ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2007–0584; FRL–8479–7]

RIN 2050–AG16

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to amend the Spill Prevention, Control, and Countermeasure (SPCC) rule in order to provide increased clarity, to tailor requirements to particular industry sectors, and to streamline certain requirements for a facility owner or operator subject to the rule. Specifically, EPA is proposing to: Exempt hot-mix asphalt; exempt pesticide application equipment and related mix containers used at farms; exempt heating oil containers at single-family residences; amend the facility diagram requirement to provide additional flexibility for all facilities; amend the definition of ''facility'' to clarify the flexibility associated with describing a facility's boundaries; define ''loading/unloading rack'' to clarify the equipment subject to the provisions for facility tank car and tank truck loading/unloading racks; provide streamlined requirements for a subset of qualified facilities; amend the general secondary containment requirement to provide more clarity; amend the security requirements for all facilities; amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards at all facilities; amend the integrity testing requirements for containers that store animal fat or vegetable oil and meet certain criteria; streamline a number of requirements for oil production facilities; and exempt completely buried oil storage tanks at nuclear power generation facilities. These changes tailor requirements to particular industries for easier and increased compliance, resulting in greater protection of human health and the environment. EPA is also providing clarification in the preamble to this proposed rule on additional issues raised by the regulated community.

DATES: Comments must be received on or before December 14, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OPA–2007–0584, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* EPA Docket, Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OPA–2007–0584. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure 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 in *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 for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA 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 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this proposed rule, contact either Vanessa E. Rodriguez at 202–564–7913 (*rodriguez.vanessa@epa.gov*), or Mark W. Howard at 202–564–1964 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION: The contents of this preamble are:

I. General Information

The Environmental Protection Agency (EPA or the Agency) is proposing several amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule to address a number of issues that have been raised by the regulated community. These proposed amendments are intended to increase clarity, tailor, and streamline certain requirements for a facility owner or operator who is required to prepare an SPCC Plan. Specifically:

- EPA proposes to exempt hot-mix asphalt (HMA) from the SPCC requirements. EPA believes it is unnecessary to apply the SPCC requirements to HMA. EPA would continue to regulate asphalt cement, asphalt emulsions, and cutbacks, which are not hot-mix asphalt, but is describing in this notice the flexibility contained in the SPCC rule regarding these materials.
- EPA proposes certain tailored requirements benefiting farms. Specifically, EPA proposes to exempt pesticide application equipment and related mix containers used at farms, that may currently be subject to the SPCC rule when crop oil or adjuvant oil are added to formulations. In addition, EPA seeks to clarify that the amendment related to mobile refuelers, as promulgated in the December 2006 rule amendments (71 FR 77266, December 26, 2006), can be used by farmers to address oil spill prevention requirements for fuel nurse tanks.
- EPA proposes to exempt residential heating oil containers, i.e., those used solely at single-family residences, from the SPCC requirements. This exemption would apply to aboveground containers, as well as completely buried heating oil tanks at single-family residences, including those located at farms.
- EPA proposes to modify the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to specify that the ''facility'' definition governs the applicability of 40 CFR part 112. These proposed revisions would allow an owner or operator to separate or aggregate containers to determine the facility boundaries, based on such factors as ownership or operation of the buildings, structures, containers, and equipment on the site, the activities being conducted, property boundaries, and other relevant considerations.
- EPA proposes to revise the facility diagram requirement at § 112.7(a)(3) to clarify how containers, fixed and mobile, are identified on the facility diagram. 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 would be able to 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 would be able to mark that area on the diagram where such containers are stored. If the total number of mobile or portable containers changes on a frequent basis, the owner or operator would be able to indicate the potential range in number of containers and the anticipated contents and capacities of the mobile or portable containers maintained at the facility in the Plan.
- EPA proposes to define the term ''loading/unloading rack'' and specify that this definition would govern the applicability of the provision at § 112.7(h), *Facility tank car and tank truck loading/unloading rack*. This amendment would provide clarity to the regulated community over whether this provision applies to a facility. Furthermore, EPA is proposing to specifically exclude oil production facilities and farms from the requirements at § 112.7(h), because loading/unloading racks are not typically found at these facilities (loading/unloading activities at these facilities will remain subject to the general secondary containment requirements of § 112.7(c)). EPA also proposes editorial revisions to the provision at § 112.7(h) for clarity.
- EPA proposes to streamline and tailor the SPCC requirements for a subset of qualified facilities. Qualified facilities were addressed in a recent amendment to the SPCC rule (71 FR 77266, December 26, 2006). The owner or operator of such a facility was provided an option to self-certify his SPCC Plan and comply with other streamlined requirements. This proposed rule further defines a subset of qualified facilities (''Tier I qualified facilities'') as those that meet the current qualified facilities eligibility criteria and that have no oil storage containers with an individual storage capacity greater than 5,000 gallons. A Tier I qualified facility would have the option to complete a self-certified SPCC Plan template (proposed as Appendix G to 40 CFR part 112) in lieu of a full SPCC Plan. By completing the SPCC Plan template, an owner or operator of a Tier I qualified facility would certify that the facility complies with a set of streamlined SPCC rule requirements. All other qualified facilities will be designated ''Tier II qualified facilities''.
- EPA proposes to amend the general secondary containment requirement at § 112.7(c) to make clear that the scope of secondary containment takes into

consideration the typical failure mode, and most likely quantity of oil that would be discharged, consistent with current Agency guidance. This proposed amendment would also provide additional examples of prevention systems for onshore facilities found at § 112.7(c)(1).

• EPA proposes to amend the facility security requirements at § 112.7(g) to allow an owner or operator to tailor his security measures to the facility's specific characteristics and location. A facility owner or operator would be required to describe in the SPCC Plan how he secures and controls access to the oil handling, processing, and storage areas; secures master flow and drain valves; prevents unauthorized access to starter controls on oil pumps; secures out-of-service and loading/unloading connections of oil pipelines; and addresses the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges. This proposed action would extend the streamlined security requirements that EPA provided to a qualified facility in the December 2006 final rule (71 FR 77266, December 26, 2006) to all facilities subject to the security requirements.

• EPA proposes to amend the requirements at §§ 112.8(c)(6) and 112.12(c)(6) to provide flexibility in complying with bulk storage container integrity testing requirements. Specifically, EPA is proposing to modify the current 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/frequency of integrity testing required for a particular container size and configuration. This proposed action would extend the streamlined bulk storage container inspection requirement that EPA provided to qualified facilities in the December 2006 final rule (71 FR 77266, December 26, 2006) to all facilities subject to the integrity testing provision.

• EPA proposes to differentiate 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. Specifically, EPA proposes to provide the PE or an owner/operator certifying an SPCC Plan with the flexibility to determine the scope of integrity testing that is appropriate for containers that store animal fats or vegetable oil and that meet other criteria.

• EPA proposes several amendments to tailor the requirements for oil production facilities to address a number of concerns that have been raised by representatives of this sector. Specifically, EPA is proposing to: Modify the definition of production facility, consistent with the proposed amendments to the definition of facility; extend the timeframe by which a new oil production facility must prepare and implement an SPCC Plan; exempt flow-through process vessels at oil production facilities from the sized secondary containment requirements while maintaining general secondary containment requirements and requiring additional oil spill prevention measures; exempt flowlines and intra-facility gathering lines at oil production facilities from all secondary containment requirements, while establishing more specific requirements for a flowline/intra-facility gathering line maintenance program and contingency planning; and clarify the definition of ''permanently closed'' as it applies to an oil production facility. EPA also describes approaches that would establish alternative criteria for an oil production facility to be eligible to self-certify an SPCC Plan as a qualified facility, and approaches to address produced water storage containers at oil production facilities.

• EPA proposes to exempt completely buried oil storage tanks at nuclear power generation facilities that are subject to design criteria under Nuclear Regulatory Commission regulations.

In this notice, EPA is also clarifying a number of issues of concern to the regulated community, including: the consideration of man-made structures in determining how to comply with SPCC rule requirements; and the applicability of the rule to wind turbines that are used to produce electricity. EPA also proposes technical corrections to §§ 112.3 and 112.12.

II. Entities Potentially Affected by This Proposed Rule

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

Industry sector	NAICS code
Government	92

The list of potentially affected entities in the above table may not be exhaustive. The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **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 and 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 replaced by Executive Order 12777 (56 FR 54757, October 22, 1991). A Memorandum of Understanding (MOU) between the U.S. Department of Transportation (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 2002 rule included revised requirements for SPCC Plans and for Facility Response Plans (FRPs). It also included new subparts outlining the requirements for various classes of oil; revised the applicability of the regulation; amended the requirements for completing SPCC Plans; and made other modifications (67 FR 47042). The revised rule became effective on August 16, 2002. After publication of this rule, several members of the regulated community filed legal challenges to certain aspects of the rule. All but one of the issues raised in the litigation have been settled, following which EPA published clarifications in the **Federal Register** to several aspects of the revised rule (69 FR 29728, May 25, 2004).[1] In addition, concerns were raised about the implementability of certain aspects of the 2002 rule.

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

Also, in December 2005, EPA released the *SPCC Guidance for Regional Inspectors.* EPA intends to issue revisions to this guidance document to incorporate changes consistent with the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006). This guidance document is intended to assist regional inspectors in reviewing the implementation of the SPCC rule at a regulated facility. The guidance document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of the inspector in the review and evaluation of a facility owner or operator's compliance with the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. The guidance is available to the owner or operator of a facility that may be subject to the SPCC rule and to the general public on the Agency's Web site at *http://www.epa.gov/emergencies.* This guidance is a living document and will be revised, as necessary, to reflect any relevant future regulatory amendments, including any final rule based on this proposed action.

In addition, EPA has amended the dates for compliance with the July 2002 amendments to the SPCC rule by extending the dates for preparing or amending, and implementing revised SPCC Plans in 40 CFR 112.3(a), (b), and (c), most recently by final rule published May 16, 2007 (72 FR 27443). EPA took the most recent action to provide facilities time to fully understand the amendments to the SPCC rule finalized in December 2006 and to allow potentially affected owners and operators an opportunity to make any changes to their facilities and to their SPCC Plans, as well as to provide time for the Agency to take final action on this proposal. Additionally, EPA intends to provide the regulated community time to review and understand any revised material presented in the *SPCC Guidance for Regional Inspectors.* Please see the **Federal Register** notice (72 FR 27443, May 16, 2007) for further discussion of the compliance date extensions.

