other oil/water separators. To address these concerns, EPA is providing an exemption for certain produced water containers holding oil that would not violate section 311(b)(3) if discharged, and a differentiated set of requirements for other produced water containers at oil production facilities that are used for oil/water separation. EPA is also promulgating a definition of produced water container to clarify which containers will be eligible for this rule amendment. The Agency believes that the approaches for produced water containers promulgated in this rule amendment are a logical outgrowth of the three approaches discussed in the proposal and the comments received.

Specifically, EPA is finalizing two approaches for produced water containers at oil production facilities. Under the first approach, EPA is exempting produced water containers at oil production facilities from the requirements of the SPCC rule when a PE certifies, as part of the SPCC Plan, that based on the efficiency of the oil/water separation technology used, the contents of a produced water container, if completely discharged, does not contain oil in amounts that may be harmful, as described in 40 CFR part 110; the capacity of the exempted containers would not be counted in oil storage capacity.

Under the second alternative, which is drawn from two of the approaches presented in the proposal, for those produced water containers that cannot meet the criterion for the exemption under this rule, the facility owner/operator has the option to apply general secondary containment requirements and conduct visual inspections, maintenance and corrective action, in lieu of sized secondary containment, when a PE describes in the Plan and certifies that a practice is established that is designed to remove the amount of free-phase oil from the produced water container on a scheduled and routine basis. These containers are counted toward the aggregate storage capacity. As described below, if the production facility has certain types of oil discharges or fails to meet the requirements of this part of the rule, the facility will no longer be eligible for the exemption or the streamlined requirements.

EPA is taking this action because the Agency believes that there are alternative options for produced water containers that can provide the regulated community compliance flexibility while continuing to effectively protect the environment from discharges of quantities of oil that may be harmful. The options the Agency is providing for produced water containers are based on the facility's site-specific characteristics, and an owner or operator may still choose to comply with the sized secondary containment requirements of § 112.9(c)(2). For example, if a produced water container at an existing facility is already located within sized secondary containment, the owner/operator may elect to not follow the alternative requirements in § 112.9(c)(6). The comments received on the produced water options and the Agency's responses are located in section V.M.7.e. below.

a. Exemption for Produced Water Containers

A new subsection at § 112.9(c)(6) has been added to the rule to address the streamlined requirements for produced water containers. Paragraph 112.9(c)(6)(i) includes an exemption for those produced water containers and any associated piping and appurtenances downstream of the container that do not contain oil that would cause harm as described in 40 CFR 110.3 if the contents of the container are completely discharged.

EPA recognizes that some oil production facilities may have (or may want to install) separation equipment that performs at a highly efficient rate. In these cases, the contents of the produced water containers downstream of such separation equipment may not contain oil in quantities that may cause harm, as described in 40 CFR part 110. Under 40 CFR part 110, a discharge of oil in such quantities as ''may be harmful'' is defined as one that may violate applicable water quality standards; or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or cause a sludge or emulsion to be deposited beneath the surface of the navigable water or upon adjoining shorelines. To make this determination, the PE should apply the same standard as is set forth in 40 CFR 112.1, which allows the owner or operator (and the PE) to determine if a container could reasonably be expected to discharge oil in quantities that may be harmful as described in part 110 into or upon navigable waters. This determination is made by reference to the volume of oil reasonably expected to reach navigable waters or adjoining shorelines, if the entire contents of the container are completely discharged, and not by reference to the volume of oil in the container.

EPA understands that meeting the standard described above may require oil/water separation equipment and/or techniques such as hydrocyclones, induced gas floatation, ultra-filtration, and micro-filtration. Because of the level of separation efficiency and treatment required to meet the Part 110 standard, EPA believes that the involvement of a PE is necessary. Therefore, EPA is requiring owners/operators who take advantage of this exemption to have this part of their SPCC Plan certified by a PE, even for a qualified facility. EPA has amended the PE attestation in § 112.3(d)(1) to add a provision at (1)(vi) so that the PE specifically certifies that exempted produced water containers and any

[8] A wet gas facility that stores condensate and meets the other SPCC qualifying criteria is considered an oil production facility. Otherwise, a wet gas facility falls outside the scope of the Agency's SPCC jurisdiction.

associated piping and appurtenances downstream of the container (which may include flowlines and other appurtenances associated with injection and discharge) meet the 40 CFR part 110 ''no harm'' criterion and these containers are identified in the Plan and that appropriate produced water characteristics in the container, piping and appurtenances; procedures; or maintenance required to meet the standards of Part 110 are identified. The PE must use his professional judgment in applying the necessary procedures to determine that the contents of the container, if completely discharged, will meet the ''no harm'' criteria of 40 CFR part 110 and documents them in the Plan. Additionally, in accordance with § 112.5, the owner or operator must verify on an annual basis that the produced water characteristics in the container, piping and appurtenances; procedures; or maintenance required to meet the standards of Part 110 that formed the basis for the PE certification are maintained. The owner or operator must document the verification and sign a statement that the produced water characteristics in the container, procedures, or maintenance that formed the basis for the PE certification are maintained. The following words will suffice, ''I verify that the produced water characteristics in the container, and any associated piping and appurtenances downstream from the container; procedures; or maintenance required to meet the standards of Part 110 are maintained in accordance with the PE certification.'' This rule text provides an example of how the owner or operator can document the required annual verification for the exempt produced water containers. The verification must be maintained in accordance with § 112.7(e).

If the facility experiences a discharge from an exempt produced water container or any associated piping and appurtenances downstream from the container in quantities that may be harmful to navigable waters or adjoining shorelines (as described in 40 CFR part 110) then the produced water container is no longer exempt from the rule and must comply with all provisions of the SPCC rule within six months of the discharge, including the sized secondary containment requirements at § 112.9(c)(2). The final rule, as described above, focuses on a ''container'' and related to discharges under part 110. Under the requirements of 40 CFR part 110, such a discharge must also be reported to the National Response Center (NRC) at 1–800–424–8802.

This exemption does not change the current requirement for an owner/operator of a facility to mark the location and contents of all containers, including both exempt and non-exempt produced water containers, on the facility diagram. This requirement is necessary not only to assist response personnel in identifying hazards during spill response activities, but also to assist facility and Agency personnel in determining whether the exemption criteria are being met.

b. Alternative Option for Non-Exempt Produced Water Containers

For those produced water containers that do not meet the criteria for being exempt as described above, the facility owner/operator now has the option to comply with an alternative set of requirements in lieu of providing sized secondary containment. This new alternative compliance option, which is drawn from two of the approaches presented in the proposal, is provided in paragraph § 112.9(c)(6)(ii) and is described below.

The first approach described in the proposal would allow the owner or operator of a production facility to comply with the general secondary containment requirements along with additional measures as an option in lieu of sized secondary containment for existing produced water containers. Generally, the additional measures were requirements for periodic inspections, examination and integrity testing, prompt removal of oil discharges and corrective action. The second approach described in the proposal would allow the owner or operator of a production facility to comply with additional measures in lieu of both general and sized secondary containment. Generally, the additional measures under this approach were visual inspection, implementation of a skimming program, prompt removal of oil discharges and corrective action. In response to comments, the Agency developed this alternative compliance option which includes (1) compliance with general secondary containment requirements along with additional measures and (2) implementation of a procedure or process to remove free-phase oil or skimming program.

Specifically, the general secondary containment requirement at § 112.7(c) calls for secondary containment to be designed to hold the most likely quantity of oil potentially discharged in an event, rather than installation of sized secondary containment designed to hold the contents of the largest container with sufficient freeboard. Typically, the quantity of oil contained by general secondary containment is expected to be smaller than the amount of oil that would need to be contained by sized secondary containment. EPA believes that good general secondary containment practices can be successfully implemented if such practices are designed by a PE in consideration of the site specific factors and in combination with additional oil spill prevention practices including inspections, procedures to minimize the amount of free-phase oil in the container and procedures to remove/remediate discharged oil.

The piping and appurtenances downstream of the produced water containers addressed by this section are also subject to the general secondary containment requirements in § 112.7(c) and are not subject to sized secondary containment requirements. However, the owner or operator of the facility may choose to address the downstream piping and appurtenances using the optional approach offered under new § 112.9(d)(3). These provisions are noted in the rule under § 112.9(c)(6)(ii)(A) for clarity.

Procedure to separate free-phase oil. Under this alternative, the facility owner or operator must implement a process and/or procedure for the produced water container(s) that is designed to remove free-phase oil that accumulates on the surface of the produced water container. EPA expects this procedure or process will be implemented on a periodic basis so that the amount of free phase oil that collects in these produced water containers is within the amounts managed by the general secondary containment scheme designed by the PE and implemented by the facility owner/operator. The SPCC Plan must include a description of the free-phase oil separation and removal procedure or process, the frequency it is implemented or operated, the amount of free-phase oil expected to be maintained inside the container, and a description of the adequacy of the general secondary containment approach for the produced water container, including the anticipated typical failure mode and the method, design, and capacity for general secondary containment. Additionally, the owner or operator must keep records of the implementation of these procedures in accordance with § 112.7(e).

Like the amendment for exempt produced water containers, EPA has amended the PE attestation in § 112.3(d)(1) to add a provision at (1)(vii) so that the PE specifically certifies that an oil removal procedure for non-exempt produced water containers is designed according to good engineering practice to reduce the accumulation of free-phase oil, and that

the procedures and frequency for required inspections, maintenance and testing have been established.

Because this removal procedure is essential for reducing the amount of free-phase oil in the produced water tank, EPA requires that if, upon inspection, it is discovered that the removal procedure is not implemented, then the facility owner/operator may no longer take advantage of this alternative option and must comply with the sized secondary containment requirements at § 112.9(c)(2) within six months after EPA informs the facility owner/operator of this determination of ineligibility for the option.

Additional requirements. EPA believes that the combination of general secondary containment, a free-phase oil removal methodology as certified by a PE, and the additional requirements listed below provide the appropriate amount of environmental protection for these containers in lieu of sized secondary containment. The additional requirements include periodic inspection and/or testing of produced water containers and any associated piping and appurtenances downstream from the container for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b); corrective action or repairs to produced water containers and any associated piping as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge; and prompt removal or initiation of actions to stabilize and remediate any accumulations of oil discharges associated with produced water containers.

Periodic inspection and/or testing of produced water containers and any associated piping and appurtenances downstream from the container is necessary to increase the likelihood that a discharge will be prevented or detected promptly when general secondary containment measures are used instead of sized secondary containment.

Corrective action is necessary to prevent a discharge from occurring, as well as in response to a discharge. This measure is intended to prevent discharges by ensuring that produced water containers are adequately maintained.

The requirement to promptly remove or initiate actions to stabilize or remediate any accumulations of oil discharges is intended to ensure the removal of oil accumulations around the container and any associated piping and appurtenances downstream from the container that may contribute to a discharge as described in § 112.1(b). EPA also considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil and/or oil-contaminated media must be in accordance with applicable Federal, state, and local requirements.

The intent of these regulatory revisions is to treat produced water containers used for oil/water separation in a manner similar to that of a separator or flow-through process vessel, such as a heater-treater, free water knock-out, or gun barrel, because these produced water containers are being used for the same purpose. Use for oil/water separation is the basis for the differentiated treatment of flow-through process vessels as discussed in section V.M.5 above. Accordingly, these requirements are similar to those found at § 112.8(c)(5) for flow-through process vessels.

Reportable discharge. If the facility experiences a discharge of more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharges more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b), occurring within any twelve month period (excluding discharges that are the result of natural disasters, acts of war, or terrorism) from a non-exempt produced water container, then the facility owner/operator may no longer take advantage of this alternative option and must comply with the sized secondary containment requirements at § 112.9(c)(2) and the inspection requirements at § 112.9(c)(3) within six months. Section 112.9(c)(6)(ii)(E) has been added to provide this requirement. A non-exempt produced water container must already comply with § 112.9(c)(1) and § 112.9(c)(4) and therefore these requirements were not added to § 112.9(c)(6)(ii)(E).

c. Definition of Produced Water Container

A production facility typically includes, at a minimum, a wellhead, a tank battery, and flowlines connecting the wellhead to the tank battery. The tank battery includes separation equipment, a crude oil or condensate container (stock oil tank), and typically a produced water container, which receives both oil and produced water from the separator, respectively. Produced water containers are typically located within the tank battery.

Produced water containers are located at a facility as part of the process that separates the oil from other fractions (water and/or gas). A produced water container is generally the last container in the separation process, as there may be more than one separator (e.g., heater-treater, gun barrel, free water knock-out) used in succession or in combination to separate the oil/water fraction.

To clarify which containers are subject to the requirements of § 112.9(c)(6), EPA provides a definition of a produced water container in § 112.2. EPA did not propose a definition for produced water containers in October 2007, but EPA believes that the definition promulgated in this notice is a logical outgrowth of the proposal. In the October 2007 proposal, EPA described produced water containers as bulk storage containers ''typically located within a tank battery at a production facility where they are used to store well fluids after separation and prior to subsequent use (e.g., re-injection or reuse), further treatment, or disposal.'' 72 FR 58413. EPA asked for and received comments on the characteristics of produced water containers (72 FR 58414) and crafted a definition to establish the specific containers eligible for this exemption consistent with the description in the proposal. A produced water container is a bulk storage container at an oil production facility used to store the produced water after initial oil/water separation, and prior to reinjection, beneficial reuse, discharge, or transfer for disposal. Piping and appurtenances downstream of the produced water container may include flowlines and other appurtenances associated with injection and discharge.

d. Overlap Between Produced Water Container Alternatives and Qualified Facilities

Some production facilities with produced water containers will meet the eligibility criteria for qualified facilities, under the previous eligibility criteria (*see* 71 FR 77266, December 26, 2006) or the additional criteria finalized in this notice exclusively for oil production facilities. EPA notes that both of the optional alternatives for a produced water container finalized in this notice (the exemption or the alternative requirements in lieu of sized secondary containment) require PE certification and are not amendments which can be self-certified. Therefore, if the owner or operator of an oil production facility qualifies as a Tier II qualified facility, and wants to self-certify his Plan and use one of the alternative approaches for produced water containers (exempt a produced water container or take advantage of the alternative requirements in § 112.9(c)(6)), then he must use a ''hybrid'' SPCC Plan. Sections of the Plan satisfying the produced water container requirements of § 112.9(c)(6)

must be certified by a PE, who completes the attestation in § 112.3(d)(1)(vi) and/or (vii). Section 112.6(b)(4)(ii) has been modified to emphasize this point. An owner or operator of an oil production facility which qualifies as a Tier I qualified facility may not use the self-certified SPCC Plan template found in Appendix G to 40 CFR part 112 if he wishes to exempt a produced water container or take advantage of the alternative requirements in § 112.9(c)(6), because the exemption or alternative requirements for produced water containers require PE certification and the template is for self-certification only.

In addition, the exemption for produced water containers meeting the criteria under § 112.9(c)(6)(i) can affect the applicability of the alternative qualified facility eligibility criteria for oil production facilities under § 112.3(g)(2)(ii). Under that section, an oil production facility with injection wells does not meet the alternative definition of qualified facility. However, if the injection well is to inject fluids from a container that is exempt under § 112.9(c)(6)(i), the presence of that injection well does not make the facility ineligible for regulation as a qualified facility under § 112.3(g)(2)(ii).

