ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2007–0584; FRL–8979–8]

RIN 2050–AG16

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On December 5, 2008, EPA amended the Spill Prevention Control, and Countermeasures (SPCC) rule to provide increased clarity with respect to specific regulatory requirements, to tailor requirements to particular industry sectors, and to streamline certain rule requirements. The Agency subsequently delayed the effective date of these amendments to January 14, 2010, to allow the Agency time to review the amendments to ensure that they properly reflect consideration of all relevant facts. EPA also requested public comment on the delay of the effective date and its duration, and on the December 2008 amendments. Having reviewed the record for the amendments and the additional comments, EPA has decided to make only limited changes to the amendments. With respect to the majority of the December amendments, EPA is either taking no action or providing minor technical corrections. EPA is, however, removing the following provisions in the December 2008 amendments: the exclusion of farms and oil production facilities from the loading/unloading rack requirements; the exemption for produced water containers at an oil production facility; and the alternative qualified facility eligibility criteria for an oil production facility.

DATES: This final rule is effective on January 14, 2010.

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 the index at *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. Principe at 202–564–7913 (*principe.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.

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I. General Information

On December 5, 2008, the Environmental Protection Agency (EPA or the Agency) amended the Spill Prevention, Control, and Countermeasure (SPCC) rule to address a number of issues raised by the regulated community (73 FR 74236). EPA is now amending the December

2008 amendments to make technical corrections. In addition, EPA has decided to remove three provisions from the SPCC rule it had adopted in December 2008. In all other respects, the amendments have not been changed. The following provisions, which 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''), will become effective without modification:

- Exemption for hot-mix asphalt (HMA);
- Exemption for 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 pesticide formulations;
- Exemption for residential heating oil containers, which applies to aboveground containers, as well as completely buried heating oil containers, at single-family residences, including those located at farms;
- Clarification that the definition of mobile refueler 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;
- Amendment of 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 reaffirm that the ''facility'' definition governs the applicability of 40 CFR part 112;
- Amendment of the facility diagram requirement at § 112.7(a)(3) to clarify how containers, fixed and mobile, are identified on the facility diagram. EPA also clarified 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, as well as indicate the potential range in number of containers and the anticipated contents and capacities of the mobile or portable containers;
- Definition of the term ''loading/unloading rack,'' and clarification that this definition governs the applicability of the provisions for facility tank car and tank truck loading/unloading racks at § 112.7(h);
- Amendment of the general secondary containment requirements at § 112.7(c) to clarify the scope of secondary containment so that an owner or operator 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);
- Extension of 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;
- Amendment of 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;
- Amendment of the requirements at §§ 112.8(c)(6) and 112.12(c)(6) 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;
- Amendment of 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) so as to provide 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 relating to container construction and configuration;
- Amendment of the definition of ''production facility'' to be consistent with the amended definition of ''facility'';
- Clarification that drilling and workover activities are not subject to the provisions at § 112.9;
- Alternative compliance option for flow-through process vessels at oil production facilities requiring general secondary containment and additional oil spill prevention measures in lieu of the sized secondary containment requirements that would apply to this equipment;
- Definition of the term ''produced water container'', and an alternative compliance option for these containers at oil production facilities requiring general secondary containment, a PE-certified process or procedure designed to remove free-phase oil that accumulates on the surface of the produced water container, and additional oil spill prevention measures in lieu of the sized secondary containment requirements that would apply to these containers;
- Exemption for certain intra-facility gathering lines subject to requirements of the U.S. Department of Transportation's (DOT's) pipeline regulations in 49 CFR parts 192 or 195;
- Specific requirements for a flowline/intra-facility gathering line maintenance program and an alternative compliance option of contingency planning for flowlines and intra-facility gathering lines in lieu of the general secondary containment requirements; and
- Clarification of the definition of ''permanently closed'' as it applies to oil production facilities and containers present at an oil production facility.

The following provisions of the 2008 amendments will become effective with technical corrections:

- Exemption for underground oil storage tanks that supply emergency diesel generators at nuclear power generation facilities, revising the provision to state that the exemption applies ''*provided that such a tank* is subject to any Nuclear Regulatory Commission provision regarding design and quality criteria*, including but* not limited to* * *'' (emphasis added);
- Designation of a subset of qualified facilities (''Tier I qualified facilities'') with a set of streamlined SPCC rule requirements. 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. In § 112.6 and the Appendix G SPCC Plan template, technical corrections include clarifications and corrections of typographical and formatting errors; and,
- Amendment of the compliance date provision for new oil production facilities, so that it applies to new oil production facilities that begin operations after November 10, 2010. This change is necessary to align with the current compliance date for other facilities.

In this notice, EPA is also removing the paragraphs in § 112.3 specific to farms because on June 19, 2009 EPA established the same compliance dates for farms as for all other facilities (74 FR 29136); such differentiated provisions are no longer necessary.

Additionally, EPA was particularly interested in receiving comments on

these provisions as indicated in the February 2009 notice. After consideration of all relevant facts and public comments, EPA is removing the following provisions which were promulgated on December 5, 2008 from the SPCC regulation:

- The exemption for certain produced water containers that do not contain oil in amounts that may be harmful as certified by a PE; and
- The alternative criteria for an oil production facility to be eligible to self-certify an SPCC Plan as a qualified facility.

The Agency is also removing the specific exclusion of oil production facilities and farms from the loading/unloading rack requirements at § 112.7(h). Finally, EPA commits to continue inter-Agency discussions with DOT to clarify jurisdiction over facilities as described in the joint memorandum ''Jurisdiction over Breakout Tanks/Bulk Storage Tanks (Containers) at Transportation-Related and Non-Transportation-Related Facilities'' (February 4, 2000).

This rulemaking marks the completion of the SPCC action proposed on October 15, 2007 (72 FR 58378), finalized on December 5, 2008 (73 FR 74236), and for which the Agency considered public comments again in February 2009 (74 FR 5900, February 3, 2009). Hereafter, comments addressing the December 5, 2008 amendments will be referred to as ''comments from the 2009 comment period.'' However, EPA recognizes that because of the changes in this action, and specifically provisions that have been removed from the December 2008 Amendments, facilities may need additional time to comply with the SPCC amendments. For example, owners or operators of facilities with marginal wells may need a PE to certify amendments to their SPCC Plan if the facility does not meet the qualified facility eligibility criteria. Because of the uncertainty surrounding the final amendments to the December 5, 2008 rule and the delay of the effective date, the Agency will propose to extend the compliance date.

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
Government	92

The list of potentially affected entities in the above table may not be exhaustive. The Agency's goal is to provide a clear 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 amendments (67 FR 47042) 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. After publication of these rule amendments, several members of the regulated community filed legal challenges to certain aspects.[1] All of the issues raised in the litigation have now been resolved; EPA published clarifications in the **Federal Register** to several aspects of the amended rule (69 FR 29728, May 25, 2004).[2] In a separate **Federal Register** notice, the Agency published a final rule announcing the vacatur of the July 17, 2002 definition of ''navigable waters'' in 40 CFR part 112,[3] and restoring it back to the regulatory definition promulgated by EPA in 1973 (73 FR 71941, November 26, 2008).

Concerns were also raised about the ability to implement certain aspects of the July 2002 rule amendments. As a result, EPA proposed additional 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 (71 FR 77266, December 26, 2006). Additionally, EPA made available the *SPCC Guidance for Regional Inspectors* in December 2005. This guidance document is intended to assist regional inspectors, as well as members of the regulated community, in reviewing the implementation of the SPCC rule at a regulated facility. The guidance document is designed to provide more detail about the rule's applicability, to help clarify the role of the inspector in reviewing and evaluating 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 revise this guidance to address the regulatory amendments in this action and the December 2006 amendments (71 FR 77266, December 26, 2006). EPA welcomes comments from the regulated community and the public on the guidance document at any time. Instructions for submitting comments are provided on the EPA Office of Emergency Management Web site.

On December 5, 2008 (73 FR 74236), EPA again amended the SPCC rule to clarify certain provisions, to tailor requirements to particular industry sectors, and to streamline certain rule requirements. These requirements were to become effective on February 3, 2009. However, the effective date of the December 2008 rulemaking was delayed for 60 days from February 3, 2009 to April 4, 2009, in accordance with the January 20, 2009 White House memorandum entitled ''Regulatory Review,'' and the January 21, 2009 memorandum from the Office of Management and Budget entitled ''Implementation of Memorandum Concerning Regulatory Review'' (M–09–08, January 21, 2009 OMB memorandum). (These memoranda are available for review in the docket for this rulemaking.) The Agency took this action to ensure that the rule properly reflected consideration of all relevant facts. Accordingly, EPA requested public comment on the delay of the effective date and its duration, and further comment on the regulatory amendments contained in the final rule amendments (74 FR 5900, February 3, 2009). On April 1, 2009, the Agency further delayed the effective date of the December 2008 rulemaking until January 14, 2010 (74 FR 14736). The Agency took this action to allow sufficient time to address the comments received on the February 3, 2009 notice. EPA is now promulgating several limited revisions to the December 2008 amendments as a result of the Agency's review of comments and consideration of all relevant facts.

Section V of this notice describes EPA's action on the December 2008 amendments. For a complete discussion of the comments received during the 2009 comment period, see *Comment and Response Document for 2008 Final SPCC Amendments, Comment Period Ending March 2009*, a copy of which is available in the docket for this rulemaking.

Furthermore, EPA has extended the dates for preparing or amending, and implementing revised SPCC Plans in 40 CFR 112.3(a), (b), and (c) in a rule published on June 19, 2009 (74 FR 29136). In that action, the Agency also established dates for the owners and operators of farms to prepare or amend their SPCC Plans, and implement those Plans.

V. This Action

A. Final Amendments Effective Without Change

EPA has not modified the following provisions of the December 2008 amendments (73 FR 74236, December 5, 2008):

- Exemptions for HMA and HMA containers, pesticide application equipment and related mix containers, and heating oil containers at single-family residences, including those located at farms;
- Clarification that the definition of mobile refueler includes a nurse tank at farms;
- Amended definition of ''facility'' to clarify the existing flexibility associated with describing a facility's boundaries;
- Amended facility diagram requirements to provide additional flexibility;
- A definition of ''loading/unloading rack'' to clarify the oil transfer equipment subject to the provisions for facility tank car and tank truck loading/unloading racks, as well as amended provisions for this equipment;
- Amended general secondary containment requirements to provide more clarity;
- Exemption of non-transportation-related tank trucks from the sized secondary containment requirements;
- Amended security requirements;
- Amended integrity testing requirements to allow greater flexibility in the use of industry standards;
- Amended integrity testing requirements for containers that store AFVOs and meet certain criteria;
- Amended definition of ''production facility'';
- Clarification that drilling and workover activities are not subject to the provisions at § 112.9;
- Exemption for certain intra-facility gathering lines at oil production facilities from the SPCC requirements;
- More prescriptive requirements for a flowline/intra-facility gathering line maintenance program for all oil production facilities and an alternative

[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 July 2002 rule amendment.

[2] Several comments requested that the Agency codify the clarifications as part of the December 2008 rulemaking. To the extent the subject matter of the clarification were reflected in the rulemaking, the Agency either incorporated the clarification in the regulatory text or reaffirmed the Agency's position in the preamble. See 73 FR 74236, December 5, 2008.

[3] This action was taken in accordance with an order issued by the United States District Court for the District of Columbia (D.D.C.) in *American Petroleum Institute* v. *Johnson,* 571 F.Supp.2d 165 (D.D.C. 2008).

compliance option of contingency planning for flowlines and intra-facility gathering lines in lieu of all secondary containment;

- Alternative compliance 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 the sized secondary containment requirements;
- A definition of ''produced water container'';
- Alternative compliance option to sized secondary containment for produced water containers that includes general secondary containment, a PE-certified process or procedure designed to remove free-phase oil that accumulates on the surface of the produced water container, and additional oil spill prevention measures;
- Clarification of the definition of ''permanently closed'' as it applies to an oil production facility; and
- Technical corrections.

This preamble discusses each of these provisions, and any related comments received during the 2009 comment period that raise substantive policy issues, in more detail below. For a complete discussion of the comments received in 2009, see *Comment and Response Document for 2008 Final SPCC Amendments, Comment Period Ending March 2009*, a copy of which is available in the docket for this rulemaking.