The December 2006 final rule (71 FR 77266, December 26, 2006) addressed only certain areas of the SPCC requirements and specific issues and concerns raised by the regulated community. As highlighted in the EPA Regulatory Agenda and the 2005 Office of Management and Budget report on ''Regulatory Reform of the U.S. Manufacturing Sector,'' EPA is proposing amendments in this notice to address other areas where further changes may be appropriate.

V. This Action

A. Hot-mix Asphalt

Hot-mix asphalt (HMA) is a blend of asphalt cement (AC) and aggregate material, such as stone, sand, or gravel, which is formed into final paving products for use on roads and parking lots. All types of asphalt, including HMA, are petroleum oil products. As a result, a facility that stores and handles HMA may currently be regulated under the SPCC rule, if the applicability criteria are met (e.g., storage capacity thresholds and potential for a discharge into navigable waters or adjoining shorelines). As such, SPCC requirements, including secondary containment, apply to HMA containers. However, EPA never intended that HMA be included as part of a facility's SPCC Plan, particularly facilities which may be subject to the SPCC requirements solely because of the presence of HMA. Taken to the extreme, it could be argued that roads, parking lots, or other asphalt paving projects

[1] *American Petroleum Institute* v. *Leavitt,* No. 1:102CV02247 PLF and consolidated cases (D.D.C. filed Nov. 14, 2002). The remaining issue to be decided concerns the definition of ''navigable waters'' in § 112.2.

would be part of a facility's SPCC Plan. That was not and is not the Agency's intent.

In addition, because this material is unlikely to flow as a result of the entrained aggregate, there are few circumstances in which a discharge of HMA would reach navigable waters or adjoining shorelines. As a result, EPA is proposing to revise the rule to eliminate the requirement for an owner or operator of a facility otherwise subject to the SPCC rule to include a HMA container in the facility's SPCC Plan or aggregate storage capacity calculations.

1. Proposed Exemption for Hot-Mix Asphalt

This proposed rule amendment would exempt HMA from SPCC rule applicability by adding a new paragraph (8) under the general applicability section, § 112.1(d). Furthermore, EPA proposes to modify § 112.1(d)(2) so that the capacity of storage containers solely containing HMA would not be counted toward the facility oil storage capacity calculation. The Regional Administrator would continue to have the option under § 112.1(f), however, to require an owner or operator of a facility, including one solely handling HMA, to prepare or amend and implement an SPCC Plan or any applicable part, to include HMA containers if he determines that it is necessary in order to prevent a discharge of oil into navigable waters or adjoining shorelines.

For those substances that are not eligible for the proposed exemption, the SPCC rule provides the facility owner or operator with significant flexibility to select prevention and control measures that are appropriate and cost effective for the facility and type of product being stored. For example, the secondary containment requirements of the SPCC rule may be satisfied if the secondary containment system, including walls and floor, are capable of containing the oil and are constructed so that any discharge from a primary containment system will not escape secondary containment before cleanup occurs (§ 112.7(c)) and diked areas are sufficiently impervious to contain the oil (§ 112.8(c)(2)). Therefore, the flow properties of asphalt cement (AC), for example, (as for any oil) may be considered in designing appropriate means of containment. If, once cooled, the oil remains in place, an effective means of secondary containment may involve surrounding the bulk storage container with an earthen berm that will contain the oil until it can solidify. As stated in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005), ''The suitability of earthen material for secondary containment systems may depend on the properties of both the product stored and the soil. For example, compacted local soil may be suitable to contain a viscous product, such as liquid AC, but may not be suitable to contain gasoline.'' If an owner or operator chooses to use an earthen berm as a method of secondary containment, the facility owner or operator should consider, among other factors, the effect of weather, vehicle and worker movement, access, and safety, in accordance with good engineering practice.

Furthermore, a facility owner or operator does not necessarily need to construct a berm around an asphalt cement container to satisfy the secondary containment requirements; he may opt to use a storm water retention pond or other similar structure or existing natural terrain features that would serve to divert, remotely impound, and prevent the discharge to navigable waters or adjoining shorelines. EPA notes that oil discharged into secondary containment needs to be removed promptly so that the containment system retains its appropriate capacity.

Finally, the Agency would note 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. Therefore, the owner or operator of a facility that stores or handles only those oils that are solid at ambient temperatures may conclude that the facility is not subject to the SPCC rule. However, if a facility owner or operator determines that there is a reasonable expectation to discharge oil to navigable waters or adjoining shorelines for a single oil container, all oil containers at the facility are subject to the rule's requirements.

Although this proposed amendment would provide an exemption from the SPCC requirements for containers of HMA, HMA manufacturers and other facilities that use, store, distribute, or otherwise handle HMA may still be subject to the SPCC requirements due to the storage capacity of other types of oils (e.g., No. 2 fuel oil and heat transfer oils) at the facility.

The Agency seeks comments on the proposed exemption for HMA. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Alternative Options Considered

a. No Action

EPA considered taking no regulatory action regarding this issue. Under this option, a facility owner or operator would continue to be required to consider HMA in calculating the facility's total oil storage capacity, and comply with all SPCC requirements related to storage or transfer of HMA. The owner or operator would continue to benefit from the flexibility in the SPCC rule to provide secondary containment measures that are appropriate and cost effective for the facility and the asphalt it stores. EPA believes that it is unnecessary for an owner or operator of a facility that constructs roads, parking lots, or sidewalks to develop an SPCC Plan, solely for the routine end use of HMA as part of these operations. Moreover, as HMA is unlikely to flow as a result of the entrained aggregate, the Agency believes there are few circumstances in which a discharge of HMA would reach navigable waters or adjoining shorelines. Therefore, EPA chose not to propose this option.

b. Exemption for Asphalt Cement

EPA considered exempting both HMA and AC from the requirements of the SPCC rule, but chose not to propose such an option. In documents submitted to EPA, the asphalt industry argues that AC poses a low risk to navigable waters and adjoining shorelines, claiming that it does not flow if spilled on the ground. The industry further argues that asphalt facilities are either already covered under other environmentally protective regulations or are granted a specific exemption from other regulations due the unique nature of the product, and that the cost of complying with the SPCC regulation is disproportionate to the risk posed.

Because of the operational conditions under which AC is used and stored, AC does pose a risk of being discharged into navigable waters and adjoining shorelines. (See EPA's report, *Asphalt Under the Spill Prevention, Control, and Countermeasure Regulation,* August 29, 2007, in the docket for this proposal.) Although AC is semi-solid or solid at ambient temperature and pressure, it is generally stored at elevated temperatures. Hot AC is liquid—similar to other semi-solid oils, such as paraffin wax and heavy bunker fuels—and therefore is capable of flowing. All of these oils are regulated under the SPCC

rule to prevent discharges to navigable waters and adjoining shorelines.

EPA believes that the threat that AC, as well as other semi-solid oils, pose to navigable waters and adjoining shorelines can be effectively addressed by implementing the procedures and measures required under the SPCC regulation. As discussed previously, the current SPCC regulation provides flexibility to an asphalt facility owner and operator to account for site- and product-specific characteristics in implementing measures to prevent oil discharges in a cost-effective manner.

The Agency welcomes comments on these or other alternatives that could serve to address HMA, while at the same time maintaining appropriate levels of environmental protection. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

B. Farms

The owner or operator of a farm, by virtue of storing or using oil, is potentially subject to the SPCC requirements. The December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006) defined a farm as ''* * * a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, $1,000 or more of agricultural products during a year.'' In providing the option for an owner or operator of a facility that stores 10,000 gallons of oil or less and meets other qualifying criteria to self-certify his SPCC Plan in lieu of review and certification by a Professional Engineer, the December 2006 amendments offered relief to an estimated 95 percent of all SPCC-regulated farms. The 2006 amendments also exempted mobile refuelers, which include fuel nurse tanks on farms, from the sized secondary containment requirements for bulk storage containers (see more detailed discussion regarding nurse tanks below). Finally, the 2006 amendments extended the date by which farms must amend their existing SPCC Plans to come into compliance with the July 2002 rule changes until the Agency publishes a final rule in the **Federal Register** establishing a new compliance date. This proposal does not affect this extended compliance date for farms. The Agency will propose a new compliance date for farms in the **Federal Register** at a later date.

While the December 2006 amendments provided streamlined requirements for most of the farms that are subject to the SPCC requirements, EPA believes further amendments to the SPCC rule are appropriate considering the unique characteristics of farm facilities, including their geographic scale, configuration, land ownership and lease structure, and on-farm activities. Specifically, EPA recognizes that a farm: May be privately owned and may contain the residence of the owner or operator; has a configuration that varies across the country, from farm to farm and season to season; contains low-volume oil storage that is often dispersed across different land parcels separated by roads and natural barriers; has multiple fueling sites; is located in a remote area; stores oil on-site for on-farm use and not for further distribution in commerce; uses oil seasonally in different quantities; and leases a significant amount of land to or from secondary parties. For these reasons, EPA is proposing additional amendments to the SPCC rule that further benefit farms.

As discussed in Section G of this preamble, EPA is proposing an additional option for a subset of qualified facilities (''Tier I'') that have a maximum individual oil storage container capacity of 5,000 gallons, by allowing these facilities to complete a simplified self-certified SPCC Plan template in lieu of a full SPCC Plan. This option would be available to any facility that meets the Tier I qualification criteria, including a farm. EPA expects that at least 128,000 farms (or more than 84% of the farms regulated by the SPCC rule) may be eligible for this proposed option.

EPA is also proposing to clarify the definition of ''facility'' in the SPCC rule, as discussed in Section D of this preamble. The proposed definition would clarify the existing flexibility for a facility owner or operator, particularly for a farmer, to define oil storage areas located on either contiguous or non-contiguous parcels of land (e.g., satellite storage areas) as separate facilities for the purpose of determining SPCC applicability and preparing/implementing an SPCC Plan.

Under this proposal (see Section C), EPA would exempt heating oil containers at single-family residences. EPA understands that farms often include, within the geographical confines of the facility, the residence of the owner or operator, and so the Agency believes this proposed amendment also will be of benefit to farms.