Comments. Many commenters expressed support for exempting produced water containers from the secondary containment requirements, SPCC regulation and/or an exemption for produced water treatment facilities. Some commenters suggested that the produced water containers at these facilities be subject to the wastewater treatment exemption. Other commenters suggested exempting produced water containers according to their location, upstream or downstream of separation, because the amount of oil remaining in the water after primary separation and treatment is minimal. In fact, several commenters indicated that EPA has authority to regulate discharges of oil, not water. Additionally, one commenter specifically noted that for older oil fields, produced water comprises a large amount of water or brine with extremely low oil content, ''perhaps 0.1% or less.'' One commenter claimed that produced water containers always have a layer of oil. Another commenter urged EPA to allow the certifying engineer to make the determination whether a given produced water tank or oil/water separator should have secondary containment, rather than including tanks that may or may not include measurable amounts of oil. Several commenters suggested produced water located at oil and gas facilities should be subject to the wastewater treatment exemption.

Two commenters suggested using ''primary separation'' as the difference between upstream and downstream production, while two other commenters noted it should be ''after the last separation.'' Two other commenters noted that if the facility is relying on gravity separation, the atmospheric storage tank should be considered bulk storage.

Several commenters suggested that discharges are already regulated by state law, the National Pollutant Discharge Elimination System (NPDES) program, or the Safe Drinking Water Underground Injection Control (UIC). DOE cited published information used to establish national effluent limitations for coastal oil and gas production facilities, discussed the efficiency of control and treatment technologies and found that numerous end-of-the-pipe treatment methods can achieve this level of effluent quality. One commenter suggested exempting NPDES-permitted ponds from storage capacity calculation for SPCC and FRP applicability due to their very low oil content.

Several other commenters addressed the proposed approach for additional requirements for produced water containers in lieu of sized secondary containment. One commenter supported the inspection, maintenance and periodic skimming proposed approach as a second option to an exemption. One commenter stated that field operators maintain a constant watch over the amount of oil carryover to the produced water tanks and when the oil layer reaches the point of being recoverable, the oil is skimmed and pumped. One commenter suggested ensuring that integrity testing is not required for produced water containers, because integrity testing of the typically closed-top fiberglass would be problematic, expensive, and difficult. However, other commenters opposed reduced requirements for produced water containers and expressed concerns about the potential for harmful discharges.

Response. After evaluating the comments received, EPA is modifying the requirements at § 112.9(c) to exempt produced water containers that meet certain conditions, and to allow an alternative management scheme (which is optional) for produced water containers that are used for oil/water separation in lieu of sized secondary containment. In deciding how to proceed, EPA acknowledges that the amount of oil by volume observed in produced water storage containers varies depending on a number of factors, including, but not limited to, separator efficiency, age and formation of the oilfield, and use of heat or chemical separation. EPA agrees with commenters that after separation, the amount of oil remaining in produced water can be minimal given the characteristics of the oilfield and facility/separator configuration. Therefore, EPA agrees with commenters that certain produced water containers with minimal amounts of oil may be eligible for exemption, and that certain produced water containers that are used for oil/water separation should be subject to differentiated requirements; EPA is allowing a PE to make the determination whether a given produced water container should be eligible for an exemption from the rule or for alternative requirements as described in § 112.9(c)(6)(ii). EPA believes the exemption criteria (certification by the PE that no discharge from the produced water container, including a complete loss of the capacity of the container, could cause a discharge in quantities that may be harmful as described in part 110) addresses the commenters' concerns about regulating produced water containers that do not contain oil in harmful quantities. Further, EPA believes the approach for non-exempt containers, featuring differentiated requirements and general secondary containment, provides appropriate regulatory requirements for these produced water containers.

The Agency does not agree, however, with commenters that produced water located at oil and gas facilities should be subject to the wastewater treatment exemption. The basis for the conditional exemption in these finalized amendments is whether oil is present in quantities that may be harmful. As stated in the preamble to the 2002 amendments to the SPCC rule, the goal of an oil production, recovery or recycling facility is to maximize the production and recovery of oil, which presumes that oil is present in quantities that may be harmful (67 FR 47068, July 17, 2002).

EPA has created a new section that describes alternative requirements for produced water containers (§ 112.9(c)(6)) in lieu of the sized secondary containment requirements of § 112.9(c)(2) and inspection requirements under § 112.9(c)(3). Produced water containers are typically found after the primary separation conducted by flow-through process vessels at an oil production facility. In order to address commenters who suggested using the term ''primary separation,'' the Agency has indicated

in the definition for produced water container that the container is used to store produced water after ''initial'' oil/water separation. The Agency agrees that produced water containers, including those used to separate oil from water by means of gravity separation, are bulk storage containers, and are therefore subject to requirements under § 112.9(c), including those specifically for produced water containers under paragraph (c)(6) of that section.

EPA agrees with commenters that oil production facilities may be regulated under the NPDES, UIC, other Federal regulations, and state regulations. However, the Agency's review of the scope of these programs and regulations indicates that these regulations do not necessarily provide an equivalent level of protection from accidental and incidental discharges of harmful quantities of oil to those required under the national SPCC requirements. Therefore these programs cannot serve solely as a substitute for an SPCC Plan at a facility. EPA acknowledges that onshore oil production facilities may discharge directly to surface waters pursuant to an NPDES permit and that technology-based discharge standards (effluent guidelines) for onshore produced water is ''zero discharge'' (with two exceptions: Produced water generated west of the 98th meridian that is put to beneficial use during the period of discharge (set to 35 mg/L), and stripper wells). An NPDES permit typically includes the guideline that the discharge ''shall be free from substances in amounts which would cause a visible sheen or visible deposits in the receiving water or adjoining shoreline.'' Because these permitted facilities are required to eliminate harmful quantities of oil in produced water, a produced water container at the facility may be eligible for the exemption finalized in this notice. Additionally, the NPDES requirements may be used by a PE to address the certification elements (produced water characteristics in the container and any associated piping and appurtenances downstream of the container, procedures or maintenance) required for the exemption.[9]

The Agency is finalizing an alternative to sized secondary containment requirements for a produced water container that does not meet the conditional exemption criteria described above. The alternate requirements finalized in this action take into consideration the commenters suggestions regarding the proposed alternatives. The finalized set of requirements include: Implementation of a procedure designed to separate the free-phase oil that may accumulate on the surface of the produced water, inspection or testing of the produced water container and components, prompt removal of or initiation of actions to contain and stabilize any oil accumulations, and corrective action should a discharge occur. The Agency did not include integrity testing in the finalized set of additional requirements. Produced water containers used specifically for oil/water separation serve the same purpose as separators or flow-through process vessel and thus, EPA is applying similar requirements to these containers.

EPA also agrees with the comment that when an oil layer in a produced water container becomes recoverable, the oil is typically skimmed and pumped. Consequently, EPA's final rule requiring removal and reduction of free-phase oil from the produced water container is consistent with industry practice. Whatever procedure is used must be developed by a PE, described in the Plan, and implemented by the owner or operator to reduce the amount of free-phase oil which may accumulate. Records of implementation of these procedures must be maintained in accordance with § 112.7(e).

8. Clarification of the Definition of Permanently Closed Containers

The Agency is addressing concerns expressed by the regulated community over the requirements for permanently closing a container, as described in the definition of ''permanently closed'' at § 112.2. EPA does not believe that further regulatory action is needed to address this issue. Specifically, the SPCC rule exempts from applicability and from capacity threshold determinations any oil storage container that is ''permanently closed.'' For a container to be permanently closed, all liquid and sludge must be removed from the container and connecting lines, all connecting lines and piping must be disconnected from the container and blanked off, all valves, except ventilation valves, must be closed and locked, and conspicuous signs must be posted on each container stating that it is a permanently closed container and noting the date of closure. Once permanently closed, a container is no longer required to be counted toward the total facility storage capacity, nor is it subject to the other requirements under the SPCC rule. The definition does not require that a permanently closed container be removed from the facility. In addition, any new container brought on to a facility that has never stored oil is not subject to the SPCC rule, nor is it counted toward the facility capacity until it stores oil. Furthermore, any other container that at one time stored oil but no longer contains oil or sludge, which is brought on to a facility and meets the definition of permanently closed, is not subject to the SPCC rule nor is it counted toward the facility capacity until it stores oil.

EPA also is clarifying that the permanent closure requirements under the SPCC rule are separate and distinct from the closure requirements in regulations promulgated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (i.e., *Standards For Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities at 40 CFR part 264 and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities*) at 40 CFR part 264 and 265. These regulations describe the requirements for operators of facilities that use tank systems for storing or treating hazardous waste, as well as the requirements for tank closure and post-closure care (§§ 264.197 and 265.197). These requirements generally do not apply to an oil production facility. According to the applicability provision in § 264.1(b), ''the standards in this part apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this part or part 261 of this chapter'' (emphasis added). 40 CFR part 261 states that ''Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy'' are not hazardous waste (§ 261.4(b)(5)). Therefore, an oil production facility does not have to undergo the expense of permanent closure under Part 264 or 265 of RCRA, because these wastes (i.e. drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil) are not subject to these regulations.

Comments. Two commenters expressed support for EPA's proposed clarification that permanently closed containers need neither be removed from the facility nor be rendered permanently out of use in the future. One commenter suggested additional clarification stating that permanently sealed, unused oil containers can remain on-site at the facility with a minimum of cleaning and preparation.

[9] As noted above, because the definition of discharge under section 311(a)(2) excludes discharges subject to an NPDES permit, SPCC regulations promulgated under section 311(j) do not, and are not intended to, prevent such discharges.

Another commenter expressed concern, however, that the cost of closing a container would be prohibitive, and suggested it may cause premature abandonment of the operation. The commenter suggested that requiring a container to be cleaned is not necessary since the container would remain within the diked area.

Several commenters provided other suggested options. One commenter suggested that EPA clarify that sealing an empty container removes the container from being part of the production facility according to the definition of production facility. Agricultural stakeholders suggested that EPA modify its position on permanently closed containers so that a container removed from service can be placed back into service with minimal operational effort so that farmers and agribusiness can acquire storage capacity flexibility in response to variable production rates and economic conditions. One commenter suggested that small containers with a capacity between 500 and 1,500 gallons used for fueling and maintenance be allowed to be temporarily closed and exempt from the SPCC requirements when closed.

Response to comments. The Agency recognizes that variable economic conditions and production rates at an oil production facility may cause certain containers to be unused for long periods of time. However, EPA does not believe that it is appropriate to exempt containers from the SPCC requirements without requiring that all liquid and sludge be removed, even if the container remains in an area that is diked and it is for a temporary period of time. A ''temporary closure'' would be intended for situations where containers would only be closed for short periods of time, and arguably need less stringent requirements than a permanent closure. The significant difference in closure requirements between EPA's current ''permanent'' closure requirements and the suggested ''temporary'' closure requirements appears to be the removal of liquid and sludge from the container and connecting lines. EPA believes that allowing liquid and sludge to remain in the container, without the benefit of the SPCC rule protections, creates the potential for a discharge, regardless of the size of the container. One commenter suggested that such containers would remain in the diked area and thus, the potential for oil to be discharged would be minimal. However, if a container was no longer subject to the SPCC rule, there would be no requirement that it be contained in a diked area or that any precautions be taken to prevent the discharge of oil to navigable waters or adjoining shorelines. Finally, EPA believes that the permanent closure provisions require actions that render the container unavailable for oil storage, by requiring that all connecting lines and piping must be disconnected from the container and blanked off, and that all valves (except ventilation valves) must be closed and locked, thus preventing accidental spills where the container is inadvertently filled with oil. These provisions also serve as a clear indicator as to the status of a container and whether it is considered a regulated container under this rule and part of the storage capacity of the facility. EPA believes that these requirements are reasonable and provide the flexibility of allowing the container to remain on site for future use. EPA does not agree that cleaning a tank is cost-prohibitive and may shut in wells prematurely. The decision to clean and close a container in accordance with the SPCC provision is typically made by an owner or operator who can determine whether it is cost-effective to close the tank or to let it remain in service and not incur the costs associated with closure, including cleaning.

The Agency also disagrees with the comments suggesting that an owner or operator need only ''seal'' a tank without requiring that all liquid and sludge be removed in an effort not to be subject to the SPCC rule. For a container to be considered permanently closed at an oil production facility, as well as at any other SPCC-regulated facility, all liquid and sludge must be removed from the container and connecting lines, all connecting lines and piping must be disconnected from the container and blanked off, all valves, except ventilation valves, must be closed and locked, and conspicuous signs must be posted on each container stating that it is a permanently closed container and noting the date of closure. Once permanently closed, a container is no longer required to be counted toward the total facility storage capacity, nor is it subject to the other requirements under the SPCC rule (such as secondary containment).

EPA reiterates the statement it made in the preamble to the July 2002 amendments to the SPCC rule: ''If a tank is not permanently closed, it is still available for storage and the possibility of a discharge as described in § 112.1(b), remains. Nor does a short time period of storage eliminate the possibility of such a discharge. Therefore, a prevention plan is necessary. A tank closed for a temporary period of time may contain oil mixed with sludge or residues of product, which could be discharged. Discharges from these facilities could cause severe environmental damage during such temporary storage and are therefore subject to the rule'' (67 FR 47059, July 17, 2002).

Finally, as noted previously, the definition of ''permanently closed'' does not require that a container be removed from the facility; permanently closed containers may be brought back into use as needed for variations in production rates and economic conditions. However, a facility owner or operator should review state and local regulations, which may have additional requirements when the container is brought back into service.

9. Oil and Natural Gas Pipeline Facilities

EPA's current SPCC rules exempt ''equipment, or operation of a vessel or transportation-related onshore or offshore facility'' that is subject to DOT authority under the November 24, 1971 EPA–DOT MOU (1971 MOU; Appendix A of 40 CFR part 112). The 1971 MOU memorialized the agencies' intent to minimize overlapping regulation by ''assign[ing] one agency the responsibility for regulating a complete operation at any one facility.'' The final rule makes no change in these provisions and is not otherwise intended to impose new requirements on DOT-regulated oil and natural gas pipelines. Rather, by granting operators new flexibility in delineating facility boundaries, the final rule should reduce uncertainty and minimize, if not eliminate, overlapping enforcement. To the same ends, as EPA stated in the NPRM, EPA and DOT have committed to realize the goal of the 1971 MOU to more clearly define the jurisdictional scope of the SPCC requirements over oil and gas related infrastructure.