1. Hot-Mix Asphalt (HMA)

In the December 2008 amendments, EPA exempted HMA and HMA containers from SPCC rule applicability. HMA is a blend of asphalt cement (AC) and aggregate material, such as stone, sand, or gravel, which is formed into final paving products. All types of asphalt, including HMA, are petroleum products.

EPA exempted 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 HMA containers is not counted toward the facility's oil storage capacity calculation. EPA took 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, if any, 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. See Section V.A of the December 5, 2008 notice at 73 FR 74240 for more information about this amendment.

EPA received one comment that recommended that EPA also extend the exemption to other products like paraffin wax, asphalt cement, certain resins, and various animal fats, and suggested the exemption be based on the unique ''self-containing'' characteristics of all these materials and the low probability of a spill reaching navigable waters or adjoining shorelines. The Agency disagrees with this comment. As EPA discussed in the December 5, 2008 amendments, these materials, unlike HMA, do have the potential to discharge in quantities that may be harmful 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. Conversely, HMA is unlikely to flow as a result of the entrained aggregate. The commenter did not provide new or compelling data supporting their position. Further, 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 no reasonable expectation of a discharge of oil to navigable waters or adjoining shorelines from every single oil container at the facility (excluding exempt containers), then the facility would not be subject to the rule's requirements. However, if the facility owner or operator determines that any oil container (excluding exempt containers) may have a reasonable expectation of a discharge of oil to navigable waters or adjoining shorelines, then the facility is subject to the rule provisions.

Other comments generally supported the amendments to the exemption for HMA and HMA containers. Based on this and review of all relevant facts, the Agency is making no changes to this provision.

2. Pesticide Application Equipment and Related Mix Containers

In the December 2008 amendments, EPA added a new paragraph (10) under the general applicability section, § 112.1(d), to exempt all pesticide application equipment and related mix containers regardless of ownership or where used when crop oil or adjuvant oil is added to the pesticide formulation. EPA also modified § 112.1(d)(2) so that the capacity of 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 containers/equipment 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 the application equipment. EPA adopted this exemption because this type of pesticide use and related mix containers are already subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as codified in 40 CFR part 165, to assure the safe use (including discharge), reuse, storage, and disposal of pesticide containers. 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 (after mixing occurs), are considered bulk storage containers and are not exempt under the SPCC rule. *See* Section V.B of the December 5, 2008 notice at 73 FR 74240 for more information about this amendment.

Comments generally supported the exemption for pesticide application equipment and related mix containers. Based on this and review of all relevant facts, the Agency is making no change to this provision.

3. Applicability of Mobile Refueler Requirements to Farm Nurse Tanks

In Section V.B. of the preamble to the December 2008 amendments (73 FR 74241, December 5, 2008), 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, and thus its 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).

Comments generally supported the clarification regarding the applicability of mobile refueler requirements to farm nurse tanks. Based on this and review of all relevant facts, the Agency is making no change to this clarification.

4. Residential Heating Oil Containers

In the December 2008 amendments, EPA added 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 also modified § 112.1(d)(2) so that the capacity of single-family residential heating oil containers is not counted toward facility aggregate oil storage capacity. Thus, the owner or operator is not required to count any residential heating oil container (i.e., those at non-commercial buildings) as part of the facility's aggregate storage capacity for the purpose of determining SPCC applicability, and no SPCC requirements will apply to these 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. See Section V.C of the December 5, 2008 notice at 73 FR 74243 for more information about this amendment.

Comments generally supported the amendments to the exemption for residential heating oil containers. The Agency did not intend for the presence of heating oil containers at a single-family residence to, by itself, trigger SPCC applicability. Based on this and review of all relevant facts, the Agency is making no change to this provision.

5. Definition of Facility

In the December 2008 amendments, EPA amended the definition of ''facility,'' as found in § 112.2. (EPA defined both ''facility'' and ''production facility'' at § 112.2 in the July 2002 amendments to the SPCC rule (67 FR 47042, July 17, 2002).) EPA modified 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 aggregated or disaggregated (*i.e.*, counted separately), based on various factors in defining the ''facility'' (in other words, the owner or operator has the discretion to identify 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.''

EPA maintains that under this provision, the owner or operator defines the boundaries of his facility, except as noted below. A facility may or may not be subject to the SPCC rule depending on how the facility owner or operator aggregates buildings, structures or equipment and associated storage or type of activity. EPA recognizes that this provision clarifies that a facility owner/operator may determine that he is no longer subject to the SPCC requirements. However, an owner or operator may not characterize a facility so as to simply avoid applicability of the rule (for example, defining separate facilities around oil storage containers that are located side-by-side or within close proximity, and are used for the same purpose). See Section V.D of the December 5, 2008 notice at 73 FR 74244 for more information about this amendment.

Comments generally supported the amendments to the definition of ''facility.'' Based on this and review of all relevant facts, the Agency is making no change to this provision.

6. Facility Diagram

In the December 2008 amendments, EPA revised the requirement that the facility diagram include the location and contents of each container to provide additional flexibility. EPA amended § 112.7(a)(3) to clarify that the facility diagram must include all fixed containers (that is, those containers that are not mobile or portable). For any mobile or portable containers (such as drums or totes), a facility owner or operator must mark the storage area on the facility diagram for these containers. For the purposes of this provision, ''storage area'' means the location of their out-of-service containers or designated storage area, primary storage area, or areas where mobile or portable containers are most frequently located. The facility owner or operator may mark the number of containers, contents and capacity of each container either on the facility diagram or in a separate description in the SPCC Plan. If the total number of mobile or portable containers changes, the owner or operator need only include an estimate in the Plan of the number of mobile or portable containers, the anticipated contents, and capacities of the mobile or portable containers maintained at the facility in the Plan.

EPA also required that certain intra-facility piping (*i.e.*, gathering lines) exempted from the SPCC requirements in the December 2008 action be identified on the facility diagram and marked as ''exempt.'' This will help facility and EPA personnel define 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. However, EPA has not required that all containers exempted from the rule be marked on the facility diagram because in many cases, it would be impracticable. For example, the mobility of motive power containers and mobile/portable containers with a capacity of less than 55 U.S. gallons makes them difficult to accurately represent on a facility diagram. See Section V.E of the December 5, 2008 notice at 73 FR 74246 for more information about this amendment.

Comments generally supported the amendments to the facility diagram provision. One commenter claimed that his facility diagrams identify underground storage tanks, but do not label them as exempt from the SPCC requirements. The comment argued that marking them as ''exempt'' would be an unnecessary expense. The requirement to identify exempt USTs was finalized in July 2002 (67 FR 47042, July 17, 2002) and so antedates the December 2008 amendments; thus the comment is outside the scope of this rulemaking. However, in response, we would note that the facility diagram can be supplemented with a table or log that indicates which USTs are exempt from the SPCC requirements. Based on this and review of all relevant facts, the Agency is making no change to this provision.

7. Loading/Unloading Racks

In the December 2008 amendments, EPA finalized a definition for the term ''loading/unloading rack,'' which governs whether a facility's oil transfer equipment and areas are subject to § 112.7(h). Under this provision, the requirements described at § 112.7(h) only apply to oil transfer areas of a regulated facility where a loading/unloading rack, as defined in § 112.2, is located. EPA modified the definition to provide more clarity, and to indicate that a loading/unloading arm is an essential component of a loading/unloading rack. Other components that may be found at a loading or unloading rack are described in the definition. 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 by the December 2008 amendments.

EPA also changed all references from loading/unloading ''area'' to loading/unloading ''rack,'' including modifications to the language in § 112.7(h)(1), and corrected the word ''break'' to ''brake'' in § 112.7(h)(2). Finally, EPA clarified that § 112.7(h) applies to a loading/unloading rack associated with a container that is exempted from the rule, such as 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. Additionally, EPA clarified that transfer areas (equipped with dispensers or other transfer equipment) that are associated with exempted USTs, at an otherwise regulated SPCC facility, are subject to the requirements of § 112.7(c). See Section V.F of the December 5, 2008 notice at 73 FR 74248 for more information about this amendment.

EPA agrees with the comment that EPA's definition of ''loading/unloading rack'' does not apply to a flexible hose used to load and/or unload oil from a tanker truck or railcar unless the flexible hose is connected to a loading/unloading arm. The Agency does not intend this definition to include areas where loading or unloading is achieved using only flexible hoses. 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 because some top and bottom loading/unloading racks consist of a combination of steel loading arms connected by flexible hoses.

Comments generally supported the ''loading/unloading rack'' definition and amendments to the requirements for a ''loading/unloading rack.'' Based on this and review of all relevant facts, the Agency is making no change to these provisions.

8. General Secondary Containment

In the December 2008 amendments, EPA amended the general secondary containment requirement at § 112.7(c) in three ways:

- By adding text regarding the method, design and capacity of secondary containment— to make it clear that the scope of the general secondary containment requirements takes into consideration the typical failure mode, and most likely quantity of oil that would be discharged, consistent with EPA guidance (*SPCC Guidance for Regional Inspectors*);
- By specifically referencing both active and passive measures of secondary containment to make it clear that general containment requirements 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 an operator. These measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a discharge, as 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. The design and capacity flexibility described in paragraph § 112.7(c) is specifically for equipment and containers subject to this paragraph and not for other secondary containment provisions of this rule; and.
- By including 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), when uncoupling hoses after bulk transfer operations, and for pumps, valves, and fittings. Sumps and collection systems generally involve a permanent pit or reservoir connected to troughs/trenches that collect oil. By expanding the list of examples of secondary containment methods/prevention systems found in § 112.7(c)(1), EPA intended to increase the clarity and better represent current prevention practices. EPA emphasizes that the list of containment methods/prevention systems are examples only; other containment methods may be used, consistent with good engineering practice. See Section V.H of the December 5, 2008 notice at 73 FR 74261 for more information about this amendment.

As EPA discussed in the December 5, 2008 amendments, the Plan preparer should include enough detail in the SPCC Plan to describe the efficacy of the measures used to comply with the general secondary containment requirements (*see* the *SPCC Guidance for Regional Inspectors,* Chapter 4). While EPA does not require that calculations be kept in the Plan, it recommends the facility owner or operator maintain them such that if questions arise during the inspection, the calculations which serve as the basis for the capacity of the secondary containment system will be readily available for review.

Comments generally supported the amendments to the general secondary containment requirements. Based on this and review of all relevant facts, the Agency is making no change to these provisions.

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

In the December 2008 amendments, EPA extended the exemption from the sized secondary containment requirements provided to mobile refuelers in the December 2006 amendments (71 FR 77266, December 26, 2006) to non-transportation-related tank trucks at a facility subject to the SPCC rule. Other non-transportation-related tanker trucks may be transferring non-fuel oils (i.e., transformer oils, lubrication oils, or certain AFVOs) and operate similarly to mobile refuelers; therefore, they may not be able to comply with the sized secondary containment requirements. Specifically, EPA amended §§ 112.6(a)(3)(ii), 112.8(c)(2), 112.8(c)(11), 112.12(c)(2), and 112.12(c)(11) 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 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) still apply. *See* Section V.I of the December 5, 2008 notice at 73 FR 74262 for more information about this amendment.

EPA agrees with comments supporting the exemption from the sized secondary containment requirements for non-transportation-related tank trucks at a facility subject to the SPCC rule. One comment noted that the exemption from sized secondary containment should be rescinded, given the use of truck and skid mounted tanks as storage containers at temporary sites and the high risks associated with these tanks. EPA disagrees with the comment. As stated in the preamble to the December 5, 2008 amendments, the Agency concluded that it is generally not practicable to provide sized secondary containment for non-transportation-related tank trucks because they are moving from location to location within a facility. A non-transportation-related tank truck that only operates in a single or fixed location within the facility (*i.e.,* it does not move within the facility for

purposes of transferring oil) is not eligible for this provision and would still be subject to the sized secondary containment requirement. Based on this and review of all relevant facts, the Agency is making no change to this provision.

10. Security

In the December 2008 amendments, EPA amended the facility security requirements at § 112.7(g) to be performance-based and allow an owner or operator of a facility to tailor its security measures to the facility's specific characteristics and location. This provision extended 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.

Specifically, EPA modified the security requirements at § 112.7(g) to allow an owner or operator to design the security arrangements at the facility to address the specific circumstances that apply. This provision 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 the 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). Because the revised requirements at § 112.7(g) apply to all facilities (excluding oil production facilities), EPA removed the security requirements previously found at § 112.6(c)(3) for qualified facilities; the provision would be redundant. See Section V.J of the December 5, 2008 notice at 73 FR 74263 for more information about this amendment.