This proposal (see Section I) also addresses streamlining of the security requirements under § 112.7(g) to allow more flexibility in determining how best to secure and control access to the oil handling, processing and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; and address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges. This amendment will particularly benefit the owner or operator of a farm, because it allows for consideration of site-specific factors in determining how best to design security for the facility to prevent vandalism and detect spills from oil-handling areas. An owner or operator of a farm may also benefit from the currently proposed amendments related to loading/unloading racks (Section F of this preamble) and integrity testing (Section J).

The Agency believes that both the amendments finalized in 2006 and those being proposed in this notice provide significant flexibility to the agricultural sector. In this action, the Agency also is proposing further amendments to the SPCC rule to address concerns specific to the agricultural community regarding pesticide application equipment and related mix containers used at farms. The proposed amendments was informed by information collected by EPA through site visits to farms and numerous consultations with the U.S. Department of Agriculture (USDA). Farm site visits helped EPA further understand oil storage characteristics at a variety of farm operation types and sizes. The site visits included dairy farms, an orchard, an agribusiness supply company, and two rice farms.

1. Exemption for Pesticide Application Equipment and Related Mix Containers

EPA is proposing to amend the SPCC rule by adding a new paragraph (10) under the general applicability section, § 112.1(d) to exempt pesticide application equipment and related mix containers used at farms from the SPCC requirements. EPA also proposes to modify § 112.1(d)(2) so that the capacity of these pesticide application equipment and related mix containers (i.e., containers used to mix pesticides with oil immediately prior to application) would not be counted toward the facility oil storage capacity calculation. This equipment includes ground boom applicators, airblast sprayers, and specialty aircraft that are used to apply measured quantities of pesticides to crops and/or soil. The pesticide formulation may include petroleum-or vegetable-based oils in concentrated formulations or may

contain crop oil or adjuvant oil in the mix formulations added just prior to application, thereby potentially subjecting certain pesticide containers to the SPCC requirements, such as those for bulk storage containers under §§ 112.8(c) and 112.12(c). Containers storing oil prior to blending it with the pesticide, and containers used to store any pesticides after they have been mixed with oil, are considered bulk storage containers and are regulated as such under the SPCC rule.

EPA regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which establishes requirements for the registration and labeling of pesticides. Sections 19(e) and (f) of FIFRA grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. Under this authority, EPA established standards, including design and labeling requirements for pesticide containers and bulk pesticide containment. These standards were promulgated on August 16, 2006 for certain facilities that use, reuse, or store pesticides in containers with capacities of 500 gallons or greater (*Standards for Pesticide Containers and Containment,* 40 CFR parts 156 and 165; see 71 FR 47330, August 16, 2006). Facilities subject to these standards include pesticide registrants, agricultural retailers, and commercial pesticide applicators; however, farms were exempted from these standards. In evaluating the risk posed by pesticide containers and application equipment when promulgating the *Standards for Pesticide Containment Structures* in 40 CFR part 165, Subpart E, EPA noted that on-farm bulk storage of pesticides remains rare as opposed to on-farm bulk storage of oil, such as off-road diesel, on-road diesel and gasoline fuels. Additionally, EPA found that there was insufficient evidence of contamination occurring as a result of these containers or equipment to warrant their regulation under the pesticide container-containment rule. However, EPA reserved the option of reexamining the need for Federal regulation of on-farm pesticide bulk storage in the future if it became apparent that the application or use of pesticides was having significant detrimental impacts. Similarly, EPA does not believe that the regulation of pesticide application equipment and related mix containers used at a farm is appropriate under the SPCC rule.

EPA believes that, on a farm, the storage and application of pesticide mixtures that may contain oil just prior to application can be addressed through the use of best management practices (BMPs) that minimize the potential for discharges to navigable waters and adjoining shorelines. For example, a number of states have ''Farm*A*Syst'' programs (partnerships between government agencies and private business that foster pollution prevention on farms) that detail on-farm pesticide BMPs such as: (1) Adhere to pesticide label instructions and prepare only the necessary amount needed for immediate use; (2) prepare the pesticide mix immediately before application; (3) the equipment spray tank should be half full with water prior to mixing in the pesticide formulation; and (4) pesticides should be mixed and loaded on a concrete pad (*Improving Storage and Handling of Pesticides,* Farm-a-Syst North Carolina, April 1997. Found at *http://www.soil.ncsu.edu/assist/pesticides/*. This document is also available in the docket for this rule proposal).

EPA requests comments on the proposed exemption of pesticide application equipment and related mix containers from SPCC applicability. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Applicability of Mobile Refueler Requirements to Farm Nurse Tanks

In the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), EPA exempted mobile refuelers from the sized secondary containment requirements applicable to bulk storage containers. In the amended regulation, EPA defined a mobile refueler as ''a bulk storage container onboard a vehicle or towed, that is designed or used solely to store and transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container.'' (§ 112.2). In this action, EPA seeks to clarify that the definition of mobile refueler includes a nurse tank, which is a mobile vessel used at farms to store and transport fuel for transfers to or from farm equipment, such as tractors and combines, and to other bulk storage containers, such as containers used to provide fuel to wellhead/relift pumps at rice farms. A nurse tank is often mounted on a trailer for transport around the farm, and EPA believes that this function is consistent with that of a mobile refueler. A nurse tank, like other types of mobile refuelers, is exempt from the sized secondary containment requirements, but would need to meet the general secondary containment requirements at § 112.7(c).

EPA does not believe that additional regulatory action is warranted to clarify that a nurse tank at a farm can be considered a mobile refueler. EPA welcomes comments on this approach.

3. Alternative Options Considered

In developing the amendments proposed in this notice, EPA considered the following alternatives for differentiating the SPCC requirements for farms:

a. No Action

With the promulgation of the final amendments to the SPCC rule on December 26, 2006, EPA estimated that approximately 145,000 of the 152,000 farms subject to the SPCC rule (95 percent of regulated farms) identified in the Regulatory Impact Analysis may be eligible for the ''qualified facility'' or self-certification option. Additionally, EPA is proposing an alternative compliance option for a subset of qualified facilities by adding a new tier, identified as Tier I qualified facilities, that would provide even more flexibility to farms.

EPA believes that considerable flexibility was provided in the December 2006 amendments, as well as other amendments being proposed in this notice to address the definition of facility, the security and integrity testing requirements, residential heating oil containers, and further streamlining of the requirements for qualified facilities. Nevertheless, EPA has concluded based on comments from agricultural stakeholders, farm-related site visits, and the August 16, 2006 final action concerning pesticide containers (71 FR 47330), that additional amendments to the SPCC rule related to farms are necessary. Therefore, EPA chose not to propose this ''no action'' option.

b. Exempt Farms Below a Certain Storage Capacity Threshold

EPA considered exempting farms that stored oil below a certain storage capacity threshold from the SPCC requirements, but determined that sufficient data to support such an exemption exclusive to farms do not currently exist. Storage tanks found at farms are similar in function and design as those found at other types of facilities, and therefore have a similar potential for a discharge. Thus, an effort to substantiate an exemption for a subset of affected farms below a certain threshold would be difficult. As a result, EPA chose not to propose this option.

The Agency welcomes comments on this or other alternatives that could serve to address the needs of the agricultural sector, while at the same

time maintaining appropriate levels of environmental protection. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

c. Alternative Qualified Facility Eligibility Criteria for Farms

Under § 112.6, a ''facility'' that has an aggregate above ground storage capacity of 10,000 gallons or less and that has not had a single discharge exceeding 1,000 U.S. gallons or two discharges each exceeding 42 U.S. gallons within any twelve month period in the three years prior is eligible for the ''qualified facility'' Plan requirements (i.e. a self-certified Plan in lieu of a PE certified Plan). The current criteria for ''qualified facilities,'' found at § 112.3(g), treat farms like all other facilities. However, there may be alternative criteria unique to farms that would be appropriate for identifying qualified facilities. EPA requests comment on (1) whether a change in the criteria is appropriate for farms; and (2) whether a higher threshold is appropriate for farms. Any alternative approach presented must include an appropriate rationale in order for the Agency to be able to consider it for final action.

C. Residential Heating Oil Containers

EPA understands that many regulated facilities, including farms, may include within the geographical confines of the facility the residence of the owner or operator. EPA did not intend to regulate residential uses of oil (i.e., those at non-commercial buildings) under the SPCC rule. For example, in 1973, EPA set the minimum facility aggregate storage capacity threshold for SPCC applicability (1,320 gallons) by considering common sizes of residential heating oil containers. The Agency stated in the preamble to the 1973 final SPCC rule (38 FR 34164, December 11, 1973) that containers of 660 gallons are the normal domestic code size for nonburied heating oil containers, and that buildings may have two such containers. Thus, the presence of a heating oil container at a residence was generally not intended, by itself, to trigger SPCC applicability since residences generally do not have significant quantities of other types of oil. However, at the time the rule was originally promulgated, the Agency did not consider residential heating oil containers that may be co-located with businesses. As a result, EPA recognizes that owners and operators may be counting these residential containers in determining the applicability of the SPCC rule to their facility, and including these containers in their SPCC Plans. Therefore, EPA proposes to amend the rule to exempt single-family residential heating oil containers.

This exemption would apply to aboveground as well as completely buried heating oil tanks at single-family residences. Heating oil tanks used for on-site consumptive use of oil are specifically exempted from the 40 CFR part 280 requirements, which apply to underground storage tanks (USTs). The SPCC rule does not apply to ''any completely buried storage tank * * * 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 * * * '' (§ 112.1(d)(4)). Because USTs used for storing heating oil for consumptive use on the premises where stored are exempted from part 280, completely buried tanks used for residential heating would currently need to be included in the storage capacity of an SPCC-regulated facility, and would be subject to applicable SPCC requirements.

1. Exemption for Residential Heating Oil Containers

EPA is proposing to specifically exempt from SPCC applicability containers that are used to store oil for the sole purpose of heating single-family residences (including residences at a farm) by adding a new paragraph (9) under the general applicability section, § 112.1(d). EPA also proposes to modify § 112.1(d)(2) so that the capacity of single-family residential heating oil containers would not be counted toward facility oil storage.