Comments. Several commenters expressed support for EPA and DOT in committing to a revision of the 1971 MOU, noting that a guideline memorandum issued by EPA and DOT in 2000 failed to achieve its intended purpose and has created confusion concerning the application of SPCC requirements to breakout tanks that are subject to DOT's pipeline safety regulation (49 CFR part 195). These commenters urged EPA and DOT to withdraw or modify the 2000 memorandum and develop additional guidance, with industry input, for eliminating dual regulation of pipeline systems. Commenters representing natural gas pipeline operators urged EPA and DOT to designate the specific equipment and appurtenances that are part of natural gas pipeline systems subject to the SPCC exemption in 40

CFR 112.1. Other commenters suggested that EPA specifically include an exemption for dry gas production facilities in the rule language to prevent any difference in regional interpretation. Still other commenters suggested that EPA determine Agency jurisdiction according to the primary function of the facility: one commenter suggested that DOT should exert sole jurisdiction over facilities that primarily provide breakout or pipeline terminus tankage, and another commenter suggested that the percentage of throughput by a particular mode can be used to delineate jurisdiction. Finally, other commenters suggested that the jurisdiction for all gathering lines should be under the sole jurisdiction of DOT, as these gathering pipelines would include both pipelines transporting product from a production facility, as well as pipelines gathering production from satellite storage locations to a central storage location.

Response to comments. The Agency has consulted with DOT in the development of this rulemaking, and will continue these consultations to address the EPA/DOT jurisdictional issues. EPA and DOT will revise the 2000 guidance memorandum, acknowledging that it has not provided a clear basis for implementing the 1971 MOU or delineating EPA and DOT jurisdiction. The agencies, as part of that effort, are evaluating the viability of a ''primary function'' approach described by commenters. EPA will continue work to improve guidance for pipeline operators and will communicate the results of discussions in a manner that affords public comment.

With respect to a 'dry gas production facility,' the Agency maintains its position that a dry gas production facility is not an oil production, oil recovery, or oil recycling facility, as described in the clarification published May 25, 2004 in the **Federal Register** notice (69 FR 29728) regarding the applicability of the wastewater treatment exemption to dry gas facilities. In that notice, EPA stated, ''A dry gas production facility is a facility that produces natural gas from a well (or wells) from which it does not also produce condensate or crude oil that can be drawn off the tanks, containers or other production equipment at the facility. As discussed in the preamble to the July 2002 rulemaking, 'the goal of an oil production, oil recovery, or oil recycling facility is to maximize the production or recovery of oil. * * *' 67 FR 47068. A dry gas facility does not meet this description.'' As such, dry gas facilities as defined here are not subject to the SPCC requirements and therefore, do not need to be addressed in the EPA/DOT MOU.

EPA disagrees with commenters that all gathering lines should be under the jurisdiction of DOT. As explained elsewhere in this notice (see discussion on flowlines and intra-facility gathering lines), EPA will continue to regulate only those intra-facility gathering lines not subject to DOT regulation. EPA is also finalizing an exemption to address the concern of commenters regarding dual regulatory requirements for these piping systems.

N. Man-made Structures

The preamble to the October 2007 notice of proposed rulemaking (72 FR 58378, October 15, 2007) addressed the consideration of man-made structures in determining the SPCC rule's applicability. Consistent with statements made in the preamble to a 1976 amendment to the rule (41 FR 34164, December 11, 1976), EPA maintains that man-made features, such as drainage control structures and dikes, are not to be used to conclude that there is no reasonable expectation that a discharge from the facility will reach navigable waters or adjoining shorelines. If there is a reasonable expectation that a discharge from the facility would reach navigable waters or adjoining shorelines in the absence of such containment or other structures, the facility is subject to the SPCC requirements. Secondary containment is required as part of an SPCC Plan and man-made structures, such as dikes, berms and retaining walls are often used to meet this planning requirement. However, unless properly implemented and maintained (as required by the SPCC rule), man-made structures may fail, thus putting the environment at risk in the event of a discharge. Therefore, it would defeat the preventative purpose of the rule to consider these structures (i.e., those required by the regulation) when determining applicability of the rule to a facility.

Nevertheless, EPA believes that it is appropriate for a facility owner or operator to consider man-made structures (for example, dikes, equipment, buildings, basements or other containment structures) to determine how to comply with the SPCC rule. More specifically, if an oil storage container at a regulated facility is located inside a building, the PE or facility owner or operator self-certifying the SPCC Plan may take into consideration the ability of the building walls and/or drainage systems to serve as secondary containment for the container. Furthermore, if, at a regulated facility, indoor conditions are such that they reduce external corrosion and potential for discharges, these operating conditions may be considered in the development of a site-specific container integrity inspection program. Given the clarifications provided in the preamble discussion of the proposal, EPA does not believe that further regulatory action is needed to address this issue.

1. Comments

Many commenters expressed general support for the clarifications on man-made structures related to secondary containment and integrity testing. One commenter, however, requested additional discussion and clarification on ''locationally exempt facilities,'' that is, facilities that may not be subject to the SPCC regulations because of their low likelihood of discharge to navigable waters or adjoining shorelines. The commenter recommended that consideration of man-made features that predate construction of an otherwise regulated facility should be allowed for a locational exemption.

Other commenters, however, did not believe that EPA's clarification goes far enough and requested specific exemptions based on EPA's reasoning regarding the potential ability for building features to serve as secondary containment. Thus, these commenters recommended exempting certain oil storage units located wholly within buildings, such as containers storing hydraulic oil for an elevator, emergency generators with a day tank, or machining coolant systems. Finally, one commenter recommended clarifying text in § 112.1(d)(1)(i) to ''allow consideration of such man-made features when conducting a reasonable expectation to discharge determination.''

2. Response to Comments

With regard to the commenter requesting clarification on ''locationally exempt facilities,'' in 1976, EPA amended the SPCC rule to clarify that when determining applicability of the rule to a facility, consideration must be based solely upon the geographical aspects of the facility, and that consideration of man-made features, such as dikes, equipment, or other structures that may serve to restrain, hinder, contain or otherwise prevent a discharge as described in § 112.1(b) should not be considered. When an owner or operator determines that the facility could not reasonably be expected to discharge oil in quantities that may be harmful to navigable waters or adjoining shorelines based upon geographic and locational aspects of the facility, then no SPCC Plan is required,

such as when a facility is located in a topographic low area or on flat land far from navigable waters or adjoining shorelines.

EPA disagrees with those commenters requesting an exemption for oil-filled equipment or other oil storage containers located inside buildings. That is, the requirements apply to all containers, unless otherwise specifically exempted, whether they are located inside or outside a building. Thus, EPA does not agree that text be included in § 112.1(d)(1)(i) to allow the consideration of man-made features when conducting a reasonable expectation to discharge because, as discussed above, the rule already allows the facility owner or operator to consider geographical and locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) in the determination. However, the SPCC Plan preparer may consider whether the building design provides adequate secondary containment to meet the general secondary containment requirements under § 112.7 for oil storage containers located indoors at a regulated facility. The owner or operator of a facility with oil-filled equipment may also be eligible for alternative compliance measures under § 112.7(k) for qualified oil-filled operational equipment if it meets the criteria in § 112.7(k)(1).

O. Underground Emergency Diesel Generator Tanks at Nuclear Power Stations

Under this final action, EPA is exempting underground oil storage tanks deferred under 40 CFR part 280, as originally promulgated, that supply emergency diesel generators at nuclear power generation facilities licensed by Nuclear Regulatory Commission (NRC) and that meet the NRC design criteria and quality assurance criteria. This exemption includes both tanks that are completely buried and tanks that are below-grade and vaulted. An underground storage tank or UST is defined in 40 CFR part 280 as ''any one or combination of tanks * * * the volume of which is 10 percent or more beneath the surface of the ground.'' Below-grade vaulted tanks and completely buried tanks that serve as underground emergency diesel generator tanks at nuclear power plants fall within this definition. Part 280 also states that a ''storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor'' is not an UST. Under the NRC regulations, a nuclear power generation facility must meet certain design criteria to ensure that the plant will be operated in a manner protective of the public's health and safety (such as 10 CFR part 50, Appendix A). These NRC design criteria cover the design, fabrication, installation, testing and operation of structures, systems, and components important to safety. Future construction permits and operating licenses for nuclear power stations may be issued per 10 CFR part 52, *Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants.* EPA compared the NRC regulations and guidelines with the relevant SPCC requirements. Under 10 CFR part 50, Appendices A and B, nuclear power generation facility operators must identify the relevant codes and standards, develop and implement a quality assurance program, and maintain appropriate records of the design, fabrication, erection, and testing throughout the life of the nuclear unit. The quality assurance program required per Appendix B must be documented by written policies, procedures or instructions and implemented as documented. To assist nuclear power unit licensees in complying with the license requirements, the NRC has developed a number of guidance documents, including documents pertaining to the operation of standby diesel generators. NRC Regulatory Guide 1.137, ''Fuel-Oil Systems for Standby Diesel Generators'' details the requirements for inspection and testing of fuel oil systems, corrosion protection, and the periodic cleaning of fuel supply tanks. These measures are similar to the measures required under the SPCC regulation for completely buried tanks, which include corrosion protection of buried tanks (§ 112.8(c)(4)) and of buried piping (§ 112.8(d)(1)), and inspection and testing of buried piping (§ 112.8(d)(4)). According to NRC, this guideline represents one acceptable method to meet the NRC requirements for these standby systems. If a licensee chooses an alternative approach, then equivalency must be demonstrated through an engineering review by the NRC as part of the licensing process.

EPA notes that nuclear power plants have unique characteristics that differentiate them from other types of SPCC-regulated facilities. Thus, EPA understands that certain actions necessary to comply with the SPCC rule could be impracticable at NRC facilities, because they may compromise the availability of the emergency diesel generation tank and consequently affect the reliability of the nuclear power supply and result in the shut down of a nuclear power plant. EPA believes that the NRC operating safety requirements best address the specific and unique operational challenges at nuclear power plants. EPA is, therefore, exempting underground oil storage tanks deferred under 40 CFR part 280 that supply emergency diesel generators at licensed NRC nuclear power generation facilities and that are subject to design criteria and quality assurance criteria under the NRC regulations. Below-grade vaulted tanks and completely buried tanks that serve as underground emergency diesel generator tanks at nuclear power plants fall within this exemption. This is consistent with 40 CFR 280.10(c)(3) which indicates that ''Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR part 50, appendix A'' is deferred from regulation under certain parts of part 280. Note also that due to this exemption, these tanks are no longer counted toward the aggregate oil storage capacity under § 112.1(d)(2)(i).

1. Comments

Many commenters expressed general support for the amendments. One commenter specifically supports the revision in order to avoid dual regulation by EPA and NRC. Some commenters, however, expressed concern that EPA's proposed language was too narrow, because NRC's licensing program does not only regulate tanks under 10 CFR part 50; new facilities' tanks are likely to fall under the alternate regulation of 10 CFR part 52, and some older facilities might not be regulated by Appendix A or B of 10 CFR part 50. One commenter suggested that EPA remove the specific reference to the text of 10 CFR part 50, replacing with more general language.

Some commenters also suggested that vaulted tanks, which are usually aboveground or in a below-grade structural vault, should be exempted because of the impracticability of inspecting those tanks. One commenter suggested that EPA can use the phrase ''completely below-grade tank'' in § 112.1(d)(2)(i) and (d)(4) to identify the exempted tank universe as including below-grade vaults.

2. Response to Comments

EPA proposed language (72 FR 58378, October 15, 2007) to exempt completely buried tanks at a nuclear power generation facility that meet the NRC design criteria specifically at 10 CFR part 50, Appendices A and B. The Agency agrees with those commenters

that suggested this language is too limiting, and that because of this narrow reference to specific regulatory citation, grandfathered and/or newly constructed tanks at nuclear power generation facilities that are licensed by the NRC may not be eligible for the exemption under the SPCC rule. The language may also cause future confusion if NRC restructures its requirements or imposes new ones; the narrow reference may render this amended language obsolete. Therefore, EPA has modified the final rule language to address these concerns by not including references to 10 CFR Part 50. This will avoid future amendments to the SPCC rule in the event that NRC modifies the specific regulatory citations regarding design and/or operating requirements for completely buried tanks.

EPA agrees with the commenters who argued that the exemption should be extended to below-grade, vaulted tanks that do not meet the definition of a completely buried tank as defined in § 112.2. Commenters argue that there is insufficient space for physical inspection of the emergency diesel generator tanks at nuclear power plants that are located in below-grade structural vaults. EPA however, disagrees that all below-grade, vaulted tanks should be included in the exemption because some of these tanks can be physically inspected. In those cases, an inspector can routinely walk into the room and view the sides of the tank, while in other cases, the design of the vault is such that the space between the vault and the tank makes it impractical for an inspector to enter the confined space surrounding the tank on a routine basis. Therefore, EPA is extending the exemption to these below-grade, vaulted tanks that do not provide enough space for physical inspection. By way of background, 40 CFR part 280.12 defines an ''underground area'' as ''an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.'' Thus, where there is insufficient space for physical inspection, tanks have been removed from UST regulation. Therefore, EPA is basing the exemption on the definition of an UST under part 280, which encompasses below-grade, vaulted tanks that cannot be physically inspected.

P. Wind Turbines

The Agency was requested to address the applicability of the SPCC rule to wind turbines used to produce electricity. As discussed in the October 2007 notice of proposed rulemaking (72 FR 58378, October 15, 2007), the Agency believes that wind turbines meet the definition of oil-filled operational equipment promulgated in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006), and thus can take advantage of the alternative compliance option provided for this type of equipment, to the extent that the wind turbines meet the oil storage capacity threshold in the rule. The amendments to the SPCC rule promulgated in December 2006 allow owners and operators of facilities with eligible oil-filled operational equipment the option to prepare an oil spill contingency plan and a written commitment of manpower, equipment, and materials to expeditiously control and remove any oil discharged that may be harmful without having to make an individual impracticability determination as required in § 112.7(d). If an owner or operator takes this option, he is also required to establish and document an inspection or monitoring program for this qualified oil-filled operational equipment to detect equipment failure and/or a discharge in lieu of providing secondary containment.

1. Comments

Several commenters agreed that the discussion in EPA's proposal added sufficient clarity on the applicability of the SPCC rule to wind turbines. One commenter also suggested that the discussion about turbines with gearbox capacities of 55 gallons or more meeting the definition of oil-filled equipment be included in EPA's *SPCC Guidance for Regional Inspectors.* Finally, one commenter considers a wind farm a facility and, asserted that because the total oil stored in the turbine gear cases plus the lubricant replacement storage may exceed the 1,320-gallon threshold, a full SPCC Plan should be required.

2. Response to Comments

The Agency agrees with those commenters who supported EPA's clarification on the applicability of the SPCC requirements to wind turbines. In addition, EPA will update the *SPCC Guidance for Regional Inspectors* to reflect the clarifications regarding the applicability of the SPCC rule to wind turbines that were discussed in the preamble to the proposed rule amendments (72 FR 58378, October 15, 2007). In response to the commenter who requested clarity on whether a wind farm is a facility, the owner or operator should refer to the definition of ''facility'' at § 112.2, to determine how to aggregate or disaggregate groups of turbines in order to define the boundaries of his facility (or facilities). A wind farm facility that meets the rule's oil storage capacity threshold and, due to its location, could reasonably be expected to have a discharge to navigable waters or adjoining shorelines, is subject to the SPCC rule and must prepare and implement an SPCC Plan. The clarification provided in this notice does not affect the applicability of the rule to wind farm facilities, but explains how wind turbines are considered under the rule and what provisions may apply to this type of equipment.