Comments generally supported the amendments to the provision for security requirements. Based on this and review of all relevant facts, the Agency is making no change to this provision.

11. Integrity Testing

In the December 2008 amendments, EPA amended 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 modified 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, EPA extended 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.

Specifically, EPA replaced the previous regulatory requirements at §§ 112.8(c)(6) and 112.12(c)(6) with the requirement for 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.

These revised provisions allow, for example, an owner or operator to adopt visual inspections for certain types of containers, as outlined in industry standards, to satisfy the integrity testing requirements without the need for environmental equivalence determinations certified by a PE. However, EPA notes that certain containers may not fall within the scope of an industry standard or may not have an applicable industry standard; in this case, the owner or operator of the facility may develop an environmentally equivalent inspection and testing program in accordance with § 112.7(a)(2) to comply with the integrity testing requirements described in §§ 112.8(c)(6) and 112.12(c)(6) (for more information, see Chapter 7 of the *SPCC Guidance for Regional Inspectors*). In the case of a Tier II qualified facility, the environmentally equivalent integrity testing program will require PE certification. See § 112.6(b)(3)(i) and 112.6(b)(4) for more information on PE certification of environmental equivalence for Tier II qualified facilities.

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 must also conduct frequent inspection of the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Because the revised requirements at §§ 112.8(c)(6) and 112.12(c)(6) apply to all facilities (excluding oil production facilities), EPA removed the integrity testing requirements previously found at § 112.6(c)(4) for qualified facilities. *See* Section V.K of the December 5, 2008 notice at 73 FR 74264 for more information about this amendment.

EPA agrees with the comments supporting the provision for integrity testing requirements. However, several comments generally opposed these amendments, and one comment questioned the need for more flexibility with regard to the integrity testing requirements. EPA recognizes that certain containers do not have applicable industry standards and notes that the rule already provides flexibility to integrity testing in that the owner or operator can rely on a PE to provide an environmentally equivalent method of integrity testing in § 112.7(a)(2). Nonetheless, the December 2008 amendments address broader concerns with the integrity testing requirements by revising the rule text under §§ 112.8(c)(6) and 112.12(c)(6). No new or compelling information or data was provided by comments that supported changing EPA's position. Based on this and review of all relevant facts, the Agency is making no change to this provision.

12. Integrity Testing Requirements for Animal Fats and Vegetable Oils

In the December 2008 amendments, EPA differentiated the integrity testing requirements at § 112.12(c)(6) for an owner or operator of a facility that handles certain types of AFVOs. Specifically, EPA provided the PE or an owner or operator self-certifying an SPCC Plan with the flexibility to use a visual inspection program for integrity testing for containers that store AFVOs and that meet certain criteria identified in § 112.12(c)(6)(ii). 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,* as well as 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)(i), without having to document the reasons for using an environmentally equivalent measure in accordance with § 112.7(a)(2). The owner or operator is required to document the procedures for inspections and testing in the SPCC Plan, including those for AFVO bulk storage containers that are eligible for the differentiated requirements described in this provision.

EPA does not require that an owner or operator use this alternative compliance option. This alternative provides additional flexibility in meeting the provisions set forth in § 112.12(c)(6) to address stakeholder concerns. EPA recognizes that certain types of containers do not have applicable industry standards. The December 2008 amendments revised the SPCC rule to provide an environmentally equivalent approach to comply with the integrity testing requirements for AFVO containers or have a PE provide an environmentally equivalent method of integrity testing in accordance with § 112.7(a)(2). See Section V.K of the December 5, 2008 notice at 73 FR 74264 for more information about this amendment.

EPA agrees with comments supporting the differentiated integrity testing requirements for an owner or operator of a facility that handles certain types of AFVOs. One comment requested greater flexibility in determining the appropriate integrity testing measures for bulk AFVO storage containers, including an extension of the inspection frequency for tanks storing AFVO. The owner or operator can identify the appropriate integrity testing measures for bulk AFVO storage containers following either § 112.12(c)(6)(i) or § 112.12(c)(6)(ii). Additional flexibility may be achieved when a PE provides an environmentally equivalent method of integrity testing in accordance with § 112.7(a)(2). The SPCC rule requires that inspections of AFVO bulk storage containers be conducted on a regular schedule, but does not otherwise specify an inspection frequency for these containers. The owner or operator can identify the appropriate inspection frequency for the AFVO containers and document the inspection frequency in the SPCC Plan. No new or compelling information or data was provided by comments that would cause the Agency to change its position. Thus, based on this and review of all relevant facts, the Agency is making no change to this provision.

13. 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, in the December 2008 amendments EPA adopted certain revisions that further streamline, tailor or clarify the SPCC requirements for oil production facilities (see Section V.M of the December 5, 2008 notice at 73 FR 74270). EPA has decided not to modify the following provisions: amended definition of ''production facility''; clarification that drilling and workover activities are not subject to the provisions at § 112.9; exemption from the SPCC requirements for certain intra-facility gathering lines subject to the DOT pipeline regulations in 49 CFR parts 192 or 195; specific requirements for a flowline/intra-facility gathering line maintenance program and an alternative compliance option of contingency planning for flowlines and intra-facility gathering lines at oil production facilities in lieu of secondary containment requirements; an alternative compliance option for flow-through process vessels at oil production facilities that requires general secondary containment and additional oil spill prevention measures in lieu of the sized secondary containment requirements; definition of ''produced water container'' and alternative compliance measures for these containers which requires general secondary containment, a process or procedure certified by a PE designed to remove free-phase oil on the surface of the produced water container and compliance with additional oil spill prevention measures in lieu of sized secondary containment requirements; and clarification of the definition of ''permanently closed'' as it applies to an oil production facility.

a. Definition of Production Facility

Consistent with the revisions to the definition of ''facility'' (as described in Section V.D of the December 2008 amendments (73 FR 74236)), EPA also modified the definition of ''production facility.'' A ''production facility'' is a type of ''facility'' as defined in § 112.2. With the December 2008 amendments, EPA added 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 at all facilities under 40 CFR part 112.) This change to the definition of production facility addresses concerns raised during litigation challenging the July 2002 rule amendments and discussed in the May 25, 2004 **Federal Register** notice (69 FR 29728). EPA 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 the revisions to the definition of ''facility'' that emphasize the flexibility in how a facility owner or operator can determine the boundaries of a facility. See Section V.M.1 of the December 5, 2008 notice at 73 FR 74270 for more information about this amendment.

EPA agrees with comments supporting the revisions to the definition of ''production facility.'' One comment, however, suggested that the Agency refer specifically to petroleum oil in the definition, to clarify that the term does not apply to vegetable oil production facilities. EPA disagrees with the comment; the addition of the term ''petroleum'' is unnecessary because the definition itself makes clear that the type of facilities addressed under ''production facility'' are those 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 associated with upstream petroleum crude oil/gas production, not AFVO production or processing facilities. Furthermore, the definition specifies that certain structures, piping, or equipment be located in an oil or gas field. The term ''oil or gas field'' is used exclusively in upstream crude oil and gas production, not in AFVO production; therefore the definition of production facility does not apply to AFVO production facilities.

Based on this and review of all relevant facts, the Agency is making no change to this provision.

b. 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, in the December 2008 amendments, EPA revised 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 also amended the introductory sentence of the section accordingly. *See* Section V.M.2 of the December 5, 2008 notice at 73 FR 74272 for more information about this amendment.

Comments generally supported the amendments to § 112.9 for drilling and workover facilities. Based on this and review of all relevant facts, the Agency is making no change to this provision.

c. Exemption for Certain Intra-Facility Gathering Lines

In the December 2008 amendments, EPA provided an exemption for intra-facility gathering lines subject to DOT requirements at 49 CFR parts 192 (*Transportation of Natural and Other Gas by Pipeline*) or 195 (*Transportation of Hazardous Liquids by Pipeline*). EPA recognizes that the DOT requirements for pipelines may be similar in scope to the SPCC regulations, so that compliance with certain DOT requirements is considered environmentally equivalent to certain SPCC requirements. For example, DOT has the statutory authority over onshore gas or hazardous liquid gathering lines in a non-rural area, as well as ''regulated rural gathering lines'' (including certain gathering lines in or within one-quarter mile of environmentally sensitive rural areas, defined as ''unusually sensitive areas''), and certain low-stress pipelines transporting hazardous liquids. While many gathering lines are under DOT's statutory authority, only a subset of them is subject to the 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 over non-transportation-related facilities, which includes pipelines used to move 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, when used for this purpose, is considered transportation-related and is therefore outside EPA's jurisdiction 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 intra-facility gathering lines.

While gathering lines within the SPCC facility boundaries are intra-facility piping, EPA maintained 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 DOT under 49 CFR part 192 or 195, EPA exempted them from the SPCC requirements. In other words, the exemption is for intra-facility gathering lines present at a facility where the piping otherwise is subject to both EPA and DOT jurisdiction and regulations. EPA's focus with the SPCC rule is the regulation of oil storage and handling at facilities engaged in activities related to drilling, producing, gathering, processing, refining, storing, transferring, distributing and using oil, while DOT's focus is to regulate transportation-related pipelines. Although EPA has jurisdiction over these lines, EPA has concluded that it is appropriate to defer to DOT's regulations, when applicable to intra-facility gathering lines, in lieu of EPA's requirements. At the same time, the Regional Administrator has the option under § 112.1(f) to require owners and operators of facilities, including those with exempt intra-facility gathering lines, to prepare and implement an SPCC Plan or any applicable part, if a determination is made that it is necessary to prevent a discharge of oil into navigable waters or adjoining shorelines.

Only intra-facility gathering lines that are subject to these DOT regulations are eligible for the exemption. Intra-facility gathering lines located at a facility that are not subject to the regulatory requirements at 49 CFR parts 192 or 195 remain subject to the requirements at 40 CFR part 112. Other non-transportation-related 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'' on the facility diagram the location of exempt piping. 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 potential hazards during a spill response activity. See Section V.M.4.a of the December 5, 2008 notice at 73 FR 74273 for more information about this amendment.

Comments generally supported the exemption for intra-facility gathering lines subject to the regulatory requirements at 49 CFR parts 192 or 195. Based on this and review of all relevant facts, the Agency is making no change to this provision.

d. Flowlines and Intra-Facility Gathering Lines

EPA is making no changes to the following provisions related to flowlines and intra-facility gathering lines.

(i) Compliance Alternative in Lieu of Secondary Containment for Flowlines and Intra-Facility Gathering Lines

EPA has determined that secondary containment is, in most cases, impracticable for flowlines and intra-facility gathering lines. Therefore, in the December 2008 amendments, the Agency revised § 112.7(c) to provide an optional compliance alternative consisting of contingency planning and a written commitment of manpower, equipment, and materials in lieu of the general secondary containment requirements for flowlines and intra-facility gathering lines that are subject to the SPCC regulation. The Agency tailored the requirements in an effort to provide additional compliance options and enhance environmental protection. *See* Section V.M.4.b of the December 5, 2008 notice at 73 FR 74274 for more information about this amendment.

EPA agrees with comments supporting the provision of an alternative option to the secondary containment requirements for flowlines and intra-facility gathering lines at an oil production facility. A few comments specifically opposed any reduction in secondary containment requirements, but no new or compelling information or data was provided by comments that supported revising the requirements. While EPA understands that flowlines and intra-facility gathering lines are typically a source of discharges, secondary containment is often impracticable. In the December 2008 amendments, EPA provided an alternative compliance option to secondary containment which combines the development of a contingency plan and a written commitment of manpower, equipment, and materials to respond to discharges from flowlines and intra-facility gathering lines. In addition, EPA has also established requirements to add specificity to the flowline and intra-facility gathering line maintenance program. Finally, if this method of spill prevention does not accomplish the goal of protecting

navigable waters or adjoining shorelines, under § 112.1(f) the RA may request that the facility amend the SPCC Plan and provide secondary containment for this piping.

Based on this and review of all relevant facts, the Agency is making no change to this provision.

(ii) Contingency Plan for Flowlines and Intra-Facility Gathering Lines

In the December 2008 amendments, EPA revised §§ 112.7(c) and 112.9(d)(3) to provide a compliance alternative to the general secondary containment requirements under § 112.7(c) for flowlines and intra-facility gathering lines at an oil production facility. Specifically, in lieu of general secondary containment, a facility owner or operator may opt to develop and 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 amended this provision in an effort to provide additional compliance options 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 CWA, 33 U.S.C. 1321(b)(3). EPA also amended § 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. See Section V.M.4.c of the December 5, 2008 notice at 73 FR 74275 for more information about this amendment.