The current proposal would remove from SPCC applicability containers (both aboveground and completely buried) located at single-family residences that are used solely to store heating oil used to heat the residence. Under the proposed amendments, the owner or operator would not count any residential heating oil container as part of the facility's aggregate storage capacity for the purpose of determining SPCC applicability, and no SPCC requirements would apply to the exempted containers. The SPCC requirements would continue to apply, however, to containers for oil used to heat other non-residential buildings within a facility, because the exemption covers only residential heating oil containers.

This exemption is not limited to facilities with only one single-family home; EPA recognizes that there may be multiple single-family homes within one facility. For example, a farm that has multiple single-family homes within its boundaries would not need to consider the residential heating oil tanks at any of those homes for purposes of SPCC applicability. Groups of single-family homes within a military base would similarly be exempted.

EPA requests comment on this proposed exemption for single-family residential heating oil containers, and whether there is a better way to characterize containers used to store oil for heating buildings with a residential, rather than commercial, use, including whether there are any unique situations in which a residential heating oil tank would be subject to the SPCC rule because the aboveground oil storage capacity is greater than 1,320 U.S. gallons. Any alternative approach presented must include an appropriate rationale in order for the Agency to be able to consider it for final action.

2. Alternative Option Considered: Exemption for Residential Heating Oil Containers Only at Farms

EPA initially considered providing an exemption only for residential heating oil containers located at farms, because farms commonly include, within the geographical confines of the facility, the residence of the farmer. Under this option, only heating oil containers associated with residences on farms would benefit from an exemption from the SPCC rule. However, EPA understands that a facility associated with another industry sector, such as a military base or university, or a small business run out of the owner's home, may also contain a residential heating oil container. The Agency determined that there was no rationale to support not expanding the exemption to all residential heating oil containers. Therefore, the Agency chose not to propose this option.

EPA requests comment on this option, and whether an exemption for residential heating oil containers should be limited to any specific sector. Any alternative approach presented must include an appropriate rationale in order for the Agency to be able to consider it for final action.

D. Definition of Facility

EPA first defined both ''facility'' and ''production facility'' at § 112.2 in the July 2002 amendments to the SPCC rule (67 FR 47042, July 17, 2002). ''Facility'' is defined as: ''any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and waste

treatment, or in which oil is used, as described in Appendix A of this part. The boundaries of a facility depend on several site-specific factors, including, but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and the types of activity at the site.'' ''Production facility'' is defined as ''all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil, or associated storage or measurement, and located in a single geographical oil or gas field operated by a single operator.''

Since the July 2002 amendments were published, members of the regulated community have asked EPA which of these definitions governs the term ''facility'' as it is used in the applicability determination of the Facility Response Plan requirements under § 112.20(f)(1) when applied to an oil production facility. In May 2004, EPA issued a **Federal Register** notice clarifying this issue (69 FR 29728, May 20, 2004). Specifically, section 112.20(f)(1) describes the applicability of the Facility Response Plan (FRP) rule by setting the criteria for determining whether a ''*facility* could, because of its location, reasonably be expected to cause substantial harm to the environment * * *'' [emphasis added]. Members of the regulated community were concerned that the language in the definition of production facility (''located in a single geographical oil or gas field'') would require aggregation of oil production structures and equipment in such a way that would trigger the applicability of the FRP rule. However, as stated in the May 2004 **Federal Register** notice (69 FR 29728), because § 112.20(f)(1) consistently uses the term ''facility,'' not ''production facility,'' it is the definition of ''facility'' in § 112.2 that governs who is subject to § 112.20(f)(1), regardless of the specific type of facility. Thus, consistent with the May 2004 notice, the definition of ''facility'' governs the meaning of facility as it is used in § 112.20(f)(1), and accordingly, EPA is now proposing to amend the definition of facility to add language clarifying this point.

Industry sectors, including farms, military bases and other large government facilities (e.g., national parks), airports, and universities also have raised concerns over how to aggregate or separate containers, buildings, structures, installations, equipment, and piping for the purpose of SPCC applicability. Regulated community members have expressed concern that non-contiguous oil-handling areas with similar purposes or ownership are required to be aggregated together as one ''facility'' to calculate total oil storage and determine SPCC applicability. A farmer, for example, often has multiple fuel storage sites on land under his management, which may include owned and leased tracts. A USDA study shows that among farmers surveyed, satellite fuel storage sites were an average distance of 4.1 miles from the main site (U.S. Department of Agriculture, ''Fuel/Oil Storage and Delivery for Farmers and Cooperatives.'' March 2005).

EPA believes that the existing definition of ''facility'' provides considerable flexibility, and that the extent of a facility depends on site-specific circumstances. The *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005) describes factors that may be considered relevant in delineating the boundaries of a facility for SPCC purposes. Those factors may include, but are not limited to: ownership, management, or operation of the containers, buildings, structures, equipment, installations, pipes, or pipelines on the site; similarity in functions, operational characteristics, and types of activities occurring at the site; adjacency; or shared drainage pathways. Consistent with this approach, EPA is proposing to amend 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.

For further clarity, EPA is also proposing to amend the definition of ''production facility,'' as discussed in Section L of this notice.

1. Proposed Revisions to the Definition of Facility

EPA is proposing to amend the definition of ''facility,'' as found in § 112.2, in three ways: To clarify that this definition alone governs applicability of 40 CFR part 112; to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities; and to add the qualifier ''oil'' before the term ''waste treatment.''

To address concerns over whether the definition of ''facility'' or the definition of ''production facility'' controls the term ''facility'' as it is used in § 112.20(f)(1) when applied to an oil production facility, EPA is proposing to add the following sentence to the end of the definition of ''facility'': ''Only this definition governs whether a facility is subject to this part.'' This language is consistent with the clarification printed in a May 2004 **Federal Register** notice (69 FR 29728). The definition of ''production facility'' is used to determine which specific provisions of the rule may apply at a particular facility (e.g., § 112.9), in addition to the administrative and general rule requirements.

The Agency seeks comments on whether the proposed revision of the definition of ''facility'' to clarify that this definition governs applicability of part 112 is appropriate. Any suggestions for alternative language to amend the definition must include an appropriate rationale in order for the Agency to be able to consider it for final action.

To address concerns over how oil containers and equipment can be separated or aggregated for the purposes of determining facility boundaries and applicability of the SPCC requirements, EPA proposes to insert the following sentence into the definition of facility: ''Contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities.'' EPA also proposes to add the terms ''property,'' ''parcel,'' and ''lease'' to the list of terms mentioned in the first sentence of the definition. EPA believes that adding these terms further distinguishes the attributes that can be considered in determining facility boundaries. These terms are intended to be those that are familiar to a regulated community member, such as a farmer or oil production facility owner, and are not meant to be exhaustive. EPA notes that an owner or operator may not determine his facility boundary in such a manner as to simply avoid applicability of the SPCC rule.

The Agency seeks comments on whether the proposed revision to 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 is appropriate. Any suggestions for alternative language to amend the definition must include an appropriate rationale in order for the Agency to be able to consider it for final action.

Finally, EPA is proposing to amend the first sentence of the definition of facility to add the qualifier ''oil'' before the term ''waste treatment.'' With this

amendment, EPA is clarifying that the term ''waste treatment'' refers to oil waste treatment and not to treatment of any other type of waste that may be generated. The Agency seeks comments on whether this proposed modification is appropriate.

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

The list of factors for determining the boundaries of a facility in the definition of facility are not exclusive, but are merely examples. *The SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005) elaborates on what other factors may be considered. As noted above, those factors may include, but are not limited to: ownership, management, or operation of the containers, buildings, structures, equipment, installations, pipes, or pipelines on the site; similarity in functions, operational characteristics, and types of activities occurring at the site; adjacency; or shared drainage pathways.

EPA provides the following example scenarios of how a facility owner or operator may determine what is considered a ''facility'' for the purposes of an SPCC Plan. Each of these scenarios is purely hypothetical and is not intended to provide a policy interpretation for any specific existing facility.

a. Separation of Tracts at a Farm

A farmer has one central fueling location and ten separate (either contiguous or non-contiguous) tracts of land (inclusive of owned and leased tracts) where various types of crops are grown. The central fueling location has several oil containers, with an aggregate storage capacity of 5,000 gallons of diesel fuel, gasoline, and hydraulic/lubrication oils. Each tract has one 1,000-gallon aboveground container of diesel fuel, used for fueling only the equipment operated on the tract. The tracts are located such that the containers are each several miles from each other. The tracts each produce various types of crops, and thus the equipment is operated seasonally according to crop type and irrigation needs.

The farmer determines that, given the distance between containers, and the clear distinction between the operations that they support, each tract and the central fueling location can be considered a separate facility for the purposes of calculating oil storage capacity and determining the applicability of the SPCC rule. The fact that the tracts may be contiguous would be only one factor in the facility determination, and may allow the designation of the separate contiguous tracts as separate facilities, given the great distance and operational differences. In this example, each tract does not individually meet the aboveground storage capacity threshold for applicability of the SPCC rule (1,320 gallons). Therefore, no SPCC Plan is required for these containers. However, the central fueling location exceeds the SPCC rule aboveground storage capacity threshold. Assuming the farm is located such that a discharge of oil could reasonably pose a threat to navigable waters or adjoining shorelines, the farmer must prepare and implement an SPCC Plan for the central fueling area.

To provide general protection and prevention measures against an oil discharge, the farmer has the option to include the oil containers on the separate tracts in his Plan. Under Section 311(b)(3) of the Clean Water Act, the farmer would still be liable for any harmful quantities of oil discharged from the containers on the separate tracts into navigable waters or adjoining shorelines, even if an SPCC Plan is not required.

b. Separation of Parcels at an Oil Production Facility

An oil production facility operator leases the right to extract oil from three parcels of land separated by large distances within one oil production field. The parcels can be contiguous or non-contiguous. Each of the parcels is subject to a distinct lease agreement, consistent with all applicable state and local oil and gas laws and regulations. Each parcel contains a tank battery and a single or several wellheads. The operator determines that, given their geographic separation and individual lease agreements, each parcel can be considered a separate facility. Each tank battery stores a total aboveground capacity of oil greater than 1,320 gallons, so the operator prepares and implements a separate SPCC Plan for each tank battery and its associated wellheads, flowlines, and associated equipment, as individual facilities. Any gathering lines that transport oil from these individual facilities into a centralized collection area involve the transportation of oil between facilities (''inter-facility'') and are therefore not within EPA jurisdiction. These ''inter-facility'' gathering lines do not need to be included in the SPCC Plans.