Q. Technical Corrections

EPA is finalizing a technical correction to the introductory paragraph of § 112.3 to move the phrase ''in writing'' after ''must prepare'' and then insert the phrase ''and implement'' after the phrase ''in writing,'' in order to provide an explicit requirement for a facility owner or operator to both prepare and implement an SPCC Plan. This paragraph describes the requirement for an owner or operator of an onshore or offshore facility subject to the rule to prepare an SPCC Plan, in writing, and in accordance with § 112.7 and any other applicable section of the rule. Adding the term ''and implement'' to this paragraph is consistent with the subsequent subsections, which provide compliance dates to both prepare or amend, and implement, an SPCC Plan for various categories of facility owners and operators. In describing the requirement to prepare a Plan in the introductory paragraph of § 112.3, the Agency inadvertently excluded the explicit requirement to also implement that Plan. Clearly, a facility owner or operator must implement his SPCC Plan in order for it to be effective in preventing discharges of oil to navigable waters or adjoining shorelines.

EPA also is finalizing a technical correction to the introductory paragraph of § 112.12 to delete the phrase ''(excluding a production facility).'' In the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), EPA amended Subpart C of 40 CFR part 112 by removing several sections because they were not appropriate for AFVOs. At that time, as a point of clarification, EPA also removed the phrase ''for onshore facilities (excluding production facilities)'' from the title of § 112.12, because, having removed the inapplicable production facility requirements from Subpart C, it was no longer necessary to differentiate onshore oil production facilities from other facilities in § 112.12. However, EPA inadvertently neglected to remove the

corresponding phrase from the introductory paragraph of the section. EPA is correcting this inadvertent omission. Finally, the Agency is amending the regulation to include ''U.S.'' before gallons in several places, to indicate that the Agency means the U.S. gallon unit of measure and not the Imperial unit of measure.

1. Comments

One commenter expressed support for the technical corrections. Another commenter specifically supported the technical correction to § 112.12.

2. Response to comments

The Agency agrees with the need for these technical corrections and is finalizing them in this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB's recommendations have been documented in the docket for this rulemaking. In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the regulatory impact analysis (RIA) entitled, ''Regulatory Impact Analysis for the Final Amendments to the Oil Pollution Prevention Regulations (40 CFR part 112)'' (July 2008). A copy of the analysis is available in the docket for this rulemaking and the analysis is briefly summarized below.

For the economic impact analysis of these amendments, EPA used the SPCC rule requirements at 40 CFR part 112, as amended in July 2002 (67 FR 47042, July 17, 2002) as the baseline to estimate the potential cost savings to regulated facilities from these amendments. The cost savings are not adjusted for the estimated, potential cost savings for the 2006 rule amendments and may overestimate the cost savings for these amendments, particularly for Tier I qualified facilities, revisions to the integrity testing requirement, and the proposed amendments to delay SPCC Plan preparation and implementation for new oil production facilities. The regulatory impact analysis developed in support of this final rule compares the compliance costs for owners and operators of facilities affected by the amendments in this rule to the costs owners and operators would face under the July 2002 SPCC rule amendments. The regulatory amendments have fourteen major components: (1) Exempt hot-mix asphalt; (2) exempt pesticide application equipment and related mix containers; (3) exempt residential heating oil containers at single-family residences; (4) amend the definition of ''facility'' to clarify the currently existing flexibility associated with describing a facility's boundaries; (5) amend the facility diagram requirement to provide additional clarity; (6) define ''loading/unloading rack'' to clarify the equipment subject to the provisions for facility tank car and tank truck loading/unloading racks, as well as amending the provision for this equipment; (7) provide streamlined requirements for a subset of qualified facilities; (8) amend the general secondary containment requirement to provide more clarity; (9) exempt non-transportation-related tank trucks from the sized secondary containment requirements; (10) amend the security requirements; (11) amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards; (12) amend the integrity testing requirements for containers that store AFVOs that meet certain criteria; (13) tailor a number of requirements at oil production facilities; and (14) exempt underground oil storage tanks at nuclear power generation facilities. EPA is also providing clarification in the preamble to this rule on two additional issues identified by the regulated community: (1) The consideration of man-made structures in determining how to comply with the SPCC rule requirements and (2) the applicability of the rule to wind turbines for electricity generation.

For each of these components, EPA estimated potential cost savings to regulated facilities that may result from reductions in compliance costs. The main steps used to estimate the compliance cost impacts of this final rule are as follows:

- Develop the baseline universe of SPCC-regulated facilities;
- Estimate the number of facilities affected by the rule amendments;
- Estimate changes in unit compliance cost for each regulated facility affected by the rule;
- Estimate total compliance cost savings to owners and operators of potentially affected facilities; and
- Annualize compliance cost savings over a ten-year period, 2010 through 2019, and discount the estimates using three and seven percent discount rates.

Based on these steps, EPA estimated the annualized compliance cost savings to potentially affected facilities associated with each of the major components of the rule, and presents the results of the economic analysis in Exhibit 1. EPA uses four key assumptions in its regulatory impact analysis. First, the Agency assumes that cost minimization behavior applies to all owners and operators of facilities that qualify for reduced regulatory requirements, whereby all those affected would seek burden relief. Second, EPA assumed, consistent with EPA's guidelines for conducting economic analyses, that all existing owners and operators of facilities are in full compliance with the July 17, 2002 amendments to the SPCC rule (67 FR 47042). Third, EPA assumes that owners and operators of existing SPCC-regulated facilities would forgo compliance activities offered as alternatives where there is only a one-time initial investment because they would have already incurred the one-time cost. For example, EPA assumes that an owner or operator of an existing facility who would qualify for reduced security requirements under the final rule that allows facility owners or operators to tailor their security measures to the facility's specific characteristics and location, would have already provided the security measures as per the July 2002 rule amendments or demonstrated environmental equivalence for tailored security measures. Therefore, owners and operators of existing facilities would not take advantage of the provided alternative. Fourth, EPA assumes that compliance is nationally consistent although EPA recognizes that there is variability in state regulations and the distribution of affected facilities.

Exhibit 1 presents the estimated cost savings for each rule component and for the final rule amendments in total. For several rule amendments, such as the security requirements and facilities handling AFVOs, EPA did not have numeric data on the number of affected facilities within a general industry sector; thus, it developed three scenarios to evaluate a range of cost savings.[10] The exhibit below presents

[10] For example, to develop a range for the number of affected AFVO facilities, EPA contacted industry experts who determined that 40 percent to 90 percent of containers at AFVO facilities are made of stainless steel and almost all containers have bottom drainage. Therefore, based on professional judgment, the Agency considered three scenarios: 40% (low), 65% (medium) and 90% (high) of all

Continued

the estimated cost savings for these regulatory amendments which EPA estimates to be about $176 million on an annualized basis (2007$). The total potential cost savings are calculated taking into account the mid-point values of the estimated ranges of statistical distributions for unit costs. These estimates are not necessarily additive, given that they do not account for interactions that might exist among the various components of the rule.[11]

The oil production sector and farms will benefit from multiple components of the final rule. Specifically, farms will benefit from the amendments to: requirements for qualified facilities (i.e., Tier I); and security requirements, integrity testing requirements, and the facility diagram requirements. Farms will also benefit from the exemption from loading/unloading rack requirements; the exemption for pesticide application equipment and related mix containers, and single-family residential heating oil containers; and clarifications for nurse tanks and the definition of ''facility.'' The total cost savings to farm owners and operators from these amendments are estimated at $13 million on an annualized basis (2007$).

The oil production sector will also benefit from a number of the revisions to the SPCC rules, including the facility diagram requirements; an exemption from the loading/unloading rack requirements and for certain produced water containers when certified by a PE; some will benefit from the new requirements for Tier I qualified facilities; and amendments specific to the oil production sector (for example, the six-month delay in preparation and implementation of SPCC Plans and the exemption of flow-through process vessels from sized secondary containment requirements). The total savings to owners and operators of oil production facilities from all of the amendments that affect this sector are estimated at $116 million on an annualized basis (2007$).

EXHIBIT 1—ESTIMATED COMPLIANCE COST SAVINGS FOR THE REGULATORY AMENDMENTS

Rule component/scenario	Annualized cost savings ($2007, in millions, 7% discount rate)
Hot-Mix Asphalt:	
Exempt HMA containers	$8
Farms:	
Exempt pesticide application equipment and related mix containers	$4
Applicability of Mobile Refueler Requirements to Farm Nurse Tanks	
Residential Heating Oil Containers:	
Exempt single-family residential heating oil containers	$2
Definition of Facility:	
Revise the definition of ''facility''	No cost impact.
Facility Diagram:	
Revise facility diagram requirement	$3
Loading/Unloading Racks [1]:	
Define ''loading/unloading rack''	$51
Tier I Qualified Facilities:	
Provide streamlined requirements for Tier I qualified facilities	$24
General Secondary Containment:	
Revisions to the general secondary containment provision	No cost impact.
General Secondary Containment for Non-Transportation-Related Tank Trucks:	
Extend regulatory relief for mobile refuelers to the non-transportation-related tank trucks	No cost impact.
Security Requirements:	
Revise security requirements [2]	$9
Integrity Testing:	
Amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards at all facilities.	$11
Animal Fats and Vegetable Oil:	
Amend integrity testing requirements for AFVO containers that meet certain criteria [3]	$2
Oil Production Facilities:	
Six-month delay for Plan preparation and implementation	$24
Exempt flowlines and gathering lines from secondary containment	No net cost impact.
Flow-through process vessels	$7
Streamlined requirements for small production facilities with marginal wells	$30
Produced water containers	No cost savings estimated.
Man-Made Structures:	
Consider manmade structures in determining SPCC rule applicability	No cost impact.
Nuclear Power Stations:	
Exempt underground oil storage tanks at nuclear power generation facilities.	Less than $1.
Wind turbines:	
Clarify applicability of the rule to wind turbines used to produce electricity	No cost impact.
Total	$176

[1] Mid-point estimate (17% of oil production facilities, 50% of AFVO facilities, and 8% of medium and large farms affected). Cost savings might be higher or lower using different assumptions.
[2] Mid-point estimate (50% of farms affected). Cost savings might be higher or lower using different assumptions.
[3] Mid-point estimate (65% of facilities affected). Cost savings might be lower using different assumptions.

AFVO facilities would have food oil tanks that are eligible.

[11] Certain industry sectors are affected by multiple rule components. As a result, taking advantage of one new requirement might preclude a facility from benefiting from other proposed requirements. The estimate also takes into account the overlap of the six-month delay with the relief for new small production facilities. The six-month delay is specifically designed to allow time for the facility production operations to stabilize in order to avoid the need for multiple certifications of the Plan by a PE. However, because small production facilities that meet the new qualified facility criteria would not have to have their SPCC Plan certified by a PE, they will not incur cost savings from the six-month delay in preparing SPCC Plan.

EPA recognizes that the economic analysis is constrained by limited availability of data and information. The SPCC regulation does not have a notification requirement for regulated facilities and thus, EPA relies on state information; Federal and proprietary databases; and information from industry experts as a basis for the cost information included in the analysis.

B. Paperwork Reduction Act

The information collection requirements for this final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 0328.14.

EPA does not collect the information required by the SPCC rule on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must generally be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility owner or operator helps prevent oil discharges to navigable waters or adjoining shorelines and mitigate the environmental damage caused by such discharges. Therefore, the primary user of the data is the facility personnel. While EPA may, from time to time, request information under these regulations, such requests are not routine.

Although facility personnel are the primary data user, EPA also uses the data in certain situations. In particular, EPA reviews SPCC Plans: (1) When it requests a facility owner or operator to submit required information in the event of certain discharges of oil or to evaluate an extension request; and (2) as part of EPA's inspection program. State and local governments also may use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness efforts. Preparation of the information for affected facilities is required under section 311(j)(1) of the Clean Water Act as implemented by 40 CFR part 112.

EPA estimates that in the absence of this rulemaking, approximately 623,000 existing facilities would be subject to the SPCC rule in 2010 and have SPCC Plans. In addition, EPA estimates that approximately 17,400 new facilities would become subject to the SPCC requirements during that year, resulting in a total of about 640,000 regulated facilities in 2010.[12]

Under this final rule, the storage capacity of containers solely containing HMA, residential heating oil containers at single-family residences, pesticide application equipment and related mix containers, and underground oil storage tanks at nuclear power generation facilities are exempt from the SPCC requirements; EPA is amending the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to specify that the ''facility'' definition governs the applicability of 40 CFR part 112; EPA is amending the facility diagram requirement to provide additional clarity for all facilities; EPA is providing a definition for the term ''loading/unloading rack,'' which determines whether a facility is subject to the provisions at § 112.7(h), as well as specifically excluding onshore oil production facilities and farms from the requirements of § 112.7(h); providing an option that allows a subset of qualified facilities (Tier I) to complete and implement an SPCC Plan template (Appendix G to 40 CFR part 112) in order to comply with the SPCC rule requirements; amending the general secondary containment requirements to provide more clarity; exempting non-transportation-related tank trucks from the sized secondary containment requirements; modifying the security requirements to allow an owner or operator to tailor his security measures to the facility's specific characteristics and location; replacing the current integrity testing requirements with the requirements provided for qualified facilities, as promulgated in December 2006; providing flexibility in the rule for determining the scope of integrity testing that is appropriate for containers that store AFVOs that are intended for human consumption and that meet other criteria; and finally, this rulemaking streamlines the requirements for oil production facilities by modifying the definition of production facility to be consistent with the amendments to the definition of facility, extending the timeframe by which a new oil production facility must prepare and implement an SPCC Plan, providing an alternative option for flow-through process vessels at oil production facilities to comply with the general secondary containment requirements and additional oil spill prevention measures in lieu of sized secondary containment requirements, establishing more specific requirements for contingency planning and a flowline/intra-facility gathering line maintenance program, while exempting such flowlines and intra-facility gathering lines at oil production facilities from the secondary containment requirements, providing an exemption for certain intra-facility gathering lines, exempting certain produced water storage containers at oil production facilities that do not contain oil as certified by a Professional Engineer (PE), establishing alternative criteria for an oil production facility to be eligible to self-certify an SPCC Plan as a qualified facility, and clarifying the definition of ''permanently closed'' as it applies to an oil production facility.

Under this action, an estimated 640,000 regulated facilities are subject to the SPCC information collection requirements of this rule in 2010.[13] The Agency estimates that as a result of these amendments to tailor, clarify, and streamline certain SPCC requirements, the reporting and recordkeeping burden would decrease by approximately 1.3 million hours. The final rule amendments would reduce capital and operation and management costs by approximately $53 million on an annualized basis.[14] Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities

[12] To estimate the number of SPCC-regulated facilities in 2010, EPA used the estimated number of facilities for 2005 (571,000) and applied annual, industry-specific growth rates that resulted in about 640,000 facilities.

[13] To estimate the number of SPCC-regulated facilities in 2010, EPA used the estimated number of facilities for 2005 (571,000) and applied annual industry-specific growth rates.