EPA agrees with comments supporting the provision to require an oil spill contingency plan in lieu of general secondary containment. However, one comment suggested that a contingency plan should not be used in lieu of secondary containment, because the purpose of the SPCC rule is to prevent spills, not to clean them up after they occur. While EPA understands that although these lines can be the source of discharges, the Agency also recognizes that secondary containment is often impracticable. EPA has provided an alternative compliance option to secondary containment which combines the development of a contingency plan and a written commitment of manpower, equipment, and materials to respond to discharges. In addition, EPA has also established requirements to add specificity to the flowline and intra-facility gathering line maintenance program. These additional measures are intended to enhance the primary integrity of the flowlines and intra-facility gathering lines to prevent the discharges of oil in the first place, and thus, EPA is not solely relying on a contingency plan. Finally, if this method of spill prevention does not accomplish the goal of protecting navigable waters or adjoining shorelines, then under § 112.1(f), the RA has the authority to request that the facility amend the SPCC Plan and provide secondary containment for this piping.

Another comment suggested that the burden for this alternative option is excessive. EPA disagrees. First, as already noted, this alternative provision for flowlines and intra-facility gathering lines is optional; some facilities may choose to provide secondary containment for these lines. Flowlines and intra-facility gathering lines can be a source of discharges and when secondary containment is not provided then it is appropriate for the facility to have a contingency plan and a written commitment of manpower, equipment, and materials in place to respond to these discharges. Additionally, by removing the need to determine impracticability, the Agency has reduced the burden to allow for contingency planning for these flowlines and intra-facility gathering lines. Therefore, EPA has concluded that the requirements are not excessive. Furthermore, by removing the requirement that a PE make the determination of impracticability (§ 112.7(d)), the cost of preparing a contingency plan should decrease.

Another comment suggested that in lieu of the secondary containment requirements for flowlines and intra-facility gathering lines, EPA should require annual physical inspections of the lines and installation of isolation valves on the ends of lines. EPA agrees that some form of enhanced inspection program is appropriate to assure the primary integrity of the flowlines and intra-facility gathering lines and to implement a contingency plan. However, EPA has concluded that inspection frequency is a site-specific determination and setting a prescriptive (''one-size fits all'') timeframe is inappropriate. Although the Agency agrees that the installation of isolation valves may be appropriate in some cases, it did not include this as a requirement because it may be impracticable for some oil production facilities. However, an owner or operator may choose to install isolation valves as an environmentally equivalent measure to comply with the flowline/intra-facility gathering line maintenance requirements in accordance with § 112.7(a)(2).

No new or compelling information or data was provided by comments that support modification of the provision. Based on this and review of all relevant facts, the Agency is making no change to this provision.

(iii) Requirements for a Flowline and Intra-Facility Gathering Line Maintenance Program

In the December 2008 amendments, EPA revised 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) to add specificity to the existing provision. This provision specifies that the requirements apply to non-transportation-related intra-facility gathering lines, as well as to 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. In response to industry concerns, EPA has established requirements to add specificity to the existing flowline/intra-facility gathering line maintenance program provision, because there are no industry standards for maintenance of this equipment. 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. Finally, EPA believes that it is appropriate to establish a minimum set of requirements for a flowline and intra-facility gathering line maintenance program in order to facilitate consistent compliance. 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.

The Agency concludes that if the requirement for general secondary containment for these lines is eliminated, then some minimal prescriptive requirements for discharge prevention to ensure the integrity of the primary containment of the pipe itself are appropriate. However, the facility owner or operator may deviate from the flowline and intra-facility gathering line maintenance program requirements if an environmentally equivalent alternative measure is implemented in accordance with § 112.7(a)(2). 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. An effective flowline and intra-facility gathering line maintenance program includes timely detection of an oil discharge so that response operations described in the contingency plan may be implemented effectively. *See* Section V.M.4.d of the December 5, 2008 notice at 73 FR 74276 for more information about this amendment.

A comment suggested that the amended requirements for a flowline and intra-facility gathering line maintenance program are excessive. The Agency disagrees. As noted previously, if the requirement for general secondary containment is eliminated, then some minimal requirements that add specificity to the flowline and intra-facility gathering line maintenance program are appropriate, particularly since there are no industry standards for the maintenance of flowlines and intra-facility gathering lines. To the extent that an owner and operator of a facility cannot comply with this provision, he can deviate from these requirements if an environmentally equivalent alternative is implemented in accordance with § 112.7(a)(2). No new or compelling information or data was provided in comments that would cause the Agency to change its position. Based on this and review of all relevant facts, the Agency is making no change to this provision.

e. Flow-Through Process Vessels

EPA is making no changes to the following provisions related to flow-through process vessels.

(i) Exemption From Sized Secondary Containment for Flow-Through Process Vessels

Flow-through process vessels, such as horizontal or vertical separation vessels (for example, a 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 separated fluid streams to the appropriate container. In the December 2008 amendments, EPA revised the requirements in § 112.9(c)(2) to remove the requirement to provide sized secondary containment for flow-through process vessels at oil production facilities without making an impracticability determination, and to allow the facility owner or operator the option to comply with the alternate requirements in § 112.9(c)(5) instead (see Section ii, below).

EPA agrees with concerns regarding the impracticability of providing sized secondary containment around certain flow-through process vessels at production facilities. EPA also recognizes that similar flow-through process equipment at non-production facilities are not subject to the more stringent sized secondary containment and inspection requirements for bulk storage containers; only the general secondary containment requirements at § 112.7(c) apply. However, due to the unattended (and in some cases remote) nature of oil production operations, EPA concluded that it was appropriate to require additional measures in lieu of sized secondary containment for this equipment. Thus, in the December 2008 amendments, EPA provided an alternative compliance option to address these concerns.

It is important to note that although the Agency provided an option that allows the owner and operator to not provide sized secondary containment for flow-through process vessels at oil production facilities, the general secondary containment requirement of § 112.7(c) still applies to these vessels. *See* Section V.M.5.a of the December 5, 2008 notice at 73 FR 74277 for more information about this amendment.

EPA agrees with comments supporting the provision to exempt flow-through process vessels from the sized secondary containment requirement. However, two comments suggested that any exemption from the secondary containment requirement for flow-through process vessels would cause a greater risk for discharges of harmful quantities of oil to reach navigable waters or adjoining shorelines. EPA agrees that some form of secondary containment is required for these vessels. EPA also agrees that sized secondary containment is generally preferable to general secondary containment because these flow-through process vessels operate at unattended facilities and often at remote locations. However, there are instances where providing such sized secondary containment is not always practicable. To address this concern, EPA provided the owner or operator with a choice to comply with either the sized secondary containment requirements, or the general secondary containment requirements along with additional measures for inspection and corrective action. These compliance options allow the owner or operator to tailor the SPCC Plan to meet the facility's operational needs while maintaining environmental protection.

No new or compelling information or data was provided in comments that supported modification of the provision. Based on this and review of all relevant facts, the Agency is making no change to this provision.

(ii) Additional Requirements in Lieu of Sized Secondary Containment for Flow-Through Process Vessels

Oil production facilities are generally unattended. EPA recognizes that process equipment at other types of facilities is typically attended during hours of operation and there is a greater potential to immediately discover and correct a discharge. Therefore, in the December 2008 amendments, EPA required additional measures for flow-through process vessels at oil production facilities that do not have sized secondary containment. EPA provided requirements in § 112.9(c)(5) that include the following: 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. *See* Section V.M.5.b of the December 5, 2008 notice at 73 FR 74278 for more information about this amendment.

Comments generally supported the additional requirements in lieu of sized secondary containment for flow-through process vessels. One comment, however, suggested that the risk of discharge from flow-through process vessels is so low that there should be no additional requirements. EPA disagrees with the comment because flow-through process vessels contain oil and therefore pose a potential threat of a discharge (*e.g.,* failure of a dump valve). Additionally, this alternative compliance option removes the sized secondary containment specification for flow-through process vessels that are located at unmanned facilities, which are often remotely located, and constantly operating. Therefore, EPA has established alternative prevention measures along with the general secondary containment requirement in order to maintain environmental protection. However, the Agency provided the owner or operator with a choice to comply with either the sized secondary containment requirements, or the general secondary containment requirements along with the additional measures for inspection and corrective action. Based on this and review of all relevant facts, the Agency is making no change to this provision.

(iii) Reportable Discharge From Flow-Through Process Vessels

In the December 2008 amendments, EPA finalized a provision to require that if an oil production facility owner or operator has a discharge as described in § 112.9(c)(5)(iv) from a flow-through process vessel, then he must ensure that all flow-through process vessels using general secondary containment comply with the sized secondary containment requirements of § 112.9(c)(2) and periodic inspection requirements of paragraph (c)(3) within six months of the discharge discovery. A discharge, as described in § 112.9(c)(5)(iv), is either a single discharge of more than 1,000 U.S. gallons of oil or two discharges within any twelve month period, each of more than 42 U.S. gallons of oil. The amount of oil specified in this criterion refers to the amount of the discharge that actually reaches navigable waters or adjoining shorelines, not the total amount of the discharge released from the container. Owners and operators do not need to include the amount of oil discharges that are the result of natural disasters, acts of war, or terrorism when evaluating this criterion. *See* Section V.M.5.c of the December 5, 2008 notice at 73 FR 74279 for more information about this amendment.

No comments specific to reportable discharges from flow-through process vessels were received in the 2009 comment period. Based on this and review of all relevant facts, the Agency is making no change to this provision.

f. Alternative Compliance Measures for Produced Water Containers

Produced water containers are typically located within a tank battery at an oil production facility where they are used to store well fluids that result after marketable crude oil is separated from the fluids extracted from the reservoir and prior to disposal, subsequent use (*e.g.,* re-injection or beneficial reuse), or further treatment. Under normal operating conditions, a layer of oil may be present on top of the fluids in these produced water 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. These produced water containers are typically at the end of the oil treatment process and often accumulate emulsified oil not captured in the separation process.[4]

In the December 5, 2008 SPCC rule amendments, EPA adopted two alternatives for produced water containers at oil production facilities. Under the first alternative, EPA exempted produced water containers at oil production facilities from the requirements of the SPCC rule if a PE certified, as part of the SPCC Plan, that the contents of a produced water container, if completely discharged, would not contain oil in amounts that may be harmful (as described in 40 CFR part 110) based on the efficiency of the oil/water separation technology used. Under this alternative, the capacity of the exempted containers would not count towards the facility aggregate oil storage capacity. EPA is removing this exemption. See the discussion in section V.C.3 of this notice.

For those produced water containers that were not eligible for the exemption, the facility owner/operator could comply with the general secondary containment requirements in lieu of sized secondary containment and conduct visual inspections, maintenance and corrective action, if a PE described in the SPCC Plan and certified that a practice was established that was designed to remove the amount of free-phase oil from the produced water container on a scheduled and routine basis. These containers would count toward the aggregate oil storage capacity. If the production facility had certain types of oil discharges or failed to meet the requirements of this part of the rule, the facility would no longer be eligible for the exemption or the streamlined requirements. EPA also promulgated a definition of produced water container to clarify which containers were eligible for these rule provisions.

In this action, EPA is not making any changes to the definition of produced water container in § 112.2 or the alternative compliance measures for produced water containers in lieu of sized secondary containment as finalized in the December 5, 2008 notice. The alternative measures to sized secondary containment requirements and inspections under § 112.9(c)(2) and (c)(3) for produced water containers include: compliance with general secondary containment requirements; implementation of a procedure or process to remove free-phase oil (*e.g.,* skimming program) as certified by a PE; visual inspection; corrective action or repairs to the container; and prompt removal or remediation of oil discharges.