Because the definition of facility is flexible, the operator could alternatively choose to consider all three parcels as one facility, based on his common ownership or operation of all of them. Under this approach, the operator would only need to prepare one SPCC Plan that covers the components of all parcels. Any gathering lines connecting the tank batteries of each parcel are then considered ''intra-facility'' gathering lines and must be included in the SPCC Plan (see section L.2 of this preamble). It is also important to note that if an owner/operator aggregates oil storage so as to develop one SPCC Plan, he must then determine the facility boundaries the same way for the purposes of applicability of the FRP rule requirements.

Additionally, a production facility may consist of parcels that are smaller or larger than an individual lease.

c. Aggregation of Equipment at an Oil Production Facility

An oil production facility owner operates one wellhead. Oil is treated in an 800-gallon capacity heater-treater to separate the oil from produced water; the treated oil is then stored in several stock tanks until it is sold and transported off-site. The heater-treater separation equipment is located several feet away from the stock tanks, which hold both the oil and produced water. These two areas may be physically separate and are protected by separate secondary containment berms, but the heater-treater is an integral component of an oil production facility, connected by piping, and under the control of the same operator. The separation equipment, such as a heater-treater, is a component of a larger process that would be incomplete without the ability to separate oil and produced water. Thus, all of these components should be aggregated together to comprise the oil production facility. In this circumstance, EPA does not believe the heater-treater should be considered a separate facility.

As another related example, an oil production facility owner operates one wellhead connected to the tank battery by a mile-long flowline. Despite the length of the flowline, the facility operator may not have a reasonable basis for separating the wellhead, flowline, and tank battery as distinct facilities with individual SPCC Plans. Similar to the heater-treater, the wellhead and tank battery are considered integral components of the larger process, and an oil production facility would be incomplete without including these two components. The flowline, whether several feet or several miles in length, is a necessary connection between the wellhead and tank battery, and all of these components must be included in one SPCC Plan.

An SPCC Plan must include all of the components that together comprise a complete facility. There may be no reasonable basis to determine that either of the facilities in these examples could be divided into separate, smaller facilities. While a facility owner or operator has some discretion in describing the parameters of his facility, he may not describe the boundaries of a facility unreasonably in an attempt to avoid regulation. EPA also notes that if an owner/operator aggregates oil storage so as to develop one SPCC Plan, he must then determine the facility boundaries the same way for the purposes of applicability of the FRP rule requirements.

d. Separation of Areas at a Military Base

A military base is spread out over 10 square miles. Within the base, there are several areas where oil containers are located: A tank farm associated with an aircraft fueling area, back-up fuel oil for a small power generation plant, and a mess hall with several drums of cooking oil. Because different groups service, manage, or maintain the various tank farms and oil storage areas, these operators have agreed to calculate the aggregate storage capacity of each of their operations separately to determine their SPCC rule applicability. The operations vary across these oil container locations, each with unique or specific characteristics. Thus, the operators have decided that oil spill prevention practices would be served best by preparing and implementing multiple SPCC Plans. If the military determines that it would be more efficient to prepare one SPCC Plan for the entire base, this would also be appropriate.

The same principles apply at other large facilities, such as a university or airport. While a facility owner or operator has some discretion in describing the parameters of his facility, he may not describe the boundaries of a facility unreasonably to avoid regulation. If an owner/operator aggregates oil storage so as to develop one SPCC Plan, he must then determine the facility boundaries the same way for the purposes of FRP rule applicability.

e. Separation of Functions at a Dual-purpose Facility

The owner of a truck maintenance company operates his business from a site that also includes his single-family residence. The business office is located in his residence. In an adjacent garage, he has one 500-gallon gasoline container, one 250-gallon waste oil container, and five 55-gallon drums of various automotive lubricants. The entire building is heated with one 500-gallon heating oil container. In considering whether he is subject to the SPCC rule, this business owner concluded that the heating oil container is exempt from the rule, because it is associated with his home, and the function of heating his home is necessary regardless of the presence of his business operations. The total storage capacity of the remaining containers does not meet the aboveground storage capacity threshold for applicability of the SPCC rule (1,320 gallons) and so the owner does not need to comply with the rule requirements.

3. Alternative Options Considered

In developing the amendments proposed in this notice, EPA considered the following alternatives for addressing the definition of facility:

a. No Action

EPA considered taking no regulatory action regarding this issue. However, given the significant number of questions and concerns that have been raised by the regulated community, EPA believes that addressing the definition of facility in some manner is necessary. Therefore, EPA chose not to propose this ''no action'' option.

b. Address Only Through Guidance

EPA considered providing guidance to address the regulated community's concern over the definition of facility and which definition governs the term ''facility'' as it is used in § 112.20(f)(1) when applied to an oil production facility. EPA has provided clarity already on the definition of facility in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005) and through a **Federal Register** Notice (69 FR 29728, May 25, 2004). Despite these efforts, the regulated community continues to express concern. EPA believes that a formal rule amendment will provide more clarity. Therefore, EPA is not moving forward with the option to address this rule solely through guidance. EPA does intend, however, to revise the *SPCC Guidance for Regional Inspectors* to be consistent with any rule amendment(s) finalized.

The Agency welcomes comments on this or other alternatives that could serve to address the needs of the regulated community, while at the same time maintaining appropriate levels of environmental protection. Any alternative approaches presented must include an appropriate rationale in order for the Agency to be able to consider them for final action.

E. Facility Diagram

Section 112.7(a)(3) of the SPCC rule requires that a facility owner or operator include in his SPCC Plan a facility diagram that identifies the location and contents of oil containers, connecting piping, and transfer stations. The diagram helps to ensure safe and efficient response actions, effective spill prevention and emergency planning, and proper implementation of the Plan by facility personnel. It also assists the EPA inspector in reviewing the facility's SPCC Plan.

The rule requires that the facility diagram include the location and contents of each container, completely buried tanks (even if exempted from the SPCC requirements), transfer areas (i.e., stations), and connecting pipes. In addition to the requirement for a facility description and diagram, § 112.7(a)(3) lists additional items to be addressed in an SPCC Plan, including the type of oil in each container and its capacity; discharge prevention measures; discharge or drainage controls; countermeasures for discharge discovery, response, and cleanup; methods of disposal of recovered materials; and specific contact information. The *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005) discusses the requirements for facility diagrams in more detail.

The facility diagram must include all containers (including oil-filled equipment) that store 55 gallons or more of oil and must include information indicating the contents of these containers (§ 112.7(a)(3)). The minimum container size addressed by the SPCC rule is 55 gallons. Any containers with an oil storage capacity of less than 55 gallons do not need to be included in the SPCC Plan.

Regulated community members have raised the concern that documenting the contents of all oil storage containers with a capacity of 55 gallons or more on a facility diagram would be impractical due to seasonal and market changes. EPA acknowledges these concerns, and proposes to add flexibility to this requirement.

1. Proposed Revision to the Facility Diagram Requirement

EPA proposes to amend § 112.7(a)(3) to clarify that the facility diagram must include all *fixed* (i.e., not mobile or portable) containers. For any mobile or portable containers located in a certain area of the facility, a facility owner or operator must mark that area on the diagram where such containers are stored. He may mark the number of

containers, contents and capacity of each container either on the facility diagram, or provide a separate description in the SPCC Plan. If the total number of mobile or portable containers changes on a frequent basis, the owner or operator can indicate an estimate in the Plan of the number of containers, the anticipated contents and capacities of the mobile or portable containers maintained at the facility.

Those oil storage containers that are located in a fixed position (and do not move around the facility) must be represented on the facility diagram, as currently required. In situations where diagrams become complicated due to the presence of multiple oil storage containers or complex piping/transfer areas at the facility, it may be difficult to indicate the contents and capacity of the containers on the diagram itself. In order to simplify the diagram, the owner or operator may choose to include that information separately in the SPCC Plan in an accompanying table or key.

The proposed revision to the rule language would simplify the process for developing a facility diagram by allowing for a general description of the location and contents of mobile or portable oil storage containers (e.g., drums and totes) rather than representing each container individually. Under this proposal, the owner or operator could identify an area on the facility diagram (e.g., a drum storage area) and include a separate description of the total number of containers, capacities, and contents in the Plan or reference facility inventories that can be updated by facility personnel. As currently required in § 112.7(a)(3)(i), an owner or operator is required to list all of the containers in the facility in the SPCC Plan. Under the current proposal, EPA would modify § 112.7(a)(3)(i) to allow the owner or operator to provide an estimate of the potential number of mobile or portable containers, types of oil, and anticipated capacities in the Plan. This clarification may be particularly useful when the number of containers change frequently at the facility. Thus, the Plan should include a reasonable estimate of the number of containers expected to be stored in the area and the capacity of the containers. This estimate can be used to determine the applicability of the rule thresholds and provide a general description of the mobile/portable containers in the Plan.

Mobile or portable containers should be marked on the facility diagram in their out-of-service or designated storage area or where they are most frequently located, such as a warehouse drum storage area. The facility owner/operator or certifying PE may determine how best to represent mobile/portable containers on the facility diagram, such as by including a descriptive table or indicating primary storage areas. A descriptive table or key would complement the facility diagram and the SPCC Plan by providing further information on the location and contents of mobile and portable containers.

A mobile or portable oil storage container is still subject to the sized secondary containment requirements of the SPCC rule. Sections 112.8(c)(11) and 112.12(c)(11) require that a mobile or portable oil storage container (other than a mobile refueler) be positioned or located to prevent a discharge as described in § 112.1(b). The mobile or portable container must have a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation. This area can be identified on the facility diagram.

A facility diagram prepared for a state or federal plan or for other purposes (construction permits, facility modifications, or other pollution prevention requirements) may be used in an SPCC Plan if it meets the requirements of the SPCC rule. Additionally, changes to the facility diagram are considered administrative in nature and do not require PE certification.

The Agency seeks comments on this proposed option or any other approach to revising to the facility diagram requirement at § 112.7(a)(3) to address how mobile/portable containers should be marked on a facility diagram. Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action.