[14] The paperwork burden reduction does not include the reduction associated with the amendment for milk bulk storage containers, because EPA only accounted for containers storing petroleum-based oil and not milk or related substances, when estimating the universe of affected facilities.

include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business as defined in the U.S. Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and oil production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $0.5 million to $27.5 million per year in sales receipts, depending on the industry, or 500 or fewer employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, the Agency certifies that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule would not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Under the final rule amendments, the following issues are addressed: Exempt HMA and HMA containers, pesticide application equipment and related mix containers, residential heating oil containers at single-family residences, and underground oil storage tanks at nuclear power generation facilities from the SPCC requirements; amend the definition of ''facility'' to clarify the flexibility associated with the existing definition in describing a facility's boundaries; clarify how containers, fixed and mobile, are identified on the facility diagram; define ''loading/unloading rack'' to clarify whether a facility is subject to the SPCC rule requirements of § 112.7(h); streamline the requirements for a subset of qualified facilities (Tier I qualified facilities); amend the general secondary containment requirements to provide more clarity; exempt non-transportation-related tank trucks from the sized secondary containment requirements; amend the facility security requirements to allow an owner or operator to tailor security measures to his facility's specific characteristics and location; replace the current integrity testing requirements with the regulatory requirements for a qualified facility promulgated on December 26, 2006 (71 FR 77266); provide flexibility in the rule to determine the scope of integrity testing that is appropriate for containers that store AFVOs that are intended for human consumption and that meet other criteria; and initiate several amendments to tailor the requirements for oil production facilities to address concerns raised by the production sector, respectively.

Overall, EPA estimates that this action will reduce annual compliance costs by approximately $176 million on an annualized basis (2007$) for owners and operators of affected facilities. Total costs were annualized over a 10-year period using a seven percent discount rate. EPA derived these savings by estimating the number of facilities affected by each amendment; identifying the specific behavioral changes that may occur (for example, choosing to prepare an SPCC Plan template instead of a full SPCC Plan); estimating the unit costs of compliance measures under the baseline and amended scenarios; and applying the change in unit costs to the projected number of affected facilities.

EPA has therefore concluded that this rule will relieve regulatory burden for small entities and therefore, certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule amendment does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This final rule would reduce compliance costs on owners and operators of affected facilities by approximately $176 million on an annualized basis (2007$), although EPA acknowledges this total estimate is derived from analyses of individual major components of the rule that are not necessarily additive, given that they do not account for interactions that may exist among the various components. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the rule amendment will be to reduce burden for facility owners and operators, including certain small governments that are subject to the rule.

E. Executive Order—13132 Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State

and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule amendment does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), states may impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters or adjoining shorelines. EPA recognizes that some states have more stringent requirements (56 FR 54612, October 22, 1991). This rule amendment will not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule amendment does not have tribal implications, as specified in Executive Order 13175. This rule amendment will not significantly or uniquely affect communities of Indian trial governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045—Protection of Children from Environmental Health & Safety Risks

Executive Order 13045,'' Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Although this final rule is economically significant in that it would reduce compliance costs on owners or operators of affected facilities by approximately $176 million on an annualized basis (2007$), it is not subject to the Executive Order because the Agency does not have reason to believe the environmental health or safety risk addressed by this action presents a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule amendment is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The overall effect of the action is to decrease the regulatory burden on facility owners or operators subject to its provisions.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The owner or operator of a facility subject to the SPCC rule has the flexibility to consider applicable industry standards in the development of an SPCC Plan, in accordance with good engineering practice. However, this rulemaking does not involve technical standards, as it does not set or incorporate by reference any one specific technical standard. Therefore, the NTTAA does not apply.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The overall effect of the action is to decrease the regulatory burden on facility owners or operators subject to its provisions.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2) because it will likely result in an annual effect on the economy of $100 million or more. This rule will be in effect on February 3, 2009.

List of Subjects in 40 CFR Part 112

Environmental protection, Animal fats and vegetable oils, Hot-mix Asphalt, Farms, Flammable and combustible materials, Integrity testing, Loading racks, Materials handling and storage, Natural gas, Oil pollution, Oil and gas exploration and production, Oil spill response, Penalties, Petroleum, Reporting and recordkeeping requirements, Secondary containment, Security, Tanks, Unloading racks, Water pollution control, Water resources.

Dated: November 20, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 112 as follows:

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority citation for part 112 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Amend § 112.1 as follows:

■ a. By revising paragraphs (d)(2)(i) and (d)(2)(ii);

■ b. By revising paragraph (d)(4); and

■ c. By adding paragraphs (d)(8) through (d)(12).

§ 112.1 General applicability.

* * * * *

(d) * * *

(2) * * *

(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 generation facility licensed by the Nuclear Regulatory Commission and subject to any Nuclear Regulatory Commission provision regarding design and quality criteria, 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.

(F) The capacity of a produced water container, as defined in § 112.2, and any associated piping or appurtenances downstream of the container, that meets the requirements at § 112.9(c)(6)(i).

* * * * *

(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 generation facility licensed by the Nuclear Regulatory Commission, except that such a tank may qualify for the exemption if it is subject to any Nuclear Regulatory Commission provision regarding design and quality criteria, 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.

* * * * *

(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.

(12) A *produced water container,* as defined in § 112.2 and any associated piping or appurtenances downstream of the container, that meets the requirements at § 112.9(c)(6)(i), except that such a tank'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.

* * * * *

■ 3. Amend § 112.2 by revising the definitions for ''Facility,'' ''Production facility,'' and adding definitions for ''Loading/unloading rack'' and ''Produced water container'' in alphabetical order to read as follows:

§ 112.2 Definitions.

* * * * *

Facility means any mobile or fixed, onshore or offshore building, property, parcel, lease, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and oil waste treatment, or in which oil is used, as described in Appendix A to this part. The boundaries of a facility depend on several site-specific factors, including but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and types of activity at the site. Contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities. Only this definition governs whether a facility is subject to this part.

* * * * *

Loading/unloading rack means a fixed structure (such as a platform, gangway) necessary for loading or unloading a tank truck or tank car, which is located at a facility subject to the requirements of this part. A loading/unloading rack includes a loading or unloading arm, and may include any combination of the following: piping assemblages, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices.

* * * * *

Produced water container means a storage container at an oil production facility used to store the produced water after initial oil/water separation, and prior to reinjection, beneficial reuse, discharge, or transfer for disposal.

Production facility means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or intra-facility gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil (including condensate), or associated storage or measurement, and is located in an oil or gas field, at a facility. This definition governs whether such structures, piping, or equipment

are subject to a specific section of this part.

* * * * *

■ 4. Amend § 112.3 as follows:
■ a. By revising the introductory text;
■ b. By revising paragraph (b)(1);
■ c. By adding paragraph (b)(3);
■ d. By adding paragraph (d)(1)(vi) and (d)(1)(vii); and
■ e. By revising paragraph (g).

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

The owner or operator or an onshore or offshore facility subject to this section must prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (hereafter ''SPCC Plan'' or ''Plan''),'' in accordance with § 112.7 and any other applicable section of this part.

* * * * *

(b)(1) If you are the owner or operator of an onshore or offshore facility (excluding oil production facilities) that becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

(3) If you are the owner or operator of an oil production facility that becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan within six months after you begin operations.

* * * * *

(d) * * *

(vi) That, if applicable, all exempted produced water containers and any associated piping and appurtenances downstream of the container, including flowlines and other appurtenances associated with injection or discharge, meet the criteria described in § 112.9(c)(6)(i) and are identified in the Plan; and appropriate produced water characteristics in the container and any associated piping and appurtenances downstream of the container, procedures, or maintenance required to meet the standards of Part 110 required for the produced water container are identified in the Plan.

(vii) That, if applicable, for a produced water container subject to § 112.9(c)(6)(ii), any procedure to minimize the amount of free-phase oil is designed to reduce the accumulation of free-phase oil and the procedures and frequency for required inspections, maintenance and testing have been established and are described in the Plan.

* * * * *

(g) *Qualified Facilities.* The owner or operator of a qualified facility as defined in this subparagraph may self-certify his facility's Plan, as provided in § 112.6. A qualified facility is one that meets the following Tier I or Tier II qualified facility criteria:

(1) A Tier I qualified facility meets the qualification criteria in paragraph (g)(2) of this section and has no individual aboveground oil storage container with a capacity greater than 5,000 U.S. gallons.

(2) A Tier II qualified facility is one that has had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to this part if the facility has been in operation for less than three years (other than discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism), and either:

(i) Has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less; or

(ii) Is an onshore oil production facility with:

(A) No more than two producing wells per single tank battery, each of which produce ten barrels or less of crude oil per well per day, if the facility has an injection well; or

(B) No more than four producing wells per single tank battery, each of which produce ten barrels or less of crude oil per well per day, and with no injection wells at the facility.

■ 5. Amend § 112.5 as follows:
■ a. By redesignating paragraphs (b) and (c) as paragraph (d) and (e);
■ b. By revising the newly redesignated paragraph (d) and;
■ c. Adding new paragraphs (b) and (c).

The additions and revisions read as follows:

§ 112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.

* * * * *

(b) For onshore oil production facilities with produced water containers exempted pursuant to the requirements at § 112.9(c)(6)(i), on an annual basis, the owner or operator must verify that the produced water characteristics in the container and any associated piping and appurtenances downstream of the container, procedures, or maintenance required to meet the standards of Part 110 that formed the basis for the PE certification described in that section are maintained. If an owner or operator fails to maintain the produced water characteristics in the container, or in the associated downstream piping and appurtenances; procedures; or maintenance required to meet the standards of 40 CFR part 110 that formed the basis for the PE's certification, then the produced water container and any associated piping and appurtenances downstream are ineligible for this exemption, and you must, within six months, comply with all provisions under this part applicable to the container and amend your Plan. A technical amendment made under this section must be prepared within three months and implemented as soon as possible, but not later than three months following the preparation of the amendment.

(c) The owner or operator of an onshore oil production facility with produced water containers exempted according to the requirements at § 112.9(c)(6)(i), must maintain the verifications in accordance with § 112.7(e). You must document your verification and sign a statement that the produced water characteristics in the container and any associated piping and appurtenances downstream from the container, procedures, or maintenance required to meet the standards of Part 110 are maintained in accordance with the PE certification. The following words will suffice, ''I verify that the produced water characteristics in the container and any associated piping and appurtenances downstream of the container, procedures, or maintenance required to meet the standards of 40 CFR part 110 that formed the basis for the PE's certification are maintained.''

(d) Notwithstanding compliance with paragraphs (a) and (c) of this section, complete a review and evaluation of the SPCC Plan at least once every five years from the date your facility becomes subject to this part; or, if your facility was in operation on or before August 16, 2002, five years from the date your last review was required under this part. As a result of this review and evaluation, you must amend your SPCC Plan within six months of the review to include more effective prevention and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge as described in § 112.1(b) from the facility. You must implement any amendment as soon as possible, but not later than six months following preparation of any amendment. You must document your

completion of the review and evaluation, and must sign a statement as to whether you will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following words will suffice, ''I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result.''

* * * * *

■ 6. Revise § 112.6 to read as follows:

§ 112.6 Qualified Facilities Plan Requirements.

Qualified facilities meeting the Tier I applicability criteria in § 112.3(g)(1) are subject to the requirements in paragraph (a) of this section. Qualified facilities meeting the Tier II applicability criteria in § 112.3(g)(2) are subject to the requirements in paragraph (b) of this section.

(a) *Tier I Qualified Facilities.*

(1) *Preparation and Self-Certification of the Plan.* If you are an owner or operator of a facility that meets the Tier I qualified facility criteria in § 112.3(g)(1), you must either: comply with the requirements of paragraph (a)(3) of this section; or prepare and implement a Plan meeting requirements of paragraph (b) of this section; or prepare and implement a Plan meeting the general Plan requirements in § 112.7 and applicable requirements in subparts B and C, including having the Plan certified by a Professional Engineer as required under § 112.3(d). If you do not follow the Appendix G template, you must prepare an equivalent Plan that meets all of the applicable requirements listed in this part, and you must supplement it with a section cross-referencing the location of requirements listed in this part and the equivalent requirements in the other prevention plan. To complete the template in Appendix G, you must certify that:

(i) You are familiar with the applicable requirements of 40 CFR part 112;

(ii) You have visited and examined the facility;

(iii) You prepared the Plan in accordance with accepted and sound industry practices and standards;

(iv) You have established procedures for required inspections and testing in accordance with industry inspection and testing standards or recommended practices;

(v) You will fully implement the Plan;

(vi) The facility meets the qualification criteria in § 112.3(g)(1);

(vii) The Plan does not deviate from any requirement of this part as allowed by § 112.7(a)(2) and 112.7(d) or include an exemption/measures pursuant to § 112.9(c)(6) for produced water containers and any associated piping and appurtenances downstream from the container; and

(viii) The Plan and individual(s) responsible for implementing this Plan have the approval of management, and the facility owner or operator has committed the necessary resources to fully implement this Plan.

(2) *Technical Amendments.* You must certify any technical amendments to your Plan in accordance with paragraph (a)(1) of this section when there is a change in the facility design, construction, operation, or maintenance that affects its potential for a discharge as described in § 112.1(b). If the facility change results in the facility no longer meeting the Tier I qualifying criteria in § 112.3(g)(1) because an individual oil storage container capacity exceeds 5,000 U.S. gallons or the facility capacity exceeds 10,000 U.S. gallons in aggregate aboveground storage capacity, within six months following preparation of the amendment, you must either:

(i) Prepare and implement a Plan in accordance with § 112.6(b) if you meet the Tier II qualified facility criteria in § 112.3(g)(2); or

(ii) Prepare and implement a Plan in accordance with the general Plan requirements in § 112.7, and applicable requirements in subparts B and C, including having the Plan certified by a Professional Engineer as required under § 112.3(d).

(3) *Plan Template and Applicable Requirements.* Prepare and implement an SPCC Plan that meets the following requirements under § 112.7 and in subparts B and C of this part: introductory paragraph of §§ 112.7, 112.7(a)(3)(i), 112.7(a)(3)(iv), 112.7(a)(3)(vi), 112.7(a)(4), 112.7(a)(5), 112.7(c), 112.7(e), 112.7(f), 112.7(g), 112.7(k), 112.8(b)(1), 112.8(b)(2), 112.8(c)(1), 112.8(c)(3), 112.8(c)(4), 112.8(c)(5), 112.8(c)(6), 112.8(c)(10), 112.8(d)(4), 112.9(b), 112.9(c)(1), 112.9(c)(2), 112.9(c)(3), 112.9(c)(4), 112.9(c)(5), 112.9(d)(1), 112.9(d)(3), 112.9(d)(4), 112.10(b), 112.10(c), 112.10(d), 112.12(b)(1), 112.12(b)(2), 112.12(c)(1), 112.12(c)(3), 112.12(c)(4), 112.12(c)(5), 112.12(c)(6), 112.12(c)(10), and 112.12(d)(4). The template in Appendix G to this part has been developed to meet the requirements of 40 CFR part 112 and, when completed and signed by the owner or operator, may be used as the SPCC Plan. Additionally, you must meet the following requirements:

(i) *Failure analysis, in lieu of the requirements in § 112.7(b).* Where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of discharge), include in your Plan a prediction of the direction and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

(ii) *Bulk storage container secondary containment, in lieu of the requirements in §§ 112.8(c)(2) and (c)(11) and 112.12(c)(2) and (c)(11).* Construct all bulk storage container installations (except mobile refuelers and other non-transportation-related tank trucks), including mobile or portable oil storage containers, so that you provide a secondary means of containment for the entire capacity of the largest single container plus additional capacity to contain precipitation. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a catchment basin or holding pond. Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b).