EPA acknowledges comments that expressed general support for, as well as opposition to, the alternatives for produced water containers finalized in the December 2008 notice (73 FR 74236, December 5, 2008). Good general secondary containment practices can be successfully implemented in lieu of sized secondary containment, if such practices are designed by a PE in consideration of 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 Agency acknowledges that skimming operations at produced water containers may operate similarly to separation operations at flow-through process vessels when free phase oil is being removed or recovered from them on a regular basis. Therefore, including the additional compliance measures for produced water containers with procedures to minimize the amount of

[4] *Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation* (40 CFR part 112)) found in the docket for this rulemaking at EPA–HQ–OPA–2007–0584–0015; and Supplemental DOE Information Relating to Oil and Gas Industry Relief from Some SPCC Requirements, found in the docket for this rulemaking at EPA–HQ–OPA–2007–0584–0175.

free-phase oil, including remediation and inspections, is appropriate and consistent with alternative compliance options provided for other bulk storage containers (*i.e.,* flow-through process vessels) which separate oil and water mixtures. As with flow-through process vessels at oil production facilities, EPA remains concerned that these produced water containers are typically located at unattended, often remote facilities, and therefore has retained the additional provisions for maintenance, inspection, and remediation to maintain environmental protection. The Agency agrees with comments that expressed concern regarding the threat of discharges from produced water containers. Oil may be present not only in free phase, but also in other forms, such as in a dissolved phase, emulsion or sludge at the bottom of the produced water container. EPA is addressing these concerns by retaining the additional spill prevention measures in addition to general secondary containment for these containers.

A comment noted that it is common practice to locate produced water bulk storage containers with other bulk storage containers in the tank battery surrounded by sized secondary containment. EPA agrees that some oil production facilities already provide sized secondary containment around their bulk storage containers, including around their produced water containers. Engineered secondary containment measures, such as dikes or berms, are particularly appropriate for oil production facilities (including produced water containers) since these facilities can be remotely located and are often unattended, and thus there may be delays in detecting and mitigating an oil spill. In fact, the data referenced in comments show that a number of spills from produced water containers were specifically contained by a sized secondary containment berm or other man-made structure which prevented the migration of the fluids offsite and to waters. Therefore, the alternative measures for produced water containers under § 112.9(c)(6) are optional. An owner or operator may choose to comply with the sized secondary containment requirements in § 112.9(c)(2) along with the inspection requirements in § 112.9(c)(3). However, because the alternative removal procedure is essential for reducing the amount of free-phase oil in the produced water container, if it is not implemented as described in the Plan or no records are maintained, then the owner/operator must comply with § 112.9(c)(2) and (c)(3).

Additionally, 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 produced water container, then the facility owner or 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)(v) has been retained to provide this requirement. As stated in the December 2008 amendments, a 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)(v). *See* Section V.M.7.b of the December 5, 2008 notice at 73 FR 74287 for more information about this amendment.

Based on this and review of all relevant facts, the Agency is making no change to this provision or to the definition of produced water container.

g. Clarification of the Definition of Permanently Closed Containers

In the preamble to the December 2008 amendments, the Agency addressed 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. There, EPA clarified 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). Consequently, an oil production facility does not have to undergo the expense of permanent closure under 40 CFR part 264 or 265 of RCRA, because the drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil are not subject to those regulations. *See* Section V.M.8 of the December 5, 2008 notice at 73 FR 74290 for the full text of this preamble clarification.

No comments were received in the 2009 comment period addressing the clarifying language and therefore, EPA maintains its position on this clarification.

14. Man-Made Structures

In the preamble to the December 2008 amendments, EPA clarified that, consistent with statements made in the preamble to a 1976 amendment to the SPCC rule (41 FR 34164, December 11, 1976), manmade features, such as drainage control structures and dikes, cannot be used to conclude that there is no reasonable expectation that a discharge from the facility will reach navigable waters or adjoining shorelines. That is, 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. However, EPA noted that it may be 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. *See* Section V.N of the December 5, 2008 notice at 73 FR 74292 for the full text of this preamble clarification.

EPA agrees with the comment that generally supported the clarifications on man-made structures. Based on this and review of all relevant facts, the Agency is making no change to this clarification.

15. Wind Turbines

In the preamble to the December 2008 amendments, EPA clarified that wind turbines meet the definition of oil-filled operational equipment adopted in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006). Thus, the alternative compliance option provided for this type of equipment in § 112.7(k) is available for wind turbines, 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 qualified oil-filled operational equipment the option of preparing 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 chooses 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. *See* Section V.P of the December 5, 2008 notice at 73 FR 74294 for the full text of this preamble clarification.

No comments were received in the 2009 comment period on the

clarification and therefore, EPA maintains its position.

16. Technical Corrections

In the December 2008 amendments, EPA corrected the text of 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 make it explicit that a facility owner or operator must prepare and implement an SPCC Plan.

EPA also amended the introductory paragraph of § 112.12 to delete the phrase ''(excluding a production facility).'' This amendment corrected an inadvertent omission when EPA removed several sections in Subpart C of 40 CFR part 112 that were inappropriate for AFVOs in the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006).

Finally, the Agency amended 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. *See* Section V.Q of the December 5, 2008 notice at 73 FR 74294 for more information about these technical corrections.

Comments generally supported the technical corrections. Based on this and review of all relevant facts, the Agency is making no change to these provisions.

B. Technical Corrections to Provisions of the December 2008 Amendments

EPA is correcting the text of several of the provisions promulgated on December 5, 2008. These corrections further clarify or update the provisions of the December 2008 amendments without making substantive changes to the regulatory requirements.

1. Tier I Qualified Facilities and Appendix G Plan Template

As required in the December 2008 amendments, 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), as well as not have any aboveground oil storage container with a capacity greater than 5,000 U.S. gallons. EPA developed this individual container capacity criterion in order to link any streamlined requirements with a reduced potential for oil discharge. The selection of the maximum individual aboveground container capacity threshold of 5,000 U.S. gallons is consistent with the applicable industry consensus standard that calls for varying levels of inspection requirements based on container size and configuration.

EPA designated qualified facilities that have an 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 was modified to accommodate the tiered approach, the requirements for Tier II qualified facilities remained the same as promulgated on December 26, 2006 (71 FR 77266).

The December 2008 amendments eliminated and/or modified several SPCC requirements for Tier I qualified facilities. For example, the facility diagram requirements (§ 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 at loading racks (§ 112.7(h)) were removed. The list of applicable rule provisions for Tier I qualified facilities is included in § 112.6(a)(3).

The Tier I self-certification requirement is similar in scope to that 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). Consistent with the current requirement for qualified facilities, the owner or operator of a Tier I qualified facility is also allowed to self-certify any technical amendments to the Plan under § 112.6(a)(2), and document this certification in the Plan template (or some other equivalent Plan).

The December 2008 amendments provided the owner or operator of a Tier I qualified facility with 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. The SPCC Plan template for Tier I qualified facilities is intended to facilitate the development of SPCC Plans at Tier I qualified facilities. 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)(1)).

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 following 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. *See* Section V.G of the December 5, 2008 notice at 73 FR 74256 for more information about these technical corrections.

EPA is now further clarifying the earlier amendments, as well as correcting typographical and formatting errors in the following sections of the Appendix G SPCC Plan Template:

- Introduction—in the second sentence, the term ''meet'' was replaced by ''addresses'' for clarity; and a sentence was added to clarify that an owner or operator should follow State and local requirements (such as for permitting, design and construction) and obtain professional assistance, as appropriate;
- Section I, Self-Certification Statement (§ 112.6(a)(1))—points 3c and 3d are combined and edited for increased clarity. The phrase ''By completing this Plan template'' was removed because this text is unnecessary; with this revision, EPA clarifies that completing the template represents the preparation of a Plan, but not its implementation.
- Section II, Record of Plan Review and Amendments. In the Five Year Review (§ 112.5(b)) paragraph, EPA inserted the term ''SPCC Plan'' for clarity.
- Table G–2 Oil Storage Containers and Capacities—In the footnote to the table, EPA inserted the word applicability to the phrase ''qualified facility applicability threshold'' for clarity.
- Table G–3 Secondary Containment and Oil Spill Control—EPA added the phrase ''cleanup occurs'' which was unintentionally not printed in the Federal Register notice for the December 2008 amendments;
- Table G–5 Inspections, Testing, Recordkeeping and Personnel Training—EPA added the word ''bulk'' to clarify that this provision only applies to aboveground bulk storage containers; added citations that were inadvertently omitted; corrected typographical errors; and removed an unnecessary blank row;
- Section A, Onshore Facilities (excluding production) (112.8(b) through (d). 112.12(b) through (d)). The title of this section was amended to correct a typographical error.
- Table G–10 General Rule Requirements for Onshore Facilities—

EPA added the requirement for manual activation of pumps or ejectors and inspection of accumulations prior to discharge, a rule requirement that was unintentionally omitted from this Table; fixed typographical errors; added the word ''bulk'' to clarify that certain provisions only apply to aboveground bulk storage containers; and defined the table border;

- Table G–11 General Rule Requirements for Onshore Oil Production Facilities—EPA defined the table border;
- Table G–15 Checklist of Development and Implementation Criteria for State, Local and Regional Oil Removal Contingency Plans (§ 109.5)—EPA removed inappropriate checkboxes and reformatted the table to be consistent with the other tables in Appendix G; and
- Table G–20 Information provided to the National Response Center in the Event of a Discharge—EPA deleted an unnecessary blank row.

Additionally, EPA is providing technical corrections in § 112.6 and Appendix G to amend the self-certification requirements that refer to produced water containers, as discussed further in Section A.13.f and C.3 of this notice. EPA is also adding extra space in many of the tables and formatting them so that each table begins on a new page.

EPA's amendments to the SPCC rule will have no effect on whether a facility owner or operator must use a PE to meet the State or local requirements, because the SPCC rule does not pre-empt any State or local requirements. In States where the engineer licensing boards have prohibited SPCC Plan self-certification, the owner or operator must have a PE certify the Plan. Although this may limit the relief for Tier II qualified facilities, the owner/operator can develop and certify a Tier I qualified facility Plan to comply with the SPCC rule and have a PE certify the SPCC Plan to meet the state requirements.

2. Underground Emergency Diesel Generator Tanks at Nuclear Power Stations

In the December 2008 amendments, EPA exempted from SPCC applicability underground oil storage tanks deferred from regulation under 40 CFR part 280, as originally promulgated, that supply emergency diesel generators at nuclear power generation facilities licensed by the Nuclear Regulatory Commission (NRC) and that meet the NRC design criteria and quality assurance criteria. EPA amended § 112.1(d)(2)(i) and § 112.1(d)(4) to include an exemption applicable to both tanks that are completely buried and tanks that are below-grade and vaulted. Under 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, including a requirement to provide redundant standby power systems (see 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. NRC Regulatory Guide 1.137 describes an acceptable method to comply with NRC requirements regarding fuel oil systems for standby diesel generators and assurance of adequate fuel-oil quality. *See* Section V. O. of the December 5, 2008 notice at 73 FR 74293 for more information.

The Agency agrees with comments supporting the exemption for emergency diesel generator tanks at nuclear power stations. EPA has further amended § 112.1(d)(4) to clarify that this exemption applies to ''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, provided that such a tank is subject to any Nuclear Regulatory Commission provision regarding design and quality criteria, *including but* not limited to, 10 CFR part 50.'' (Emphasis added to show modified wording.) EPA has concluded that this revision makes this provision easier to understand. EPA has also amended § 112.1(d)(2)(i) to include the phrase ''including but'' before ''not limited to 10 CFR part 50'' for consistency.

3. SPCC Plan Preparation and Implementation for New Oil Production Facilities

The variables associated with the start of operations and the employment of green completion techniques at new oil production facilities could lead to significant changes in necessary storage capacity and facility design. In the December 2008 amendments, therefore, EPA finalized an amendment to allow a new oil production facility a period of six months after the start of operations to prepare and implement an SPCC Plan. EPA excluded oil production facilities from the current requirements at § 112.3(b)(1), and added 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. *See* Section V.M.3 of the December 5, 2008 notice at 73 FR 74272 for more information about this amendment.

This provision does not apply to drilling or workover activities at existing oil production facilities. Drilling and workover operations are subject to the requirements at § 112.3(c) for mobile facilities, and facility owners or operators may implement a general SPCC Plan. This provision also does not apply to an existing oil 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 implemented within six months of the amendment.

EPA agrees with comments supporting the provision to allow new oil production facilities six months to prepare and implement a Plan. On June 19, 2009 (74 FR 29136), EPA amended the compliance date for the amended SPCC rule to November 10, 2010. When the December 2008 amendments were promulgated, the provision applied at a new oil production facility that began operations after July 1, 2009, which was the applicable compliance date. In this action, EPA is making a technical correction to change the compliance date to November 10, 2010, to align with the current SPCC Plan preparation and implementation compliance date for all other facilities.