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

A facility diagram must also include all transfer stations and connecting pipes (§ 112.7(a)(3)). Associated piping and oil-filled manufacturing equipment present at an SPCC-regulated facility may be difficult to clearly present on a facility diagram, due to their relative location, complexity, or design. EPA requests comment on whether a rule revision is appropriate to provide further clarification on how complicated areas of piping or oil-filled equipment may be indicated on the facility diagram. As stated in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005), EPA allows flexibility in the way the facility diagram is drawn—an owner or operator may represent such systems in a less detailed manner on the facility diagram, as long as more detailed diagrams of the systems are maintained at the facility and referenced on the diagram. As described in the SPCC guidance document, the scale and level of detail shown on a facility diagram may vary according to the needs and complexity of the facility. For example, simplified schematic representations of piping combined with a description in the Plan may be sufficient. Similar to the approach described above for mobile/portable equipment, a facility owner or operator may indicate in the diagram an area where complicated oil-filled equipment is located and provide a table in the Plan describing the type(s) of equipment and oil storage capacities.

Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

F. Loading/Unloading Racks

Tank car and tank truck loading/unloading racks are subject to specific requirements in § 112.7(h), including sized secondary containment requirements. Although the term ''rack'' is referred to in the title of the provision, the rule text refers to ''loading/unloading area.'' In response to concerns expressed by the regulated community over how broadly this provision applies (whether to all areas where oil is loaded or unloaded, or only to areas with a designated loading or unloading rack), the Agency in May 2004 issued a **Federal Register** notice clarifying that the provision only applies at areas of a regulated facility where a loading or unloading rack is located (69 FR 29728, May 25, 2004). If a facility does not have a loading or unloading ''rack,'' § 112.7(h) does not apply. To provide further clarification, in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005), EPA provided a set of characteristics that describe the type of equipment typically associated with a loading or unloading rack. To provide additional clarity and certainty to the regulated community, EPA is now proposing a definition for the term ''loading/unloading rack,'' which would govern whether a facility is subject to § 112.7(h). Under this proposal, the requirements described at § 112.7(h) would only apply to areas of a regulated facility where a loading/unloading rack, as would be defined in § 112.2, is located.

A loading/unloading rack can be located at any type of facility; however, the loading and unloading areas associated with oil production tank batteries and farms generally do not have the equipment meeting the proposed definition of loading/unloading rack. Therefore, EPA is proposing a specific exclusion for oil production facilities and farms from the requirements at § 112.7(h).

1. Proposed Loading/Unloading Rack Definition

The proposed definition for ''loading/unloading rack'' is based on the set of characteristics that generally describes loading/unloading racks, as presented in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005). In developing this description, EPA considered existing definitions of the term ''loading rack'' or related terms, as found in industry, Federal, state, or international references. Based on this review, EPA is proposing to use the definition (with certain changes) developed by the American Petroleum Institute (API).[2] Specifically, we removed language on frequency of use, various components, and the limitation to the types of facilities at which a rack could be located. EPA modified this definition in order to accommodate racks found among the broader universe of facilities subject to the SPCC rule. For this proposal, the guidelines presented in the guidance document were modified to reflect additional research on the equipment typically associated with racks and to remove several ambiguous terms and phrases (See EPA's *Analysis of Loading and Unloading Rack Requirement (40 CFR part 112)*, August 31, 2007).

EPA is proposing the following definition for ''loading/unloading rack'' under § 112.2: ''Loading/unloading rack means a structure necessary for loading or unloading a tank truck or tank car, which is located at a facility subject to the requirements of this part. A loading/unloading rack includes a platform, gangway, or loading/unloading arm; and any combination of the following: piping assemblages, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices.'' The Agency believes this proposed amendment will provide clarity as to the applicability of the § 112.7(h) requirement by providing a specific definition for a loading/unloading rack.

In developing this proposed definition, EPA considered whether to differentiate between ''loading'' and ''unloading'' racks. Generally, loading involves oil transfer from a bulk storage container into the tank car/truck, whereas unloading involves oil transfer from the tank car/truck into a bulk storage container. Although racks are more commonly used for loading activities, there are instances in which unloading of oil also occurs at a rack, and, in some cases, using the same equipment. The similarity of equipment and activities suggests that EPA should not differentiate between loading and unloading racks nor eliminate the term ''unloading rack'' altogether. This approach is consistent with correspondence received from the regulated community on this issue. For example, in an October 2003 letter to EPA, the American Petroleum Institute (API) suggested a definition for rack that includes both loading and unloading activities (see the docket for this proposed rulemaking for the complete letter).

EPA understands that a loading/unloading rack is typically designed to meet the needs of an individual facility, and thus a single definition that captures all potential variations of the components presents a challenge. However, discussions with manufacturers of loading/unloading racks suggest that there is some commonality among the basic structural components of a typical ''rack.'' Thus, each of the specific components listed in the proposed definition were included because they are common characteristics of loading or unloading racks.

Loading arms are an essential component of both top and bottom loading. By including the generic term ''loading/unloading arms,'' EPA intends the proposed definition to be applicable to all loading approaches, including top, side, and bottom loading. The National Institute of Standards and Technology (NIST) (*Loading-Rack Meters Presentations, Chapter 2: Introduction to Loading Rack Metering Systems*, Revised August 2000) indicates that loading racks are designed to fill receiving tanks either from the top, side or bottom. Although top loading is common, bottom loading is increasingly used to load/unload tank cars and trucks.

Platforms offer structural bases to a loading rack and are typical of both top and bottom loading. Platforms are often found in conjunction with additional components (e.g., gangways), whereas bottom-loading operations that do not require access to the top of a tank are sufficient with only a platform component.

Gangways are primarily found on loading racks that accommodate top loading operations. However, it is not uncommon for bottom loading operations to include gangways to access the top of the rack structure or receiving container during loading operations for the purposes of sampling, testing overfill or other safety equipment, or for pressure venting operations.

Piping assemblages, valves, pumps, shut-off devices, overfill sensors, and personnel safety devices are examples of typical accessories of a loading/unloading rack, but may not be part of the rack structure itself.

The Agency seeks comment on the proposed definition of ''loading/unloading rack'' or if there are any other definitions for ''loading/unloading rack'' that would be more suitable.

Comments providing a description of a ''loading/unloading arm'' may also provide useful information for EPA to consider in determining a final action. Any alternative definition presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Requirements for Loading/Unloading Racks

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

The modification to change the word ''area'' to ''rack'' in § 112.7(h) is consistent with EPA's notice in the **Federal Register** in May 2004, which noted that the application of § 112.7(h) only applies to facilities with loading and unloading ''racks'' (69 FR 29728, May 25, 2004). EPA also clarified, in a letter to the Petroleum Marketers Association of America, that loading and unloading activities that take place beyond the rack area are not subject to

[2] American Petroleum Institute, October 18, 2002. Letter to David Lopez, Director, EPA Oil Program Center.

the requirements of § 112.7(h), but are subject, where applicable, to the general secondary containment requirements of § 112.7(c) (Letter to Daniel Gilligan, President, Petroleum Marketers Association of America, from Marianne Lamont Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA, May 25, 2004).

In the preamble to the July 2002 amendments to the SPCC rule, EPA stated that § 112.7(h) ''applies to containers which are aboveground (including partially buried tanks, bunkered tanks, or vaulted tanks) or completely buried (except those exempted by this rule)'' (67 FR 47110, July 17, 2002). This means that § 112.7(h) does not apply to a loading/unloading rack associated with a container that is exempted from the rule, such as an underground storage tank (UST) that is subject to all of the technical requirements of 40 CFR part 280 or a State program approved under part 281. EPA is reconsidering this position, because a transfer to or from such a container at an SPCC-regulated facility is a potential source of a discharge of oil into navigable waters or adjoining shorelines. Additionally, since a loading/unloading rack associated with the UST is not typically part of the UST system, it is not subject to all of the technical requirements of 40 CFR part 280 or 281, and is therefore regulated under SPCC in the same manner as any other transfer equipment or transfer activity located at an otherwise regulated SPCC facility.

In the preamble to the December 2006 amendments, EPA noted that although the amendment provided an exemption for motive power containers, the oil transfer activities to or from motive power containers occurring within an SPCC-regulated facility continue to be regulated (71 FR 77283, December 26, 2006). Consistent with the preamble to the December 2006 amendments, the Agency is clarifying that at an SPCC-regulated facility, § 112.7(h) (including the sized secondary containment provision) applies to transfers at any loading/unloading rack associated with any type of container, including one that is exempted from the rule, as long as the loading/unloading rack meets the definition proposed in this notice. A transfer not associated with a loading or unloading rack is subject to the general secondary containment provision at § 112.7(c). The Agency believes that no rule change is needed to clarify this point, because a rule amendment to exempt a loading/unloading rack associated with a UST was never proposed or finalized.

The Agency seeks comments on the proposed modifications to the provision at § 112.7(h), and how EPA regulates the transfers to or from completely buried tanks subject to all of the technical requirements under 40 CFR part 280 or part 281, or if there are any other modifications that would be more suitable. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

3. Exclusions

EPA is proposing to exclude onshore oil production facilities and farms from the loading/unloading rack requirements at § 112.7(h). The provision currently excludes all offshore facilities. EPA understands that there are extremely few, if any, loading/unloading racks at oil production facilities. Similarly, EPA understands that farm oil and fuel dispensing equipment is generally not associated with loading/unloading racks. Oil transfer areas, such as loading/unloading areas, at farms and oil production facilities that are subject to the SPCC rule remain subject to the general secondary containment requirements of § 112.7(c).

EPA understands that there may be other facilities or industry sectors that are involved in the transfer of oil, but do not have a structure that meets the definition of ''loading/unloading rack'' as proposed in this notice. EPA is proposing to exclude onshore oil production facilities and farms from § 112.7(h), because the Agency is specifically aware that these types of transfer equipment are not typically associated with these types of facilities. EPA does not want to create any confusion for owners/operators associated with oil production facilities and farms, and for the purpose of clarity, is exempting them. At other facilities that do not have a loading/unloading rack, the provisions at § 112.7(h) similarly do not apply. As EPA stated in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005), ''Areas where oil is transferred but no loading or unloading rack is present are subject to § 112.7(c), and thus appropriate containment and/or diversionary structures are required. EPA does not require specifically sized containment for transfer areas; however, containment size must be based on good engineering practice.''