(iii) *Overfill prevention, in lieu of the requirements in §§ 112.8(c)(8) and 112.12(c)(8).* Ensure that each container is provided with a system or documented procedure to prevent overfills of the container, describe the system or procedure in the SPCC Plan and regularly test to ensure proper operation or efficacy.

(b) *Tier II Qualified Facilities.*

(1) *Preparation and Self-Certification of Plan.* If you are the owner or operator of a facility that meets the Tier II qualified facility criteria in § 112.3(g)(2), you may choose to self-certify your Plan. You must certify in the Plan that:

(i) You are familiar with the requirements of this part;

(ii) You have visited and examined the facility;

(iii) The Plan has been prepared in accordance with accepted and sound industry practices and standards, and with the requirements of this part;

(iv) Procedures for required inspections and testing have been established;

(v) You will fully implement the Plan;

(vi) The facility meets the qualification criteria set forth under § 112.3(g)(2);

(vii) The Plan does not deviate from any requirement of this part as allowed by § 112.7(a)(2) and 112.7(d), or include an exemption/measures pursuant to § 112.9(c)(6) for produced water containers and any associated piping

and appurtenances downstream from the container, except as provided in paragraph (b)(3) of this section; and

(viii) The Plan and individual(s) responsible for implementing the Plan have the full approval of management and the facility owner or operator has committed the necessary resources to fully implement the Plan.

(2) *Technical Amendments.* If you self-certify your Plan pursuant to paragraph (b)(1) of this section, you must certify any technical amendments to your Plan in accordance with paragraph (b)(1) of this section when there is a change in the facility design, construction, operation, or maintenance that affects its potential for a discharge as described in § 112.1(b), except:

(i) If a Professional Engineer certified a portion of your Plan in accordance with paragraph (b)(4) of this section, and the technical amendment affects this portion of the Plan, you must have the amended provisions of your Plan certified by a Professional Engineer in accordance with paragraph (b)(4)(ii) of this section.

(ii) If the change is such that the facility no longer meets the Tier II qualifying criteria in § 112.3(g)(2) because it exceeds 10,000 U.S. gallons in aggregate aboveground storage capacity you must, within six months following the change, prepare and implement a Plan in accordance with the general Plan requirements in § 112.7 and the applicable requirements in subparts B and C of this part, including having the Plan certified by a Professional Engineer as required under § 112.3(d).

(3) *Applicable Requirements.* Except as provided in this paragraph, your self-certified SPCC Plan must comply with § 112.7 and the applicable requirements in subparts B and C of this part:

(i) *Environmental Equivalence.* Your Plan may not include alternate methods which provide environmental equivalence pursuant to § 112.7(a)(2), unless each alternate method has been reviewed and certified in writing by a Professional Engineer, as provided in paragraph (b)(4) of this section.

(ii) *Impracticability.* Your Plan may not include any determinations that secondary containment is impracticable and provisions in lieu of secondary containment pursuant to § 112.7(d), unless each such determination and alternate measure has been reviewed and certified in writing by a Professional Engineer, as provided in paragraph (b)(4) of this section.

(iii) *Produced Water Containers.* Your Plan may not include any produced water container exemptions or alternative procedures for skimming in lieu of sized secondary containment pursuant to § 112.9(c)(6), unless they have been reviewed and certified in writing by a Professional Engineer, as provided in paragraph (b)(4) of this section.

(4) *Professional Engineer Certification of Portions of a Qualified Facility's Self-Certified Plan.*

(i) As described in paragraph (b)(3) of this section, the facility owner or operator may not self-certify alternative measures allowed under § 112.7(a)(2) or (d), that are included in the facility's Plan. Such measures must be reviewed and certified, in writing, by a licensed Professional Engineer. For each alternative measure allowed under § 112.7(a)(2), the Plan must be accompanied by a written statement by a Professional Engineer that states the reason for nonconformance and describes the alternative method and how it provides equivalent environmental protection in accordance with § 112.7(a)(2). For each determination of impracticability of secondary containment pursuant to § 112.7(d), the Plan must clearly explain why secondary containment measures are not practicable at this facility and provide the alternative measures required in § 112.7(d) in lieu of secondary containment. By certifying each measure allowed under § 112.7(a)(2) and (d), the Professional Engineer attests:

(A) That he is familiar with the requirements of this part;

(B) That he or his agent has visited and examined the facility; and

(C) That the alternative method of environmental equivalence in accordance with § 112.7(a)(2) or the determination of impracticability and alternative measures in accordance with § 112.7(d) is consistent with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part.

(ii) As described in paragraph (b)(3) of this section, the facility owner or operator may not self-certify measures as described in § 112.9(c)(6) for produced water containers and any associated piping and appurtenances downstream from the container. Such measures must be reviewed and certified, in writing, by a licensed Professional Engineer, in accordance with § 112.3(d)(1)(vi) or (vii), as applicable.

(iii) The review and certification by the Professional Engineer under this paragraph is limited to the alternative method which achieves equivalent environmental protection pursuant to § 112.7(a)(2); to the impracticability determination and measures in lieu of secondary containment pursuant to § 112.7(d); or the measures pursuant to § 112.9(c)(6) for produced water containers and any associated piping and appurtenances downstream from the container.

■ 7. Amend § 112.7 as follows:

■ a. By revising the first sentence in paragraph (a)(2);

■ b. By revising paragraphs (a)(3) introductory text and (a)(3)(i);

■ c. By revising paragraphs (c) introductory text and (c)(1);

■ d. By revising paragraph (g); and

■ e. By revising the heading to paragraph (h), paragraphs (h)(1) and (h)(2).

§ 112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.

* * * * *

(a) * * *

(2) Comply with all applicable requirements listed in this part. Except as provided in § 112.6, your Plan may deviate from the requirements in paragraphs (g), (h)(2) and (3), and (i) of this section and the requirements in subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.9(d)(3), 112.10(c), 112.12(c)(2), and 112.12(c)(11), where applicable to a specific facility, if you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure.

* * *

* * * * *

(3) Describe in your Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located. The facility diagram must identify the location of and mark as ''exempt'' underground tanks that are otherwise exempted from the requirements of this part under § 112.1(d)(4), and produced water containers and any associated piping and appurtenances downstream from the container, that are otherwise exempted from the requirements of this part under § 112.1(d)(12). The facility diagram must also include all transfer stations and connecting pipes, including intra-facility gathering lines that are otherwise exempted from the requirements of this part under § 112.1(d)(11). You must also address in your Plan:

(i) The type of oil in each fixed container and its storage capacity. For mobile or portable containers, either

provide the type of oil and storage capacity for each container or provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities;

* * * * *

(c) Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b), except as provided in paragraph (k) of this section for qualified oil-filled operational equipment, and except as provided in § 112.9(d)(3) for flowlines and intra-facility gathering lines at an oil production facility. The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs. In determining the method, design, and capacity for secondary containment, you need only to address the typical failure mode, and the most likely quantity of oil that would be discharged. Secondary containment may be either active or passive in design. At a minimum, you must use one of the following prevention systems or its equivalent:

(1) For onshore facilities:

(i) Dikes, berms, or retaining walls sufficiently impervious to contain oil;

(ii) Curbing or drip pans;

(iii) Sumps and collection systems;

(iv) Culverting, gutters, or other drainage systems;

(v) Weirs, booms, or other barriers;

(vi) Spill diversion ponds;

(vii) Retention ponds; or

(viii) Sorbent materials.

* * * * *

(g) *Security (excluding oil production facilities).* Describe in your Plan how you secure and control access to the oil handling, processing and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; and address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

(h) Facility tank car and tank truck loading/unloading rack (excluding offshore facilities, farms, and oil production facilities).

(1) Where loading/unloading rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading/unloading racks. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.

(2) Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks or vehicle brake interlock system in the area adjacent to a loading/unloading rack, to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines.

* * * * *

Subpart B—[Amended]

■ 8. Amend § 112.8 by revising the first sentence in paragraph (c)(2) and revising paragraphs (c)(6) and (c)(11) to read as follows:

§ 112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding oil production facilities).

* * * * *

(c) * * *

(2) Construct all bulk storage tank installations (except mobile refuelers and other non-transportation-related tank trucks) so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.* * *

* * * * *

(6) Test or inspect each aboveground container for integrity on a regular schedule and whenever you make material repairs. You must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design (such as containers that are: shop-built, field-erected, skid-mounted, elevated, equipped with a liner, double-walled, or partially buried). Examples of these integrity tests include, but are not limited to: visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph.

* * * * *

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). Except for mobile refuelers and other non-transportation-related tank trucks, you must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

* * * * *

■ 9. Amend § 112.9 as follows:

■ a. By revising the section heading;

■ b. By revising the introductory text;

■ c. By revising paragraphs (c)(2) and (c)(3);

■ d. By adding paragraphs (c)(5) and (c)(6);

■ e. By revising paragraph (d)(3); and

■ f. By adding paragraph (d)(4).

§ 112.9 Spill Prevention, Control, and Countermeasure Plan Requirements for onshore oil production facilities (excluding drilling and workover facilities).

If you are the owner or operator of an onshore oil production facility (excluding a drilling or workover facility), you must:

* * * * *

(c) * * *

(2) Except as described in paragraph (c)(5) of this section for flow-through process vessels and paragraph (c)(6) of this section for produced water containers and any associated piping and appurtenances downstream from the container, construct all tank battery, separation, and treating facility installations, so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Except as described in paragraph (c)(5) of this section for flow-through process vessels and paragraph (c)(6) of this section for produced water containers and any associated piping and appurtenances downstream from the container, periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

* * * * *

(5) *Flow-through process vessels.* The owner or operator of a facility with flow-through process vessels may choose to implement the alternate requirements as described below in lieu of sized secondary containment required in paragraphs (c)(2) and (c)(3) of this section.

(i) Periodically and on a regular schedule visually inspect and/or test flow-through process vessels and associated components (such as dump valves) for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b).

(ii) Take corrective action or make repairs to flow-through process vessels and any associated components as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge.

(iii) Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with flow-through process vessels.

(iv) If your facility discharges more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharges more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b) within any twelve month period, from flow-through process vessels (excluding discharges that are the result of natural disasters, acts of war, or terrorism) then you must, within six months from the time the facility becomes subject to this paragraph, ensure that all flow-through process vessels subject to this subpart comply with § 112.9(c)(2) and (c)(3).

(6) *Produced water containers.*

(i) A produced water container, and any associated piping and appurtenances downstream from the container, are exempt from the requirements of this part if a Professional Engineer certifies in accordance with § 112.3(d)(1)(vi) that no discharge from the produced water container, including a complete loss of the capacity of the container, could cause a discharge in quantities that may be harmful, as described in part 110 of this chapter. This determination for the container must be made in accordance with § 112.1(d)(1)(i).

(A) The SPCC Plan must include a description of the produced water characteristics in the container, procedures, or maintenance required to meet the standards of Part 110 and the owner or operator's annual verifications prepared in accordance with § 112.5.

(B) If an exempt produced water container as described in paragraph (c)(6)(i) of this section experiences a discharge as described in § 112.1(b), then such container, piping, and appurtenances are ineligible for this exemption and you must comply with all provisions under this part applicable to the container, including § 112.9(c)(2) and (c)(3) within six months of the date of the discharge.

(ii) For each container not exempted as described in paragraph (c)(6)(i) of this section, comply with § 112.9(c)(1) and (c)(4); and § 112.9(c)(2) and (c)(3), or:

(A) Implement, on a regular schedule, a procedure for each produced water container that is designed to separate the free-phase oil that accumulates on the surface of the produced water. Include in the Plan a description of the procedures, frequency, amount of free-phase oil expected to be maintained inside the container, and a Professional Engineer certification in accordance with § 112.3(d)(1)(vii). Maintain records of such events in accordance with § 112.7(e). Records kept under usual and customary business practices will suffice for purposes of this paragraph. If this procedure is not implemented as described in the Plan or no records are maintained, then you must comply with § 112.9(c)(2) and (c)(3).

(B) On a regular schedule, visually inspect and/or test the produced water container and associated piping for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b) in accordance with good engineering practice.

(C) Take corrective action or make repairs to the produced water container and any associated piping as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge.

(D) Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with the produced water container.

(E) If your facility discharges more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharges more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b) within any twelve month period from a produced water container subject to this subpart (excluding discharges that are the result of natural disasters, acts of war, or terrorism) then you must, within six months from the time the facility becomes subject to this paragraph, ensure that all produced water containers subject to this subpart comply with § 112.9(c)(2) and (c)(3).

(d) * * *

(3) For flowlines and intra-facility gathering lines that are not provided with secondary containment in accordance with § 112.7(c), unless you have submitted a response plan under § 112.20, provide in your Plan the following:

(i) An oil spill contingency plan following the provisions of part 109 of this chapter.

(ii) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that might be harmful.

(4) Prepare and implement a written program of flowline/intra-facility gathering line maintenance. The maintenance program must address your procedures to:

(i) Ensure that flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids, their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment.

(ii) Visually inspect and/or test flowlines and intra-facility gathering lines and associated appurtenances on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b). For flowlines and intra-facility gathering lines that are not provided with secondary containment in accordance with § 112.7(c), the frequency and type of testing must allow for the implementation of a contingency plan as described under part 109 of this chapter.

(iii) Take corrective action or make repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly scheduled visual inspections, tests, or evidence of a discharge.

(iv) Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.

Subpart C—[Amended]

■ 11. Amend § 112.12 as follows:
■ a. By revising the introductory text;
■ b. By revising the first sentence in paragraph (c)(2); and
■ c. By revising paragraphs (c)(6) and (c)(11).

§ 112.12 Spill Prevention, Control, and Countermeasure Plan Requirements.

If you are the owner or operator of an onshore facility, you must:

* * * * *

(c) * * *

(2) Construct all bulk storage tank installations (except mobile refuelers and other non-transportation-related tank trucks) so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. * * *

* * * * *

(6) *Bulk storage container inspections.*

(i) Except for containers that meet the criteria provided in paragraph (c)(6)(ii)

of this section, test or inspect each aboveground container for integrity on a regular schedule and whenever you make material repairs. You must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design (such as containers that are: shop-built, field-erected, skid-mounted, elevated, equipped with a liner, double-walled, or partially buried). Examples of these integrity tests include, but are not limited to: Visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph.

(ii) For bulk storage containers that are subject to 21 CFR part 110, are elevated, constructed of austenitic stainless steel, have no external insulation, and are shop-fabricated, conduct formal visual inspection on a regular schedule. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. You must determine and document in the Plan the appropriate qualifications for personnel performing tests and inspections. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph (c)(6).