4. Compliance Date Provisions Specific to Farms

EPA is removing the paragraphs in § 112.3 specific to farms (the current § 112.3(a)(2) and (b)(2)) because on June 19, 2009 EPA established the same the compliance dates for farms as for all other facilities (74 FR 29136); such differentiated provisions are no longer necessary.

This amendment does not remove any regulatory requirement for owners or operators of facilities, including farms, in operation before August 16, 2002, to develop, implement and maintain an SPCC Plan in accordance with the SPCC regulations then in effect. Such facility owners and operators continue to be required to maintain (that is, keep on-site and implement) their Plans during the interim until the November 10, 2010 date for revising and implementing their Plans under the new amendments.

C. Provisions Removed From Final Rule

After review of comments received and consideration of all relevant facts, EPA is removing three of the provisions promulgated on December 5, 2008.

These are described in the section below.

1. Exclusions for Oil Production Facilities and Farms From Loading/Unloading Rack Requirements

In the December 2008 amendments, EPA specifically excluded onshore oil production facilities and farms from the loading/unloading rack requirements at § 112.7(h). This is because the Agency believed, and comments supported, that loading and unloading racks are not typically associated with these types of facilities. *See* Section V.F.3 of the December 5, 2008 notice at 73 FR 74251 for more information about this amendment.

Based on review of comments and consideration of all relevant facts, EPA is removing the specific exclusion for farms and oil production facilities from the loading/unloading rack requirements of § 112.7(h). Thus, EPA agrees with comments received on this amendment stating that certain facilities (*i.e.,* farms and oil production facilities) should not be treated differently than other facilities, even if loading/unloading racks are not typically associated with these types of facilities. In particular, the new definition for loading/unloading rack (finalized in December 2008 at § 112.2) clarifies the type of equipment that is subject to the requirements at § 112.7(h), eliminating the uncertainty that may have existed at farms and oil production facilities. For facilities (including farms and oil production facilities) that do not have a loading/unloading rack as defined in § 112.2, the provisions at § 112.7(h) do not apply; therefore, a specific exclusion for facilities based on the assumption that they do not have loading/unloading racks is unnecessary.

EPA does not believe there is any basis to specifically exclude loading/unloading racks from the requirements at § 112.7(h) simply because they are not typically associated at a facility within a specific industry sector.

2. Alternative Qualified Facility Eligibility Criteria for an Oil Production Facility

In the December 2008 amendments, EPA finalized a provision that provided alternative criteria to identify qualified facilities in the onshore oil production sector. The alternative qualified facility eligibility criteria for an oil production facility were: (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. EPA developed these alternative criteria because most oil production facilities would not be eligible as Tier I or Tier II qualified facilities that would allow them the option to self-certify their SPCC Plans because they generally exceed the maximum oil storage capacity criterion.

In this action, EPA is removing the alternative qualified facility eligibility criteria provision for oil production facilities in the December 2008 amendments (as described in Section V.M.6, 73 FR 74280) by amending § 112.3 to remove (g)(2)(i) and (ii), and revising (g)(2). Paragraph 112.3(g)(2) is amended to state that: ''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 has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less.''

EPA is taking this action based on review of all comments received, including those comments that raised serious questions with this specific exclusion and consideration of all relevant facts. In particular, the Agency has reconsidered its decision and concluded that the alternative qualified facility eligibility criteria for onshore oil production facilities will not effectively protect the environment from discharges of oil in quantities that may be harmful. The Agency also believes a PE should be involved in the development and certification of an SPCC Plan, unless the oil production facility is eligible to self-certify their Plans based on the qualified facilities criteria finalized in December 2006, because they typically have complex equipment and store large quantities of oil. These facilities are of further concern because they typically have operations in which oil flows continuously in unattended, remote locations and therefore pose an environmental threat.

Allowing unrestricted oil storage capacity undermines the existing qualified facility eligibility criteria and may pose an environmental risk. Many small oil production facilities produce low quantities of oil on a daily basis. EPA intended to provide these small oil production facilities an alternative approach to the existing 10,000 U.S. gallon aggregate aboveground oil storage capacity qualified facility eligibility criteria. The qualified facility eligibility criterion limits the oil storage capacity, restricting this option to only those facilities with a smaller discharge potential. Although a small oil production facility produces low quantities of oil on a daily basis, the Agency recognizes that the accumulated quantity stored can far exceed 10,000 U.S. gallons. Consequently, the Agency has determined that the alternative qualified facility eligibility criteria for oil production facilities are not as protective of the environment as the qualified facility criteria promulgated on December 26, 2006 (71 FR 77266).

Based upon EPA's understanding of the particular aboveground oil storage container capacities and the nature of the fluids handled at certain small oil production facilities, the Agency has concluded that the criteria established in the December 2008 amendments specific for oil production facilities are not an appropriate basis to determine whether an owner or operator of such a facility is a ''qualified facility,'' and be eligible to self-certify his SPCC Plan. The alternative eligibility criteria in the December 2008 amendments for oil production facilities (73 FR 74236) do not serve to identify a qualified facility consistent with the approach promulgated in the December 26, 2006 amendments (71 FR 77266), which focused on facilities with small oil storage capacities.

The ten barrels or fewer of oil per day production rate criterion was used in the December 2008 rulemaking because it is consistent with the definition of a ''stripper well,'' as codified under the CWA in 1979 (see 40 CFR 435.60) and used by the Interstate Oil and Gas Compact Commission (IOGCC).[5] These wells are often referred to as ''marginal wells.'' This criterion limits the total flowrate of oil at the facility, but it does not restrict the storage capacity. An oil production facility with only marginal wells may accumulate large amounts of oil in a relatively short period of time due to the large amount of oil and water

[5] *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).

mixtures typically stored at stripper well facilities. Without a limit on storage capacity, the Agency is concerned this approach increases the likelihood that relatively high-volume facilities will self-certify their SPCC Plan without the spill prevention benefits afforded by PE review and certification. This may also lead to certain oil production facilities that could reasonably be expected to cause substantial harm to the environment, and therefore subject to FRP requirements under 40 CFR 112.20, to potentially qualify to self-certify SPCC Plans under the alternative criteria.

Finally, the production rate criterion does not include the associated fluids, such as produced water, which typically contains oil. Marginal or stripper wells are often older and near the end of their production life. The fraction of produced water generated by each stripper well may be far greater than that generated by other producing wells and will likely require significant storage container capacity prior to re-injection or removal from the facility. The Agency agrees with the comment that stated there may be containers storing produced water and oil in large quantities (*e.g.*, up to one million gallons) at oil production facilities qualifying under these alternative criteria. The Agency has determined that establishing a threshold for the production rate per well does not limit the amount of oil storage, including oils in associated fluids.

The alternative qualified facility eligibility criteria for production facilities includes more complicated facilities that may pose a higher risk of oil discharge. EPA intended the alternative qualified facility criteria for oil production facilities to identify simple, uncomplicated operations consistent with the approach used for all other qualified facilities. EPA reconsidered the type and scale of operations and the equipment involved at those oil production facilities that may meet the alternative criteria, and concluded that they are generally more complex than the non-production facilities eligible under the qualified facility approach in the December 26, 2006 amendments (71 FR 77266).

Although there may be some similarities across oil production facilities, each is unique and tailored to address factors, such as the oil field, production rate, type of fluid, location on a platform or onshore, fluid viscosity, separation process, and type of water injection or disposal. Given these factors, an oil production facility's configuration and degree of complexity is variable, regardless of flow rate.

EPA agrees with the comment that stated that a small production facility is not necessarily less complex than any other oil production facility. Small oil production operations often require the same equipment, including pumping well heads, pump jacks, flowlines, separators, heater-treaters, crude oil and produced water containers, fittings, headers, valves, electrical lines and electrical motors. Failure of any of this equipment may cause an oil discharge.

In the December 2008 amendments, EPA finalized a criterion that allows the owner or operator of a facility with no more than two producing wells per single tank battery and an injection well the option to self-certify his SPCC Plan. After review of relevant facts and comments, the Agency now has concluded that an oil production facility with injection wells, regardless of the number of producing oil wells, is more complex than the intended simplicity inherent in the qualified facility eligibility criteria. An oil production facility with injection would have equipment in addition to that found in the tank battery. One or more injection wells are typically used to inject produced water underground for disposal or to enhance recovery of the oil. The underground injection process adds additional piping to the oil production facility design and layout. 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. This additional equipment offers more opportunity for a potential oil discharge.

By setting a maximum number of wells as part of the alternative eligibility criteria, the Agency intended to increase the likelihood these wells were co-located with the tank battery or in relatively close proximity. However, an oil production facility with up to four wells may have long flowlines. Flowlines and intra-facility gathering lines may extend for long distances to reach a tank battery, may cross or be located closer to a navigable waterway or adjoining shorelines than the tank battery, and often runs over land owned by an entity other than the owner or operator of the oil production facility. The Agency has concluded that the criterion that limits the number of wells does not necessarily restrict the lengths of these lines, particularly with the amendment to the definition of ''facility,'' which provides the owner or operator of the facility with flexibility in defining the oil production facility, such that a formal PE certification and review, particularly for the flowline and intra-facility gathering line maintenance program, at these facilities is likely appropriate. Furthermore, the Agency recognizes that because there is currently no industry standard for flowline maintenance, the need for a PE to develop a flowline and intra-facility gathering line maintenance program in accordance with good engineering practice is even more significant.

As EPA stated in the preamble of the December 2006 final rule, facilities handling smaller amounts of oil are typically simpler in layout and operation. Most facilities with an oil storage capacity of 10,000 gallons or less are in industrial sectors that are end consumers of oil (i.e., farms, real estate, rental and leasing, retail trade, construction). These facilities generally tend to use oil on-site for heating purposes, or to fuel emergency power generators or heavy machinery. The configuration of the oil-related equipment tends to be relatively standard and simple. Oil is commonly stored in a few bulk storage containers which are often bought off-the-shelf from a tank manufacturer or installer (*e.g.,* standard UL–142 tanks) and connected with few short lengths of piping (see December 26, 2006, 71 FR 77270). This is generally not the case at oil production facilities. Therefore, for the reasons discussed above, the alternative qualified facility criteria for oil production facilities finalized in the December 2008 final rule did not achieve the result of limiting the eligibility to self-certify SPCC Plans to those facilities with simple configurations and operations.

The volume of oil discharged from production facilities is increasing. As described in EPA's study of the oil production sector (found in the docket for this rulemaking at EPA–HQ–OPA–2007–0584–0015), there were 401,072 marginal oil wells (*i.e.*, wells producing up to 10 barrels per day) operating in 2005. The percent of marginal oil wells varies by State, from approximately 15 percent in South Dakota, to 100 percent in several Appalachian and mid-Western States. While individual production rates may be small (an average of 2.2 barrels per day), marginal wells collectively represent a significant, and growing, share of U.S. oil production, due to the overall decline in domestic production, particularly from onshore fields. Again, as described in EPA's study of the oil production sector, according to the Department of Energy, as of 2005, about 19 percent of crude oil produced in the U.S. came from marginal wells. In the lower 48 States, marginal wells

represented approximately 30 percent of onshore oil production in 2003.[6]

The SPCC regulation is based on oil storage capacity and the potential for discharges of oil in quantities that may be harmful to navigable waters or adjoining shorelines. The Agency has concluded that small oil production facilities (*i.e.*, those comprised of marginal wells) have and can continue to pose a threat of an oil discharge to navigable waters or adjoining shorelines. EPA has reviewed the spill data for the oil production sector contained in its 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* (40 CFR part 112)) found in the docket for this rulemaking at EPA–HQ–OPA–2007–0584–0015). While these data do not characterize the extent of environmental damage caused by oil discharges from small oil production facilities, they demonstrate that the volume of oil discharged from onshore oil production facilities are increasing, and the number of oil discharges on a yearly basis has remained the same, despite a decline in crude oil production. In addition, oil production facilities are often unattended, and typically located in remote areas, which potentially increases the risk of environmental damage from an oil discharge. Therefore, the combination of the potential for oil storage capacity greater than the 10,000 U.S. gallons threshold, identified risk factors and spill history leads EPA to conclude that these facilities need the benefit of PE review and certification of their SPCC Plans.