The Agency seeks comment on whether the proposed exclusion for onshore oil production facilities and farms from the loading/unloading rack requirements is necessary, or whether the proposed definition of the term ''loading/unloading rack'' would provide sufficient clarity as to the applicability of § 112.7(h) at oil production facilities and farms. Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action.

4. Alternative Option Considered: No Action

EPA considered not providing any amendments to the SPCC rule related to loading/unloading racks. Under this approach, EPA would not provide a regulatory definition for loading/unloading rack or an exclusion for farms and oil production facilities, but would instead continue to follow the interpretation of loading/unloading rack as stated in the *SPCC Guidance for Regional Inspectors* and the May 2004 **Federal Register** notice. EPA chose not to move forward with this ''no action'' option because it would not address the ambiguity of the loading/unloading rack requirement as it currently stands.

The Agency seeks comment on whether there are any other alternative options that should be reviewed further by EPA prior to issuing a final action. Any suggestions for alternative options must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action.

G. Tier I Qualified Facilities

In December 2005 (70 FR 73524, December 12, 2005), EPA proposed to allow the owner or operator of a qualified facility to self-certify his SPCC Plan (this proposal was finalized in December 2006 at 71 FR 77266). In the preamble to this 2005 proposal, EPA discussed an alternative option that was developed in response to comments EPA received following publication of a Notice of Data Availability (NODA) for facilities that handle oil below a certain threshold amount (69 FR 56182, September 20, 2004) and was based on an analysis submitted by the Small Business Administration (SBA) Office of Advocacy. This ''multi-tiered approach'' was based on the total storage capacity of a facility, as follows:

- Tier I would include facilities that have between 1,321 and 5,000 gallons of total oil storage capacity. These facilities would not need a written SPCC Plan (and therefore no PE certification would be needed), but would have to adhere to all other SPCC requirements.
- Tier II would include facilities having between 5,001 and 10,000 gallons of total oil storage capacity.

These facilities would be required to have a written SPCC Plan, but the Plan would not need to be certified by a PE, and a PE site visit would not be required. Standardized Plans could be adopted by a facility conforming to standard design and operating procedures, without requiring PE certification.

- Tier III would include the remaining SPCC-regulated facilities with total oil storage capacities greater than 10,000 gallons. These facilities would be required to have a written SPCC Plan certified by a PE.

As described in its December 2006 final rule (71 FR 77266, December 26, 2006), EPA did not adopt this suggested multi-tiered structure approach because the Agency believes that a facility cannot effectively implement an oil spill prevention program, or any other program (business or otherwise), without documentation of that program's action items, such as in a written Plan. However, the Agency did finalize at that time requirements for one ''tier'' of qualified facilities to prepare a self-certified SPCC Plan. The Agency understands the concerns of small businesses, particularly of facilities with a smaller oil storage capacity and likely more limited resources, of the potential effort needed to develop a full Plan. Thus, the Agency is now exploring the possibility of further streamlining the SPCC requirements for certain qualified facilities that meet additional criteria.

EPA proposes to amend the SPCC rule to provide an additional option for an owner or operator of a qualified facility with a maximum individual oil storage container capacity of 5,000 U.S. gallons to complete and implement a streamlined, self-certified SPCC Plan template (proposed as Appendix G to 40 CFR part 112), in order to comply with the requirements of the SPCC rule. A qualified facility is one that meets the qualifying criteria described in the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006): a facility that has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less; and has had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve-month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years (this criterion does not include discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism). For a more complete discussion on these qualifying criteria, see the preamble to the December 2006 SPCC rulemaking at 71 FR 77266.

For clarity, EPA is now proposing the term ''Tier II qualified facility'' to describe those qualified facilities as defined by and subject to the requirements promulgated in the December 2006 SPCC rulemaking at 71 FR 77266 and to propose the term ''Tier I qualified facility'' for a new subset of these qualified facilities. EPA is proposing that a Tier I qualified facility, in addition to meeting the eligibility criteria for a Tier II qualified facility, also have no individual oil storage containers with a capacity greater than 5,000 U.S. gallons in volume, as described below.

1. Eligibility Criteria

As a subset of ''qualified facilities,'' Tier I qualified facilities must meet all of the eligibility criteria finalized by EPA in December 2006 (71 FR 77266), including reportable discharge history. In the current action, EPA is proposing an additional criterion for Tier I eligibility: a maximum individual oil storage container capacity of 5,000 U.S. gallons.

EPA has developed the proposed Tier I category based on an operational characteristic, rather than a lower total facility storage capacity threshold (as suggested by SBA), in order to link any streamlined requirements with a reduced potential for oil discharge. EPA proposes to set the maximum individual container capacity threshold at 5,000 U.S. gallons because this volume is consistent with industry consensus standards that call for varying levels of inspection stringency based on container size and configuration. For example, the Steel Tank Institute's SP001, *Standard for the Inspection of Aboveground Storage Tanks*, allows for periodic visual inspection alone, with no requirement for the inspector to be professionally certified, for containers of 5,000 U.S. gallons or less that are equipped with a spill control measure and a continuous release detection method. Furthermore, a facility with smaller storage containers often has less complicated operations, is typically an end-user of oil (does not distribute the oil further), is involved in few oil transfers, and may have predominantly mobile or portable containers with a few low-capacity fixed oil storage containers. Smaller containers have a smaller potential maximum discharge size, and there may be little or no piping associated with these small containers.

Determining the storage capacity for each oil storage container is straightforward, so it should be relatively simple for a qualified facility owner or operator to determine whether the facility meets this criterion. An EPA inspector will be able to easily verify the storage capacity for each container, and therefore confirm eligibility for Tier I status as a qualified facility.

This approach is similar to SBA's suggested Tier I eligibility criterion of a 5,000-gallon aggregate facility storage capacity threshold. However, by maintaining the higher facility capacity threshold that applies for all qualified facilities (10,000 U.S. gallons) and limiting the size of individual oil storage containers, EPA proposes an option from which a greater number of facilities, including those with a fluctuating oil storage capacity below 10,000 U.S. gallons, may benefit.

To determine eligibility as either a Tier I or Tier II qualified facility, only the aboveground oil storage capacity is considered. However, a completely buried oil storage tank located at a qualified facility is also regulated unless it is subject to all of the technical requirements of 40 CFR part 280 or a State program approved under part 281. That is, if a facility is subject to the SPCC rule, then both aboveground and completely buried oil storage containers located at the facility are subject to the rule, unless specifically exempted from applicability under § 112.1(d).

The Agency seeks comments on whether setting the criteria for Tier I qualified facilities as a maximum individual oil container capacity of 5,000 U.S. gallons appropriately addresses the concerns of facilities with relatively smaller volumes of oil, while maintaining the environmental protection intended by the regulation. Any suggestions for alternative criteria, including alternate container volume thresholds, must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Provisions for Tier I Qualified Facilities

In lieu of preparing a full SPCC Plan that is PE- or self-certified, EPA proposes that an owner or operator of a Tier I qualified facility would have the option to complete the SPCC Plan template proposed as Appendix G of 40 CFR part 112. The Plan template is designed to be a simple SPCC Plan that includes only the requirements that should apply to this lowest tier of regulated facilities. This proposed rule streamlines requirements for Tier I qualified facilities by eliminating and/or modifying several SPCC requirements (e.g., facility diagram (§ 112.7(a)(3)) and

certain provisions that generally do not apply to facilities that store or handle smaller volumes of oil, such as requirements for transfers taking place at loading racks (§ 112.7(h)).

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

a. Streamlined Provisions for Tier I Qualified Facilities

EPA is proposing a set of revised requirements applicable to Tier I qualified facilities in lieu of the specific existing requirements.

In lieu of the full failure analysis requirements in § 112.7(b), EPA proposes that an owner or operator of a Tier I facility examine areas where there is a reasonable possibility for equipment failure (such as where equipment is loaded or unloaded; where tank overflow, rupture, or leakage is possible; or at the location of any other equipment known to be a source of discharge) and include in the Plan the total quantity of oil that could be discharged and a prediction of the direction of flow. This proposed amendment removes the requirement for an owner or operator of a Tier I facility to predict the rate of flow that could result from an equipment failure. This modified requirement is proposed as § 112.6(a)(3)(i). EPA believes this is appropriate because Tier I facilities will have only containers less than 5,000 gallons and, additionally, usually have low pressure pumps. In order to simplify completion of the SPCC Plan template, EPA is removing the requirement for an owner/operator to calculate the rate of flow that could result from an equipment failure.

Currently, secondary containment requirements for mobile/portable containers and all other bulk storage container requirements are provided in separate provisions: §§ 112.8(c)(2) and (c)(11) and 112.12(c)(2) and (c)(11). In lieu of these separate requirements, EPA proposes to (1) combine mobile/portable container requirements with the other bulk storage container requirements, and (2) eliminate the requirement for containment to be ''sufficiently impervious.'' This modified requirement is proposed as § 112.6(a)(3)(ii). Combining these requirements streamlines two similar provisions and simplifies requirements for Tier I qualified facilities. Because EPA expects a Tier I qualified facility to be a small, simple operation, with oil storage containers that are inside buildings, inside pre-engineered secondary containment, or double-walled, the requirement for containment to be specifically designed as ''sufficiently impervious'' may be unnecessary. Furthermore, the requirement for secondary containment to be capable of containing oil and constructed so that any discharge will not escape the containment system before cleanup occurs (§ 112.7(c)) still applies, and is similar in nature to the ''sufficiently impervious'' requirement. For the purposes of simplicity, EPA would rely on the requirement in § 112.7(c) to adequately address Tier I qualified facilities.

In lieu of §§ 112.8(c)(8) and 112.12(c)(8), the overfill prevention requirements, EPA proposes to require that an owner or operator of a Tier I qualified facility ensure each container is provided with a system or documented procedure to prevent overfills of containers, and that containers are regularly tested to ensure proper operation or efficacy. This modification provides more flexibility by allowing the use of alternative methods to prevent container overfills, rather than requiring an owner or operator to meet a prescribed set of overfill prevention procedures. This modified requirement is proposed as § 112.6(a)(3)(iii). EPA believes this proposed flexibility is warranted, because overfills can be prevented on smaller containers if tanks are manually gauged and the transfer is constantly attended. In order to comply with this requirement, a Tier I qualified facility owner or operator simply needs to provide a relatively brief description of the overfill prevention procedures in the SPCC Plan. The description needs to provide only sufficient detail that would allow an EPA inspector to understand how the owner/operator prevents overfills of oil storage containers and how liquid level sensing devices are tested.