* * * * *

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). Except for mobile refuelers and other non-transportation-related tank trucks, you must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

* * * * *

■ 12. Add Appendix G to read as follows:

BILLING CODE 6560–50–P

APPENDIX G to Part 112-
Tier I Qualified Facility SPCC Plan

This template constitutes the SPCC Plan for the facility, when completed and signed by the owner or operator of a facility that meets the applicability criteria in §112.3(g)(1). This template meets the requirements of 40 CFR part 112. Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or for a facility attended fewer than four hours per day, at the nearest field office.

Facility Description

Facility Name _____
Facility Address _____
City _____ State _____ ZIP _____
County _____ Tel. Number _____ ( ) - _____

Owner or operator Name _____
Owner or operator Address _____
City _____ State _____ ZIP _____
County _____ Tel. Number _____ ( ) - _____

I. Self-Certification Statement (§112.6(a)(1))

The owner or operator of a facility certifies that each of the following is true in order to utilize this template to comply with the SPCC requirements:

I _____, certify that the following is accurate:

1. I am familiar with the applicable requirements of 40 CFR part 112;
2. I have visited and examined the facility;
3. This Plan was prepared in accordance with accepted and sound industry practices and standards;
4. Procedures for required inspections and testing have been established in accordance with industry inspection and testing standards or recommended practices;
5. I will fully implement the Plan;
6. This facility meets the following qualification criteria (under §112.3(g)(1)):
   a. The aggregate aboveground oil storage capacity of the facility is 10,000 U.S. gallons or less; or is an onshore oil production facility with no more than two producing wells per single tank battery, each of which produce ten barrels or less of crude oil per well per day if the facility has an injection well; or, is an onshore oil production facility with no more than four producing wells per single tank battery, each of which produce ten barrels or less of crude oil per well per day and with no injection wells at the facility; and
   b. The facility has had no single discharge as described in §112.1(b) exceeding 1,000 U.S. gallons and no two discharges as described in §112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years (not including oil discharges as described in §112.1(b) that are the result of natural disasters, acts of war, or terrorism); and
   c. There is no individual oil storage container at the facility with an aboveground

capacity greater than 5,000 U.S. gallons.

7. This Plan does not deviate from any requirement of 40 CFR part 112 as allowed by §112.7(a)(2) (environmental equivalence) and §112.7(d) (impracticability of secondary containment) or include an exemption/measures pursuant to §112.9(c)(6) for produced water containers and any associated piping and appurtenances downstream from the container;.
8. This Plan and individual(s) responsible for implementing this Plan have the full approval of management and I have committed the necessary resources to fully implement this Plan.

I also understand my other obligations relating to the storage of oil at this facility, including, among others:

1. To report an oil discharge to navigable waters or adjoining shorelines to the appropriate authorities. Notification information is included in this Plan.
2. To review and amend this Plan whenever there is a material change at the facility that affects the potential for an oil discharge, and at least once every five years. Reviews and amendments are recorded in an attached log [See Five Year Review Log and Technical Amendment Log in Attachments 1.1 and 1.2.]
3. Optional use of a contingency plan. A contingency plan:
    a. May be used in lieu of secondary containment for qualified oil-filled operational equipment, in accordance with the requirements under §112.7(k), and;
    b. Must be prepared for flowlines and/or intra-facility gathering lines which do not have secondary containment at an oil production facility, and;
    c. Must include an established and documented inspection or monitoring program;
    d. an oil spill contingency plan following the provisions of 40 CFR part 109; and a written commitment of manpower, equipment and materials to expeditiously remove any quantity of oil discharged that may be harmful. If applicable, a copy of the contingency plan and any additional documentation will be attached to this Plan as Attachment 2.

By completing this Plan template, I certify that I have satisfied the requirement to prepare and implement a Plan under §112.3 and all of the requirements under §112.6(a). I certify that the information contained in this Plan is true.

Signature _____ Title: _____
Name _____ Date: ____/_____/20___

II. Record of Plan Review and Amendments

Five Year Review (§112.5(b)):

Complete a review and evaluation of this SPCC Plan at least once every five years. As a result of the review, amend this Plan within six months to include more effective prevention and control measures for the facility, if applicable. Implement any amendment as soon as possible, but no later than six months following Plan amendment. Document completion of the review and evaluation, and complete the Five Year Review Log in Attachment 1.1. If the facility no longer meets Tier I qualified facility eligibility, the owner or operator must revise the Plan to meet Tier II qualified facility requirements, or complete a full PE certified Plan.

Table G-1 Technical Amendments (§§112.5(a), (c) and 112.6(a)(2))	
This SPCC Plan will be amended when there is a change in the facility design, construction, operation, or maintenance that materially affects the potential for a discharge to navigable waters or adjoining shorelines. Examples include adding or removing containers, reconstruction, replacement, or installation of piping systems, changes to secondary containment systems, changes in product stored at this facility, or revisions to standard operating procedures.	☐
Any technical amendments to this Plan will be re-certified in accordance with Section I of this Plan template. *[§112.6(a)(2)]* [See Technical Amendment Log in Attachment 1.2]	☐

III. Plan Requirements

1. Oil Storage Containers (§112.7(a)(3)(i)):

Table G-2 Oil Storage Containers and Capacities		
This table includes a complete list of all oil storage containers (aboveground containers[1] and completely buried tanks[2]) with capacity of 55 U.S. gallons or more, unless otherwise exempt from the rule. For mobile/portable containers, an estimate number of containers, types of oil, and anticipated capacities are provided.		☐
Oil Storage Container *(indicate whether aboveground (A) or completely buried (B))*	**Type of Oil**	**Shell Capacity (gallons)**

Total Aboveground Storage Capacity[a] _____ gallons

Total Completely Buried Storage Capacity _____ gallons

Facility Total Oil Storage Capacity _____ gallons

[a]Counts toward qualified facility applicability threshold

2. Secondary Containment and Oil Spill Control (§§112.6(a)(3)(i) and (ii), 112.7(c) and 112.9(c)(2)):

Table G-3 Secondary Containment and Oil Spill Control	
Appropriate secondary containment and/or diversionary structures or equipment[a] is provided for all oil handling containers, equipment, and transfer areas to prevent a discharge to navigable waters or adjoining shorelines. The entire secondary containment system, including walls and floor, is capable of containing oil and is constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before	☐

[1]Aboveground storage containers that must be included when calculating total facility oil storage capacity include: tanks and mobile or portable containers; oil-filled operational equipment (e.g. transformers); other oil-filled equipment, such as flow-through process equipment. Exempt containers that are not included in the capacity calculation include: any container with a storage capacity of less than 55 gallons of oil; containers used exclusively for wastewater treatment; permanently closed containers; motive power containers; hot-mix asphalt containers; heating oil containers used solely at a single-family residence; and pesticide application equipment or related mix containers.

[2] Although the criteria to determine eligibility for qualified facilities focuses on the aboveground oil storage containers at the facility, the completely buried tanks at a qualified facility are still subject to the rule requirements and must be addressed in the template; however, they are not counted toward the qualified facility threshold.

[a] Use one of the following methods of secondary containment or its equivalent: (1) Dikes, berms, or retaining walls sufficiently impervious to contain oil; (2) Curbing; (3) Culverting, gutters, or other drainage systems; (4) Weirs, booms, or other barriers; (5) Spill diversion ponds; (6) Retention ponds; or (7) Sorbent materials.

Table G-4 below identifies the tanks and containers at the facility with the potential for an oil discharge; the mode of failure; the flow direction and potential quantity of the discharge; and the secondary containment method and containment capacity that is provided.

Table G-4 Containers with Potential for an Oil Discharge					
Area	Type of failure (discharge scenario)	Potential discharge volume (gallons)	Direction of flow for uncontained discharge	Secondary containment method[a]	Secondary containment capacity (gallons)
Bulk Storage Containers and Mobile/Portable Containers[b]					
Oil-filled Operational Equipment (e.g., hydraulic equipment, transformers)[c]					
Piping, Valves, etc.					
Product Transfer Areas (location where oil is loaded to or from a container, pipe or other piece of equipment.)					
Other Oil-Handling Areas or Oil-Filled Equipment (e.g. flow-through process vessels at an oil production facility)					

[a] Use one of the following methods of secondary containment or its equivalent: (1) Dikes, berms, or retaining walls sufficiently impervious to contain oil; (2) Curbing; (3) Culverting, gutters, or other drainage systems; (4) Weirs, booms, or other barriers; (5) Spill diversion ponds; (6) Retention ponds; or (7) Sorbent materials.

[b] For storage tanks and bulk storage containers, the secondary containment capacity must be at least the capacity of the largest container plus additional capacity to contain rainfall or other precipitation.

[c] For oil-filled operational equipment: Document in the table above if alternative measures to secondary containment (as described in §112.7(k)) are implemented at the facility.

3. Inspections, Testing, Recordkeeping and Personnel Training (§§112.7(e) and (f), 112.8(c)(6), 112.12(c)(6)):

Table G-5 Inspections, Testing, Recordkeeping and Personnel Training	
An inspection and testing program is implemented for all aboveground storage containers and piping at this facility. *[§112.8(c)(6), 112.12(c)(6)]*	☐
The following is a description of the inspection and testing program (e.g. reference to industry standard utilized, scope, frequency, method of inspection or test, and person conducting the inspection) for all aboveground storage containers and piping at this facility:	

Inspections, tests, and records are conducted in accordance with written procedures developed for the facility. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph. *[§112.7(e)]*	☐
A record of the inspections and tests are kept at the facility or with the SPCC Plan for a period of three years. *[§112.7(e)]* [See Inspection Log and Schedule in Attachment 3.1]	☐
Inspections and tests are signed by the appropriate supervisor or inspector. *[§112.7(e)]*	☐
Personnel, training, and discharge prevention procedures [§112.7(f)]	
Oil-handling personnel are trained in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC Plan. *[§112.7(f)]*	☐
A person who reports to facility management is designated and accountable for discharge prevention. *[§112.7(f)]* Name/Title:_____	☐
Discharge prevention briefings are conducted for oil-handling personnel annually to assure adequate understanding of the SPCC Plan for that facility. Such briefings highlight and describe past reportable discharges or failures, malfunctioning components, and any recently developed precautionary measures. *[§112.7(f)]* [See Oil-handling Personnel Training and Briefing Log in Attachment 3.4]	☐

4. Security (excluding oil production facilities) §112.7(g):

Table G-6 Implementation and Description of Security Measures	
Security measures are implemented at this facility to prevent unauthorized access to oil handling, processing, and storage area. The following is a description of how you secure and control access to the oil handling, processing and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges:	☐

5. Emergency Procedures and Notifications (§112.7(a)(3)(iv) and 112.7(a)(5)):

Table G-7 Description of Emergency Procedures and Notifications	
The following is a description of the immediate actions to be taken by facility personnel in the event of a discharge to navigable waters or adjoining shorelines *[§112.7(a)(3)(iv) and 112.7(a)(5)]*:	☐

6. Contact List (§112.7(a)(3)(vi)):

Table G-8 Contact List	
Contact Organization / Person	**Telephone Number**
National Response Center (NRC)	1-800-424-8802
Cleanup Contractor(s)	
Key Facility Personnel	
Designated Person Accountable for Discharge Prevention:	Office:
	Emergency:
	Office:
	Emergency:
	Office:
	Emergency:
	Office:
	Emergency:
State Oil Pollution Control Agencies	
Other State, Federal, and Local Agencies	
Local Fire Department	
Local Police Department	
Hospital	
Other Contact References (e.g., downstream water intakes or neighboring facilities)	

7. NRC Notification Procedure (§112.7(a)(4) and (a)(5)):

Table G-9 NRC Notification Procedure	
In the event of a discharge of oil to navigable waters or adjoining shorelines, the following information identified in Attachment 4 will be provided to the National Response Center immediately following identification of a discharge to navigable waters or adjoining shorelines [See Discharge Notification Form in Attachment 4]: *[§112.7(a)(4)]*	☐
• The exact address or location and phone number of the facility; • Date and time of the discharge; • Type of material discharged; • Estimate of the total quantity discharged; • Estimate of the quantity discharged to navigable waters; • Source of the discharge; • Description of all affected media; • Cause of the discharge; • Any damages or injuries caused by the discharge; • Actions being used to stop, remove, and mitigate the effects of the discharge; • Whether an evacuation may be needed; and • Names of individuals and/or organizations who have also been contacted.	

8. SPCC Spill Reporting Requirements (Report within 60 days) (§112.4):

Submit information to the EPA Regional Administrator (RA) and the appropriate agency or agencies in charge of oil pollution control activities in the State in which the facility is located within 60 days from one

of the following discharge events:

- A single discharge of more than 1,000 U.S. gallons of oil to navigable waters or adjoining shorelines or
- Two discharges to navigable waters or adjoining shorelines each more than 42 U.S. gallons of oil occurring within any twelve month period

You must submit the following information to the RA:

(1) Name of the facility;
(2) Your name;
(3) Location of the facility;
(4) Maximum storage or handling capacity of the facility and normal daily throughput;
(5) Corrective action and countermeasures you have taken, including a description of equipment repairs and replacements;
(6) An adequate description of the facility, including maps, flow diagrams, and topographical maps, as necessary;
(7) The cause of the reportable discharge, including a failure analysis of the system or subsystem in which the failure occurred; and
(8) Additional preventive measures you have taken or contemplated to minimize the possibility of recurrence

* * * * *

NOTE: Complete one of the following sections (A, B or C)

as appropriate for the facility type.

A. Onshore Facilities (excluding production) (§§112.8(b) and (d), 112.12(b) and (d)):

The owner or operator must meet the general rule requirements as well as requirements under this section. Note that not all provisions may be applicable to all owners/operators. For example, a facility may not maintain completely buried metallic storage tanks installed after January 10, 1974, and thus would not have to abide by requirements in §§112.8(c)(4) and 112.12(c)(4), listed below. In cases where a provision is not applicable, write "N/A".