Furthermore, information received by the Agency from other sources, which are summarized in the docket in EPA's "*Preliminary Assessment of SPCC Compliance Costs and Energy Impacts on Oil Production and Exploration*": *Overall Conclusions and Response to Comments* (EPA–HQ–OPA–2007–0584–0173), indicate increased spill potential due to equipment failure as oil production equipment ages, particularly if maintenance has been inadequate. Much of the U.S. oil production infrastructure has been in place for decades. Marginal wells, in particular, are often older wells nearing the end of their production life, and may have older equipment that may be more prone to failure.

EPA recognizes that several comments expressed general support for the alternative qualified facility eligibility criteria for an oil production facility. However, upon reconsideration of all relevant facts, including comments opposing the approach, EPA has decided for the reasons explained in detail above to remove the provisions related to alternative qualified facility eligibility criteria for an oil production facility in the final rule.

3. Exemption for Produced Water Containers

In this action, EPA is amending or removing all rule elements associated with the exemption for produced water containers in the December 2008 amendments (Section V.M.7, 73 FR 74285) as described below:

- Amending § 112.1 to remove paragraphs (d)(2)(ii)(F) and (d)(12);
- Amending § 112.3 by removing paragraph (d)(1)(vi) and designating paragraph (d)(1)(vii) as (d)(1)(vi).
- Amending § 112.5 by removing paragraphs (b) and (c), revising paragraph (d) to remove reference to deleted paragraphs, and redesignating paragraphs (d) and (e) as paragraphs (b) and (c);
- Amending § 112.6 by revising paragraphs (a)(1)(vii), (b)(1)(vii), (b)(3)(iii), and (b)(4)(ii) to remove references to the produced water container exemption and associated appurtenances downstream from the container;
- Amending § 112.7 by revising paragraph (a)(3) to remove reference to produced water containers;
- Amending § 112.9 by revising paragraph § 112.9(c)(6); and
- Revising the reference to produced water containers in Appendix G—Tier I Qualified Facility SPCC Plan Template.

EPA is taking this action after reviewing all of the relevant facts and all of the comments received on this issue for the October 2007 proposed rule (72 FR 58378 October 15, 2007) and the December 2008 amendments (73 FR 74236 and 74 FR 5900 February 3, 2009). Several comments expressed support for the exemption, with one comment arguing that regulation of produced water is outside the SPCC rule's jurisdiction. EPA also received comments that opposed the exemption for produced water containers. Based on this review, the Agency has determined that the exemption for produced water containers would not effectively protect the environment from discharges of quantities of oil that may be harmful. Comments submitted during the 2009 comment period also pointed out that the provisions for produced water containers were confusing and unnecessary, with one comment stating that the exemption lacked a supportable rationale. Other comments noted that discharges from produced water containers contain oil, and discharges occur and can cause harm. These comments are discussed in more detail below.

Containers with no oil are not subject to the SPCC rule. The Agency agrees with comments that a fluid containing no oil is not subject to the SPCC requirements. A container that does not hold oil is not regulated under the SPCC rule; therefore, a specific exemption for produced water containers that holds no oil is unnecessary. However, EPA notes that generally, produced water containers may contain oil in sufficient quantity to cause a harmful discharge. In fact, the Agency received relatively little specific information on whether there are unique characteristics to differentiate produced water containers from other bulk storage containers found at onshore oil production facilities, and none that warrant differentiated treatment.

Produced water containers typically contain oil. Several comments expressed support for an exemption of produced water containers from SPCC regulation. These comments stated that produced water containers should not be subject to the rule. Most of the comments received, however, focused on the composition of the produced water mixture and noted that produced water generally contains varying quantities of oil. While none of the comments offered detailed information on the amount of free-phase oil measured in produced water containers as requested by EPA, they generally confirm that the presence of oil in produced water is not exceptional, but rather can be expected as a matter of regular operations at oil production facilities. Oil may be recovered even after the produced water has undergone several separations at the onshore production facility, prior to reinjection of the produced water into the geological formation. Comments point out that produced water containers have an oil layer floating on top of the water. One comment indicated that produced water contains about 0.1 percent oil, but did not indicate whether this fraction represents oil dissolved or suspended in the produced water mixture and whether produced water containers may accumulate additional oil as a free-phase layer. Information received by the Agency from other sources, which are summarized in the docket (EPA–HQ–OPA–2007–0584–0015 and EPA–HQ–OPA–2007–0584–0175), indicates that

[6] *Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation* (40 CFR part 112)) found in the docket for this rulemaking at EPA–HQ–OPA–2007–0584–0015, see page 9.

while the fraction of oil dissolved or suspended within the aqueous phase may be low, additional oil is often found as a free-phase layer floating at the surface of the produced water container. In the event of a discharge, the aqueous phase of the produced water mixture may serve to carry the oil farther overland and into waters than cases where crude oil alone is discharged.

The Agency received no additional data on the efficiency of separators typically found at onshore oil production facilities or comments on how the separation efficiency may vary over time. The Agency agrees that residence time is a key factor in achieving separation of the crude oil from other well fluids. Many oil production facilities rely on gravitational separation and long retention times to separate and recover the crude oil. Based on information reviewed by the Agency, included in the docket to the rule, separation equipment found at onshore oil production facilities are not perfectly efficient at separating oil from the produced fluids and residual oil may remain with the produced water and further separate in quiescent conditions present in the produced water container. Furthermore, separation equipment likely becomes less efficient with age and use, thus allowing more oil into a produced water container. It is therefore not exceptional for a layer of oil to accumulate in a produced water container.

In some cases, produced water containers are used as part of the separation process. In the preamble to the December 2008 amendments, EPA suggested that produced water containers may be similar to flow through-process equipment when they are used as separators (71 FR 74288, December 5, 2008). However, one comment pointed out that produced water containers are typically atmospheric storage tanks, whereas, process vessels have a pressure rating above atmospheric. EPA agrees with the comment and acknowledges that produced water containers are typically used as storage containers at the end of the separation process. Produced water containers are bulk storage containers and, therefore, are subject to the bulk storage container requirements under § 112.9(c). However, the Agency acknowledges that owners and operators of these containers may use a process to remove free-phase oil on a regular basis. To address this, the Agency is retaining the option for owners and operators of produced water containers to comply with alternative measures in lieu of sized secondary containment when a PE describes in the Plan and certifies a procedure or process to remove free-phase oil (*e.g.*, a skimming program) has been established and the facility complies with general secondary containment requirements; visual inspection; corrective action or repairs to the container; and prompt removal or remediation of oil discharges from produced water containers. For a further discussion of the alternative compliance option for produced water containers, *see* section V.A.13.f of this notice.

Produced water containers are a source of oil discharges. EPA agrees with comments arguing that spill data shows that produced water containers are a source of oil discharges from onshore oil production facilities. The Agency's analysis of spill notification data compiled by the National Response Center (NRC) for the period of 2000 through 2005, for example, identified 314 oil discharges described as having originated from tanks, including over a quarter specifically described as involving produced water containers, compared to 20 percent from crude oil stock tanks (the remaining 55 percent involved tanks holding unspecified fluids). The Agency believes that additional discharges may have been reported to State and local authorities.

Produced water containers may be equally or even more likely to fail than other containers in the tank battery. Information reviewed by the Agency and presented in the public docket (EPA–HQ–OPA–2007–0584–0015) showed corrosion as a common cause of oil and produced water discharges at onshore oil production facilities. The higher salt content of produced water fluids as compared to crude oil may lead to the increased corrosion rate of metallic components of the produced water storage system. The oil production process is configured to send continuously flowing and treated well fluids to the storage containers, with the produced water containers often located at the end of that process. The Agency's review of the circumstances of past oil discharges reported to the NRC shows that produced water containers often receive the additional well fluids when treatment equipment or appurtenances fail or when a pumper's scheduled visit is delayed, thereby increasing the amount of oil entering the produced water container and the probability that the tank will overflow, or otherwise discharge oil to navigable waters or adjoining shorelines.

Discharges of produced water can cause harm. Produced water can cause harm to surface waters, flora, fauna, and other sensitive resources and ecosystems. As described in the *Summary of DOE Comments and EPA Response* (EPA–HQ–OPA–2007–1486–0175), and the *Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation* (40 CFR part 112) (EPA–HQ–OPA–2007–1486–0015) the impacts of produced water discharges are similar to the impacts observed following other oil discharges. Additionally, the co-location of oil production facilities with other land users, including farmers and ranchers, raises additional concern over potential contamination of water resources that are essential to agricultural production. One comment expressed concern that produced water could contaminate surface waterways, groundwater and drinking water; kill fish, birds, and wildlife; and cause severe health effects in humans and impact wildlife habitats. The comment also noted that it takes only a small amount of oil to affect a large area of water. EPA agrees with this comment. 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 water or upon adjoining shorelines. In the **Federal Register** notice published when EPA provided revisions to 40 CFR part 110, EPA stated that ''[e]vidence from reviews of laboratory studies further demonstrates that very small amounts of oil, *e.g.*, less than 1 mg/L (1 ppm) can have lethal and sublethal effects on a wide variety of organisms.'' (52 FR 10716, April 2, 1987). Therefore, even if a produced water container has a very small amount of oil, the container still holds the potential to cause harm.

Upon reconsideration of all relevant facts, including comments opposing the approach (as described above), EPA has decided for the reasons explained in detail above to remove the provisions related to the produced water containers exemption in the final rule.

D. Oil and Natural Gas Pipeline Facilities

In Section V.M.9 of the December 2008 amendments (73 FR 74291, December 5, 2008), EPA provided preamble discussion regarding EPA and DOT jurisdiction. In this notice, EPA is further clarifying the jurisdiction between EPA and DOT to address confusion within the regulated community and to note that future inter-Agency discussions in the appropriate

forum on this issue will continue. The Agency continues to base its jurisdictional boundaries on Executive Order 12777 and the 1971 Memorandum of Understanding (MOU) between DOT and EPA (36 FR 24080, November 24, 1971). Under Executive Order 12777, EPA has jurisdiction over non-transportation-related onshore and offshore facilities and DOT has jurisdiction over transportation-related onshore and offshore facilities. Under the 1971 MOU (*See* Appendix A of part 112), transportation-related activities regulated by DOT and non-transportation-related activities regulated by EPA are defined.

Equipment, operations, and facilities are subject to DOT jurisdiction when they are engaged in activities subject to DOT jurisdiction. If those same facilities are also engaged in activities subject to EPA jurisdiction (such facilities are considered a ''complex''), such activities would subject the equipment, operation, or facility to EPA jurisdiction, as well. ''Complex'' is defined at § 112.2 as a ''facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.'' This definition was promulgated in 1994 (59 FR 34070, July 1, 1994) when EPA first required certain facility owners and operators to prepare FRPs to respond to a worst-case discharge of oil and to a substantial threat of such a discharge. During the development of the FRP rule, EPA and other Federal agencies with jurisdiction under OPA and E.O. 12777 (including DOT) met to create an implementation strategy that minimized duplication, wherever practicable and recognized State oil pollution prevention and response programs. One of the critical outgrowths of these efforts was the development of a definition for, and a consistent approach to regulate ''complexes.'' The jurisdiction over a component of a complex is determined by the activity involving that component. An activity at one time might subject a facility to one agency's jurisdiction, while a different activity at the same facility using the same structure, container or equipment might subject the facility to the jurisdiction of another agency.

Owners and operators have questioned how to determine whether a container (*e.g.*, a breakout tank), an activity (*e.g.*, drag reducing agent storage/injection or other transfer activities) or a facility (*e.g.*, a terminal or a pipeline facility) is considered ''transportation-related'' or ''non-transportation-related,'' and, subsequently, whether DOT and/or EPA regulatory requirements apply. To clarify jurisdiction, particularly regarding jurisdiction over breakout tanks and activities at certain facilities, in February 2000, EPA and DOT signed a joint memorandum, ''Jurisdiction over Breakout Tanks/Bulk Storage Tanks (Containers) at Transportation-Related and Non-Transportation-Related Facilities'' (February 4, 2000). Industry has raised questions and concerns about duplicative jurisdiction in the joint memorandum and for other oil storage containers and activities not specifically addressed by it. EPA will continue to work with DOT/PHMSA to provide such clarification and to minimize dual regulation, where appropriate.

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 a regulatory impact analysis (RIA) of the potential costs and benefits associated with this action entitled, ''Regulatory Impact Analysis for the 2008 and 2009 Final Amendments to the Oil Pollution Prevention Regulations (40 CFR part 112)'' (October 20, 2009). A copy of the RIA is available in the docket for this rulemaking and is briefly summarized below.

EPA estimated the combined economic impact of the December 2008 amendments and the changes made to it in this action. The SPCC rule requirements at 40 CFR part 112, as amended in July 2002 (67 FR 47042, July 17, 2002) is the baseline to estimate the potential cost savings to regulated facilities associated with these amendments. The RIA compares the compliance costs for owners and operators facilities affected by the 2008 and 2009 amendments to the costs associated with the 2002 SPCC rule revisions. EPA estimated cost savings from the following rule elements: (1) Exempt hot-mix asphalt (HMA) and HMA containers; (2) exempt pesticide application equipment and related mix containers when crop oil or adjuvant oil is added to pesticide formulations; (3) clarify the applicability of mobile refueler requirements to farm nurse tanks; (4) exempt residential heating oil containers, including those located at farms; (5) amend the definition of ''facility'' to clarify the currently existing flexibility associated with describing a facility's boundaries; (6) amend the facility diagram requirement to provide additional clarity; (7) define ''loading/unloading rack''; (8) provide streamlined requirements for a subset of qualified facilities; (9) amend the general secondary containment requirement to provide more clarity; (10) extend the regulatory relief provided to mobile refuelers in 2006 to non-transportation-related tank trucks at facilities subject to the SPCC rule; (11) amend the security requirements; (12) amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards; (13) amend the integrity testing requirements for containers that store AFVOs that meet certain criteria; (14) tailor a number of requirements at oil production facilities; and (15) exempt underground oil storage tanks at nuclear power generation facilities. EPA also provided clarification in the preamble to the December 2008 amendments 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, excluding those that only provide clarity, 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 the rule amendments are:

- 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.

In its RIA, EPA uses four key assumptions:

1. Cost minimization behavior applies to all owners and operators of facilities that qualify for the reduced regulatory requirements, whereby all those affected would seek burden relief.

2. Consistent with EPA's guidelines for conducting economic analyses, all existing owners and operators of facilities are in full compliance with the July 17, 2002 amendments to the SPCC rule (67 FR 47042).

3. 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 qualifies for reduced security requirements under the rule amendment 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 under 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.

4. 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 provision and for the rule amendments in total. For several rule amendments, such as the security requirements and facilities handling AFVOs, EPA did not have data on the number of affected facilities within a general industry sector; thus, it developed three scenarios to evaluate a range of cost savings.[7] EPA estimates that the total cost savings for this action is about $95 million on an annualized basis (2007$). The total cost savings estimates range from a low of about $92 million to a high of about $100 million on an annualized basis (2007$).These estimates are not necessarily additive, given that they do not account for interactions that might exist among the various components of the rule.[8]

The oil production sector and farms will benefit from multiple components of the 2008 and 2009 amendments. Specifically, farms will benefit from the exemption of pesticide application equipment, the exemption of residential heating oil containers, the clarification to the facility diagram requirements, the streamlined requirements for Tier I qualified facilities, the final amendments to the security requirements, and the amendments to integrity-testing requirements. 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 clarification to the facility diagram requirements, the streamlined requirements for Tier I qualified facilities, the six-month delay in SPCC Plan preparation and implementation, the alternative measures for flow-through process vessels and produced water containers in lieu of 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 $35 million on an annualized basis (2007$).

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	
Applicability of Mobile Refueler Requirements to Farm Nurse Tanks	$4.
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:	
Define "loading/unloading rack"	No cost impact.
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.

[7] 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 AFVO facilities would have food oil tanks that are eligible.

[8] Certain industry sectors are affected by multiple rule provisions. As a result, taking advantage of one revised provision might preclude a facility from benefiting from another amendment. The six-month delay is specifically designed to allow time for the facility oil production operations to stabilize in order to avoid the need for multiple certifications of the Plan by a PE.

EXHIBIT 1—ESTIMATED COMPLIANCE COST SAVINGS FOR THE REGULATORY AMENDMENTS—Continued

Rule component/scenario	Annualized cost savings ($2007, in millions, 7% discount rate)
Alternative compliance measures for 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	$95.

[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.

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 0328.15.

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 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 CWA, as implemented by 40 CFR part 112.

EPA estimates that in the absence of the December 2008 final rule and the changes made in this action, approximately 623,000 existing facilities would be subject to the SPCC rule in November 2010 and would be expected to 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.[9]

Under the December 2008 and 2009 amendments, EPA is: exempting 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 from the SPCC requirements; 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, rather than the ''production facility'' definition, governs the applicability of 40 CFR part 112; amending the facility diagram requirement to provide additional clarity for all facilities; providing a definition for the term ''loading/unloading rack,'' which determines whether a facility is subject to the provisions at § 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 its security measures to the facility's specific characteristics and location, which are the same as those provided for qualified facilities, as promulgated in December 2006; 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, streamlining 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 the sized secondary containment requirements, providing an alternative option for produced water containers to comply with general secondary containment and additional oil spill prevention measures including a PE certified program to remove free-phase oil from the surface of the produced water container in lieu of the sized secondary containment requirements, establishing more specific requirements for the flowline/intra-facility gathering line maintenance program, providing an alternative compliance option for contingency planning in lieu of secondary containment for flowlines and intra-facility gathering lines at oil production facilities, providing an exemption for certain intra-facility

[9] 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.

gathering lines that are regulated by DOT, and clarifying the definition of ''permanently closed'' as it applies to an oil production facility.

Under the 2008 and 2009 final amendments, an estimated 640,000 regulated facilities are subject to the SPCC information collection requirements of this rule in 2010.[10] 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 rule amendments would reduce capital and operation and management costs by approximately $7.5 million on an annualized basis. 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 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 the December 2008 amendments and the changes made in this action 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 2008 and 2009 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 a facility's specific characteristics and location, which are the same as those provided for qualified facilities, as promulgated in December 2006; replace the current integrity testing requirements with the regulatory requirements for a qualified facility promulgated in December 2006; 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 a number of amendments to tailor the requirements for oil production facilities to address concerns raised by the oil production sector, respectively.

Overall, EPA estimates that the December 2008 amendments and the revisions made in this action will reduce annual compliance costs by approximately $95 million on an annualized basis (2007$) 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 2008 and 2009 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 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

[10] 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.

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 action 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. The December 2008 final rule and the changes made in this action would reduce compliance costs on owners and operators of affected facilities by approximately $95 million on an annualized basis (2007$), 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.''

The December 2008 amendments and the changes made in this action do 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 action 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 Risks and 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 the combined impact of the December 2008 final rule and of the changes made in this action is economically significant, 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 action 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 action 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, while increasing the level of compliance with the SPCC program requirements, which should provide greater environmental protection.

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 effective on January 14, 2010.

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, Oil spill prevention, Penalties, Petroleum, Reporting and recordkeeping requirements, Secondary containment, Security, Tanks, Unloading racks, Water pollution control, Water resources.

Dated: November 5, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended 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 paragraph (d)(2)(i);
■ b. By removing paragraph (d)(2)(ii)(F);
■ c. By revising paragraph (d)(4); and
■ d. By removing paragraph (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, including, but not limited to, 10 CFR part 50. The completely buried storage capacity of a facility also excludes the capacity of a container that is ''permanently closed,'' as defined in § 112.2 and the capacity of intra-facility gathering lines subject to the regulatory requirements of 49 CFR part 192 or 195.

* * * * *

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

* * * * *

■ 3. Amend § 112.3 as follows:
■ a. By designating paragraph (a)(1) as paragraph (a), and removing paragraph (a)(2);
■ b. By revising the newly designated paragraph (a);
■ c. By removing paragraph (b)(2), and designating paragraph (b)(3) as (b)(2);
■ d. By revising paragraph (b)(1) and the newly designated paragraph (b)(2);
■ e. By removing paragraph (d)(1)(vi), and designating paragraph (d)(1)(vii) as (d)(1)(vi);
■ f. By revising the newly designated paragraph (d)(1)(vi);
■ g. By revising paragraph (g)(2).

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

* * * * *

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, and implement the Plan no later than November 10, 2010. If your onshore or offshore facility becomes operational after August 16, 2002, through November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before November 10, 2010.

(b)(1) If you are the owner or operator of an onshore or offshore facility (excluding oil production facilities) that becomes operational after November 10, 2010, 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.

(2) If you are the owner or operator of an oil production facility that becomes operational after November 10, 2010, 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) * * *

(1) * * *

(vi) That, if applicable, for a produced water container subject to § 112.9(c)(6), 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) * * *

(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 has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less.

■ 4. Amend § 112.5 as follows:

■ a. By removing paragraphs (b) and (c) and designating paragraph (d) as paragraph (b)

■ b. By revising the newly designated paragraph (b); and

■ c. By designating paragraph (e) as paragraph (c).

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

* * * * *

(b) Notwithstanding compliance with paragraph (a) 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.''

* * * * *

■ 5. Revise § 112.6 as follows:

■ a. By revising paragraph (a)(1)(vii);

■ b. By revising paragraph (b)(1)(vii);

■ c. By revising paragraph (b)(3)(iii); and

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

§ 112.6 Qualified Facilities Plan Requirements.

* * * * *

(a) * * *

(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 measures pursuant to § 112.9(c)(6) for produced water containers and any associated piping; and

* * * * *

(b) * * *

(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 measures pursuant to § 112.9(c)(6) for produced water containers and any associated piping, except as provided in paragraph (b)(3) of this section; and

* * * * *

(3) * * *

(iii) *Produced Water Containers.* Your Plan may not include any alternative procedures for skimming produced water containers 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) * * *

(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. Such measures must be reviewed and certified, in writing, by a licensed Professional Engineer, in accordance with § 112.3(d)(1)(vi).

* * * * *

■ 6. Amend § 112.7 as follows:

■ a. By revising paragraph (a)(3) introductory text; and

■ b. By revising paragraph (h) introductory text.

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

* * * * *

(a) * * *

(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). 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:

* * * * *

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

* * * * *

Subpart B—[Amended]

■ 7. Amend § 112.9 by revising paragraph (c)(6) to read as follows:

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

* * * * *

(c) * * *

(6) *Produced water containers.* For each produced water container, comply with § 112.9(c)(1) and (c)(4); and § 112.9(c)(2) and (c)(3), or comply with the provisions of the following paragraphs (c)(6)(i) through (v):

(i) 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)(vi). 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).

(ii) 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.

(iii) 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.

(iv) Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges

associated with the produced water container.

(v) 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).

* * * * *

■ 8. Revise Appendix G to Part 112 to read as follows:

BILLING CODE 6560–50–P

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 addresses 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. When making operational changes at a facility that are necessary to comply with the rule requirements, the owner/operator should follow state and local requirements (such as for permitting, design and construction) and obtain professional assistance, as appropriate.

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; 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 measures pursuant to §112.9(c)(6) for produced water containers and any associated piping;
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 any 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; must follow the provisions of 40 CFR part 109; and must include 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.

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 SPCC Plan 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[a] and completely buried tanks[b]) 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 [c]	_____ gallons
	Total Completely Buried Storage Capacity	_____ gallons
	Facility Total Oil Storage Capacity	_____ gallons

[a] 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.

[b] 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 applicability threshold.

[c] 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 cleanup occurs.	☐

[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) and (d)(4), 112.9(c)(3), 112.12(c)(6) and (d)(4)):

Table G-5 Inspections, Testing, Recordkeeping and Personnel Training	
An inspection and/or testing program is implemented for all aboveground bulk storage containers and piping at this facility. *[§§112.8(c)(6) and (d)(4), 112.9(c)(3), 112.12(c)(6) and (d)(4)]*	☐
The following is a description of the inspection and/or testing program (e.g. reference to industry standard utilized, scope, frequency, method of inspection or test, and person conducting the inspection) for all aboveground bulk 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
(9) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or discharge

* * * * *

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) through (d), 112.12(b) through (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. Diked areas may be emptied by pumps or ejectors that must be manually activated after inspecting the condition of the accumulation to ensure no oil will be discharged. *[§§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 bulk 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 bulk storage 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, elevated 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	☐

Table G-10 General Rule Requirements for Onshore Facilities	
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:	☐
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 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	☐

Table G-11 General Rule Requirements for Onshore Oil Production Facilities	
• 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 are 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.	☐
• 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.	☐
(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.	☐

Table G-15 Checklist of Development and Implementation Criteria for State, Local and Regional Oil Removal Contingency Plans (§109.5)[a]	
(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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