Table G-10 General Rule Requirements for Onshore Facilities	
Drainage from diked storage areas is restrained by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. *[§§112.8(b)(1) and 112.12(b)(1)]*	☐
Valves of manual, open-and-closed design are used for the drainage of diked areas. *[§§112.8(b)(2) and 112.12(b)(2)]*	☐
The containers at the facility are compatible with materials stored and conditions of storage such as pressure and temperature. *[§§112.8(c)(1) and 112.12(c)(1)]*	☐
Secondary containment for the bulk storage containers (including mobile/portable oil storage containers) holds the capacity of the largest container plus additional capacity to contain precipitation. Mobile or portable oil storage containers are positioned to prevent a discharge as described in §112.1(b). *[§112.6(a)(3)(ii)]*	☐
If uncontaminated rainwater from diked areas drains into a storm drain or open watercourse the following procedures will be implemented at the facility: *[§§112.8(c)(3) and 112.12(c)(3)]*	
• Bypass valve is normally sealed closed	☐
• Retained rainwater is inspected to ensure that its presence will not cause a discharge to navigable waters or adjoining shorelines	☐
• Bypass valve is opened and resealed under responsible supervision	☐
• Adequate records of drainage are kept [See Dike Drainage Log in Attachment 3.3]	☐
For completely buried metallic tanks installed on or after January 10, 1974 at this facility *[§§112.8(c)(4) and 112.12(c)(4)]*:	
• Tanks have corrosion protection with coatings or cathodic protection compatible with local soil conditions.	☐
• Regular leak testing is conducted.	☐
For partially buried or bunkered metallic tanks *[§112.8(c)(5) and §112.12(c)(5)]*:	
• Tanks have corrosion protection with coatings or cathodic protection compatible with local soil conditions.	☐
Each aboveground container is tested or inspected for integrity on a regular schedule and whenever material repairs are made. Scope and frequency of the inspections and inspector qualifications are in accordance with industry standards. Container supports and foundations are regularly inspected. [See Inspection Log and Schedule and Bulk Storage Container Inspection Schedule in Attachments 3.1 and 3.2] *[§112.8(c)(6) and §112.12(c)(6)(i)]*	☐
Outsides of containers are frequently inspected for signs of deterioration, discharges, or accumulation of oil inside diked areas. [See Inspection Log and Schedule in Attachment 3.1] *[§§112.8(c)(6) and 112.12(c)(6)]*	☐
For bulk storage containers that are subject to 21 CFR part 110 which are shop-fabricated, constructed of austenitic stainless steel, with a manhole and have no external insulation, formal visual inspection is conducted on a regular schedule. Appropriate qualifications for personnel performing tests and inspections are documented. [See Inspection Log and Schedule and Bulk Storage Container Inspection Schedule in Attachments 3.1 and 3.2] *[§112.12(c)(6)(ii)]*	☐
Each container is provided with a system or documented procedure to prevent overfills for the container, Describe:	☐

Table G-10 General Rule Requirements for Onshore Facilities	
Liquid level sensing devices are regularly tested to ensure proper operation [See Inspection Log and Schedule in Attachment 3.1]. *[§112.6(a)(3)(iii)]*	☐
Visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts are promptly corrected and oil in diked areas is promptly removed. *[§§112.8(c)(10) and 112.12(c)(10)]*	☐
Aboveground valves, piping, and appurtenances such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces are inspected regularly. [See Inspection Log and Schedule in Attachment 3.1] *[§§112.8(d)(4) and 112.12(d)(4)]*	☐
Integrity and leak testing are conducted on buried piping at the time of installation, modification, construction, relocation, or replacement. [See Inspection Log and Schedule in Attachment 3.1] *[§§112.8(d)(4) and 112.12(d)(4)]*	☐

B. Onshore Oil Production Facilities (excluding drilling and workover facilities) (§112.9(b), (c), and (d)):

The owner or operator must meet the general rule requirements as well as the requirements under this section. Note that not all provisions may be applicable to all owners/operators. In cases where a provision is not applicable, write "N/A".

Table G-11 General Rule Requirements for Onshore Oil Production Facilities	
At tank batteries, separation and treating areas, drainage is closed and sealed except when draining uncontaminated rainwater. Accumulated oil on the rainwater is returned to storage or disposed of in accordance with legally approved methods. *[§112.9(b)(1)]*	☐
Prior to drainage, diked areas are inspected and *[§112.9(b)(1)]*:	
• Retained rainwater is inspected to ensure that its presence will not cause a discharge to navigable waters	☐
• Bypass valve is opened and resealed under responsible supervision	☐
• Adequate records of drainage are kept [See Dike Drainage Log in Attachment 3.3]	☐
Field drainage systems and oil traps, sumps, or skimmers are inspected at regularly scheduled intervals for oil, and accumulations of oil are promptly removed [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(b)(2)]*	☐
The containers used at this facility are compatible with materials stored and conditions of storage. *[§112.9(c)(1)]*	☐
All tank battery, separation, and treating facility installations (except for flow-through process vessels) are constructed with a capacity to hold the largest single container plus additional capacity to contain rainfall. Drainage from undiked areas is safely confined in a catchment basin or holding pond. *[§112.9(c)(2)]*	☐
Except for flow-through process vessels, containers that are on or above the surface of the ground, including foundations and supports, are visually inspected for deterioration and maintenance needs on a regular schedule. [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(c)(3)]*	☐
New and old tank batteries at this facility are engineered/updated in accordance with good engineering practices to prevent discharges including at least one of the following: (i) adequate container capacity to prevent overfill if regular pumping/gauging is delayed; (ii) overflow equalizing lines between containers so that a full container can overflow to an adjacent container; (iii) vacuum protection to prevent container collapse; or (iv) high level sensors to generate and transmit an alarm to the computer where the facility is subject to a computer	☐

Table G-11 General Rule Requirements for Onshore Oil Production Facilities	
production control system. *[§112.9(c)(4)]*	
Flow-through process vessels and associated components are: • Are constructed with a capacity to hold the largest single container plus additional capacity to contain rainfall. Drainage from undiked areas is safely confined in a catchment basin or holding pond; *[§112.9(c)(2)]* and • That are on or above the surface of the ground, including foundations and supports, are visually inspected for deterioration and maintenance needs on a regular schedule. [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(c)(3)]* *Or* • Visually inspected and/or tested periodically and on a regular schedule for leaks, corrosion, or other conditions that could lead to a discharge to navigable waters; and • Corrective action or repairs are applied to flow-through process vessels and any associated components as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge; and • Any accumulations of oil discharges associated with flow-through process vessels are promptly removed; and • Flow-through process vessels are provided with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation within six months of a discharge from flow-through process vessels of more than 1,000 U.S. gallons of oil in a single discharge as described in §112.1(b), or a discharge more than 42 U.S. gallons of oil in each of two discharges as described in §112.1(b) within any twelve month period. *[§112.9(c)(5)]* *(Leave blank until such time that this provision is applicable.)*	☐ ☐ ☐ ☐ ☐
All aboveground valves and piping associated with transfer operations are inspected periodically and upon a regular schedule. The general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items are included in the inspection. [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(d)(1)]*	☐
An oil spill contingency plan and written commitment of resources is provided for flowlines and intra-facility gathering lines [See Oil Spill Contingency Plan and Checklist in Attachment 2 and Inspection Log and Schedule in Attachment 3.1] *[§112.9(d)(3)]* or Appropriate secondary containment and/or diversionary structures or equipment is provided for flowlines and intra-facility gathering lines to prevent a discharge to navigable waters or adjoining shorelines. The entire secondary containment system, including walls and floor, is capable of containing oil and is constructed so that any discharge from the pipe, will not escape the containment system before cleanup occurs.	☐ ☐
A flowline/intra-facility gathering line maintenance program to prevent discharges from each flowline has been established at this facility. The maintenance program addresses each of the following: • Flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids, their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment; • Flowlines, intra-facility gathering lines and associated appurtenances are visually inspected and/or tested on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in §112.1(b). The frequency and type of testing allows for the implementation of a contingency plan as described under part 109 of this chapter. • Corrective action and repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly scheduled visual inspections, tests, or evidence of a discharge.	☐ ☐ ☐ ☐

Table G-11 General Rule Requirements for Onshore Oil Production Facilities	
• Accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances are promptly removed. *[§112.9(d)(4)]*	☐
The following is a description of the flowline/intra-facility gathering line maintenance program implemented at this facility:	

C. Onshore Oil Drilling and Workover Facilities (§112.10(b), (c) and (d)):

The owner or operator must meet the general rule requirements as well as the requirements under this section.

Table G-12 General Rule Requirements for Onshore Oil Drilling and Workover Facilities	
Mobile drilling or worker equipment is positioned or located to prevent discharge as described in §112.1(b). *[§112.10(b)]*	☐
Catchment basins or diversion structures are provided to intercept and contain discharges of fuel, crude oil, or oily drilling fluids. *[§112.10(c)]*	☐
A blowout prevention (BOP) assembly and well control system was installed before drilling below any casing string or during workover operations. *[§112.10(d)]*	☐
The BOP assembly and well control system is capable of controlling any well-head pressure that may be encountered while the BOP assembly and well control system are on the well. *[§112.10(d)]*	☐

ATTACHMENT 1 – Five Year Review and Technical Amendment Logs

ATTACHMENT 1.1 – Five Year Review Log

I have completed a review and evaluation of the SPCC Plan for this facility, and will/will not amend this Plan as a result.

Table G-13 Review and Evaluation of SPCC Plan for Facility			
Review Date	Plan Amendment		Name and signature of person authorized to review this Plan
	Will Amend	Will Not Amend	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	

ATTACHMENT 1.2 – Technical Amendment Log

Any technical amendments to this Plan will be re-certified in accordance with Section I of this Plan template.

Table G-14 Description and Certification of Technical Amendments		
Review Date	Description of Technical Amendment	Name and signature of person certifying this technical amendment

ATTACHMENT 2 – Oil Spill Contingency Plan and Checklist

An oil spill contingency plan and written commitment of resources is required for:

- Flowlines and intra-facility gathering lines at oil production facilities and
- Qualified oil-filled operational equipment which has no secondary containment.

An oil spill contingency plan meeting the provisions of 40 CFR part 109, as described below, and a written commitment of manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful is attached to this Plan.	☐

Complete the checklist below to verify that the necessary operations outlined in 40 CFR part 109 - Criteria for State, Local and Regional Oil Removal Contingency Plans - have been included.

Table G-15 Checklist of Development and Implementation Criteria for State, Local and Regional Oil Removal Contingency Plans (§109.5)[a]	
(a) Definition of the authorities, responsibilities and duties of all persons, organizations or agencies which are to be involved in planning or directing oil removal operations.	☐
(b) Establishment of notification procedures for the purpose of early detection and timely notification of an oil discharge including:	☐
(1) The identification of critical water use areas to facilitate the reporting of and response to oil discharges.	☐
(2) A current list of names, telephone numbers and addresses of the responsible persons (with alternates) and organizations to be notified when an oil discharge is discovered.	☐
(3) Provisions for access to a reliable communications system for timely notification of an oil discharge, and the capability of interconnection with the communications systems established under related oil removal contingency plans, particularly State and National plans (e.g., NCP).	☐
(4) An established, prearranged procedure for requesting assistance during a major disaster or when the situation exceeds the response capability of the State, local or regional authority.	☐
(c) Provisions to assure that full resource capability is known and can be committed during an oil discharge situation including:	☐
(1) The identification and inventory of applicable equipment, materials and supplies which are available locally and regionally.	☐
(2) An estimate of the equipment, materials and supplies which would be required to remove the maximum oil discharge to be anticipated.	☐
(3) Development of agreements and arrangements in advance of an oil discharge for the acquisition of equipment, materials and supplies to be used in responding to such a discharge.	☐
(d) Provisions for well defined and specific actions to be taken after discovery and notification of an oil discharge including:	☐
(1) Specification of an oil discharge response operating team consisting of trained, prepared and available operating personnel.	☐

Table G-15 Checklist of Development and Implementation Criteria for State, Local and Regional Oil Removal Contingency Plans (§109.5)[a]	
(2) Predesignation of a properly qualified oil discharge response coordinator who is charged with the responsibility and delegated commensurate authority for directing and coordinating response operations and who knows how to request assistance from Federal authorities operating under existing national and regional contingency plans.	☐
(3) A preplanned location for an oil discharge response operations center and a reliable communications system for directing the coordinated overall response operations.	☐
(4) Provisions for varying degrees of response effort depending on the severity of the oil discharge.	☐
(5) Specification of the order of priority in which the various water uses are to be protected where more than one water use may be adversely affected as a result of an oil discharge and where response operations may not be adequate to protect all uses.	☐
(6) Specific and well defined procedures to facilitate recovery of damages and enforcement measures as provided for by State and local statutes and ordinances.	☐

[a] The contingency plan must be consistent with all applicable state and local plans, Area Contingency Plans, and the National Contingency Plan (NCP).

ATTACHMENT 3 – Inspections, Dike Drainage and Personnel Training Logs

ATTACHMENT 3.1 – Inspection Log and Schedule

Table G-16 Inspection Log and Schedule This log is intended to document compliance with §§112.6(a)(3)(iii), 112.8(c)(6), 112.8(d)(4), 112.9(b)(2), 112.9(c)(3), 112,9(d)(1), 112.9(d)(4), 112.12.(c)(6), and 112.12(d)(4), as applicable.					
Date of Inspection	Container / Piping / Equipment	Describe Scope (or cite Industry Standard)	Observations	Name/ Signature of Inspector	Records maintained separately [a]
					☐
					☐
					☐
					☐
					☐

[a] Indicate in the table above if records of facility inspections are maintained separately at this facility.

ATTACHMENT 3.2 – Bulk Storage Container Inspection Schedule – onshore facilities (excluding production):

To comply with integrity inspection requirement for bulk storage containers, inspect/test each shop-built aboveground bulk storage container on a regular schedule in accordance with a recognized container inspection standard based on the minimum requirements in the following table.

Table G-17 Bulk Storage Container Inspection Schedule	
Container Size and Design Specification	**Inspection requirement**
Portable containers (including drums, totes, and intermodal bulk containers (IBC))	Visually inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas
55 to 1,100 gallons with sized secondary containment	Visually inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas plus any annual inspection elements per industry inspection standards
1,101 to 5,000 gallons with sized secondary containment and a means of leak detection[a]	
1,101 to 5,000 gallons with sized secondary containment and no method of leak detection[a]	Visually inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas, plus any annual inspection elements and other specific integrity tests that may be required per industry inspection standards

[a] Examples of leak detection include, but are not limited to, double-walled tanks and elevated containers where a leak can be visually identified.

ATTACHMENT 3.3 – Dike Drainage Log

Table G-18 Dike Drainage Log						
Date	Bypass valve sealed closed	Rainwater inspected to be sure no oil (or sheen) is visible	Open bypass valve and reseal it following drainage	Drainage activity supervised	Observations	Signature of Inspector
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		

ATTACHMENT 3.4 – Oil-handling Personnel Training and Briefing Log

Table G-19 Oil-Handling Personnel Training and Briefing Log		
Date	**Description / Scope**	**Attendees**

ATTACHMENT 4 – Discharge Notification Form

In the event of a discharge of oil to navigable waters or adjoining shorelines, the following information will be provided to the National Response Center [also see the notification information provided in Section 7 of the Plan]:

Table G-20 Information provided to the National Response Center in the Event of a Discharge			
Discharge/Discovery Date		Time	
Facility Name			
Facility Location (Address/Lat-Long/Section Township Range)			
Name of reporting individual		Telephone #	
Type of material discharged		Estimated total quantity discharged	Gallons/Barrels
Source of the discharge		Media affected	☐ Soil ☐ Water (specify) _____ ☐ Other (specify) _____
Actions taken			
Damage or injuries	☐ No ☐ Yes (specify)	Evacuation needed?	☐ No ☐ Yes (specify)
Organizations and individuals contacted	☐ National Response Center 800-424-8802 Time _____		
	☐ Cleanup contractor (Specify) Time _____		
	☐ Facility personnel (Specify) Time _____		
	☐ State Agency (Specify) Time _____		
	☐ Other (Specify) Time _____		

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