Elsewhere in this notice, EPA is proposing to extend the streamlined security and integrity testing requirements that were provided for qualified facilities in the December 2006 SPCC rule amendment (71 FR 77266) to all facilities. Under this proposed approach, both Tier I and Tier II qualified facilities would be subject to the revised security (§ 112.7(g)) and integrity testing (§§ 112.8(c)(6) and 112.12(c)(6)) provisions.

b. Provisions Not Applicable to Tier I Qualified Facilities

The following requirements are not included in the SPCC Plan template because, for an end-use facility with a smaller oil storage capacity and a simple configuration, these requirements are inapplicable or unnecessary: facility diagram (§ 112.7(a)(3)); facility description (§ 112.7(a)(3)(ii), 112.7(a)(3)(iii)) and 112.7(a)(3)(v)); loading/unloading rack (§ 112.7(h)); brittle fracture evaluation (§ 112.7(i)); facility drainage (§§ 112.8(b)(3), 112.8(b)(4), 112.8(b)(5), 112.12(b)(3), 112.12(b)(4), and 112.12(b)(5)); monitoring internal heating coils (§§ 112.8(c)(7) and 112.12(c)(7)), effluent treatment facilities (§§ 112.8(c)(9) and 112.12(c)(9)); and facility transfer operations (§§ 112.8(d)(1), 112.8(d)(2), 112.8(d)(3), 112.8(d)(5), 112.9(d)(2), 112.12(d)(1), 112.12(d)(2), 112.12(d)(3), and 112.12(d)(5)).

Section 112.7(a)(3) Facility diagram. A qualified facility with no individual container greater than 5,000 U.S. gallons in capacity is typically small and generally simple in configuration. A facility diagram is not needed to understand the facility layout and locate areas of potential discharge at such facilities.

Section 112.7(a)(3)(ii) Discuss discharge prevention measures including routine handling of products (loading, unloading and facility

transfers). In order to simplify completion of the SPCC Plan template, EPA proposes to remove the administrative provisions that require discussion of oil handling at the facility. Smaller oil storage capacity facilities tend to have fewer oil transfers, which are generally conducted by an off-site oil distributor. Although the owner/operator should be familiar with the routine oil-handling activities and train employees on established procedures for oil handling, EPA does not believe it is necessary to include a description of these procedures in the SPCC Plan template.

Section 112.7(a)(3)(iii) Discuss discharge or drainage controls (e.g., secondary containment) and procedures. In order to simplify completion of the SPCC Plan template, we have removed the requirement to describe the facility drainage and secondary containment. Instead, Section 2 of the Plan template includes a table for the owner or operator to identify oil storage containers and the method of secondary containment provided for each container. EPA believes this is appropriate, considering the smaller volumes of oil stored or handled at these facilities.

Section 112.7(a)(3)(v) Discuss methods of disposal of recovered materials. In order to simplify completion of the SPCC Plan template, we have removed the requirement to discuss disposal methods for recovered materials. However, the owner/operator is still obligated to meet all local, state and Federal regulatory requirements for the proper disposal of oil contaminated materials following an oil discharge.

Section 112.7(h) Facility tank car and tank truck loading/unloading rack. Elsewhere in this notice, EPA is proposing a definition for the term ''loading/unloading rack.'' Given the Tier I qualified facility eligibility criteria, a Tier I qualified facility would be unlikely to have a loading/unloading rack, as proposed to be defined in § 112.2, because a Tier I qualified facility would not typically be involved with oil distribution. Therefore, eliminating this requirement is appropriate.

Section 112.7(i) Brittle fracture evaluation. This requirement applies to field-constructed, aboveground containers. Field-constructed containers tend to be greater than 5,000 U.S. gallons in capacity; under this proposal, a Tier I qualified facility would not have any containers greater than 5,000 U.S. gallons in capacity. Therefore, eliminating this requirement is appropriate.

Sections 112.8(b)(3)–(b)(5) and 112.12(b)(3)–(b)(5) Facility drainage requirements. A facility with a maximum individual container storage capacity of 5,000 U.S. gallons is unlikely to have complicated drainage systems. The purpose of drainage requirements listed in these provisions is to provide further specification for when drainage systems are used as secondary containment methods, and for how drainage from diked containment areas should be accomplished. In a smaller facility with less complicated operations, this additional specification is not necessary.

Sections 112.8(c)(7) and 112.12(c)(7) Requirements for monitoring internal heating coils. A facility with smaller oil storage containers is unlikely to have oil storage containers with heating coils due to the type of operations conducted and the kind of oil commonly used at such a facility. Therefore, eliminating this requirement is appropriate.

Sections 112.8(c)(9) and 112.12(c)(9) Effluent treatment facility inspections. A facility with smaller oil storage containers generally does not maintain an effluent treatment system. Therefore, eliminating this requirement is appropriate.

Section 112.8(d)(1) and 112.12(d)(1) Corrosion protection for buried piping. A facility with smaller oil storage containers generally does not maintain extensive or complicated buried piping systems. Therefore, eliminating this requirement is appropriate.

Sections 112.8(d)(2) and 112.12(d)(2), and 112.8(d)(3) and 112.12(d)(3) Capping or blank-flanging terminal connections and design of pipe supports. A facility with smaller oil storage containers generally does not maintain extensive or complicated piping systems, and piping is generally limited in length and adjacent to buildings or associated equipment. Therefore, eliminating this requirement is appropriate.

Section 112.8(d)(5) and 112.12(d)(5) Warn vehicles of aboveground piping. A facility with smaller oil storage containers generally does not maintain extensive or complicated piping systems that may be impacted by vehicles entering or leaving the facility. Furthermore, piping is generally limited in length and adjacent to buildings or associated equipment. Therefore, eliminating this requirement is appropriate.

Section 112.9(d)(2) Inspect saltwater disposal facilities. EPA does not expect there to be any saltwater disposal equipment generally associated with an oil production facility that meets the criteria for a Tier I qualified facility as described in this notice. Therefore, eliminating this requirement is appropriate.

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

EPA also believes that no further differentiation is warranted for offshore drilling, production, and workover facilities subject to § 112.11. Due to the nature of operations associated with these types of facilities, they are not likely to meet the criterion of a maximum individual container capacity of 5,000 U.S. gallons.

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

The Agency also notes that use of the Plan template approach would be optional. Under this proposed rule, an owner or operator of a Tier I qualified

facility could choose to prepare and implement either a full PE-certified SPCC Plan or a self-certified SPCC Plan according to all of the requirements of § 112.6(b) in order to comply with the requirements under 40 CFR part 112. In other words, if a Tier I qualified facility owner/operator chooses not to use the Plan template in Appendix G, he would then be required to comply with the Tier II qualified facility requirements in § 112.6(b). Any owner or operator of a qualified facility may also choose to prepare a full PE-certified Plan instead of a self-certified one.

The Agency believes that proposing a simpler, less costly compliance option for these smaller, less complex facilities will improve overall compliance with the SPCC regulation resulting in enhanced environmental protection. EPA seeks comments on whether the proposed streamlined set of rule provisions for Tier I qualified facilities addresses the concerns of owners and operators of facilities with relatively smaller volumes of oil and simpler configurations, while maintaining the environmental protection intended by the regulation. Any suggestions for alternative approaches and whether additional provisions should be included or excluded from the template must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

3. SPCC Plan Template

The proposed SPCC Plan template for Tier I qualified facilities is found at Appendix G in this proposed rule. To facilitate the development of SPCC Plans at Tier I qualified facilities, EPA would also make the Plan template available on its Web site, *http://www.epa.gov/emergencies.* Once completed and certified by the owner or operator, the Plan template would serve 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 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)).

a. SPCC Plan Template Format

The proposed template in Appendix G consists of a simple form, where the facility owner/operator can confirm that that the facility meets the rule requirements by marking the appropriate checkboxes. In other sections, the owner or operator would enter the relevant information in a summary table, or describe the equipment or procedures implemented at the facility to meet the requirements. Specifically, detailed descriptions would be provided for: (1) The inspection/testing program used for all aboveground storage containers and piping; (2) security measures (except for oil production facilities); (3) immediate actions to be taken in the event of a reportable discharge (i.e., a discharge to navigable waters or adjoining shorelines); (4) procedures for preventing overfills from each oil storage container; and (5) the flowline/intra-facility gathering line maintenance program (for oil production facilities).

The proposed template also includes attachments with various tables that the owner or operator may use to record compliance activities, such as periodic Plan reviews, equipment inspections, personnel training, and discharge notifications. Records of inspections and tests kept under usual and customary business practices also would suffice. An owner or operator may insert additional pages to his Plan to provide more detailed descriptions of equipment or procedures than allowed in the space provided in the template, and provide the appropriate reference in the relevant template field.

At a minimum, an owner or operator would be required to fill out all applicable portions of the Plan template. EPA would expect an owner or operator to complete all fields in the general portion of the template (Sections I and II, and III.1 through III.8), and the specific portion of the template that applies to their facility type (A, B, or C of Section III).

The first part of the proposed Plan template contains summary information about the facility. Section I contains the self-certification statement that must be signed by the owner or operator. By signing this statement, the facility owner or operator preparing the Plan would commit to implementing the measures described in the Plan. In Section II, the owner or operator acknowledges the requirements to review and amend the Plan, and Plan reviews and amendments can be recorded in Attachment 2 to the Plan template. Section III consists of the requirements that apply to all facility types and include, in order: (1) Oil Storage Containers; (2) Secondary Containment and Oil Spill Control; (3) Inspections, Testing, Recordkeeping, and Personnel Training; (4) Security (excluding oil production facilities); (5) Emergency Procedures and Notifications; (6) Contact List; (7) NRC Notification Procedure; and (8) SPCC Spill Reporting Requirements.

The owner or operator must also complete one of the Sections labeled A through C, according to the type of facility, as follows: Section A in the case of an onshore facility (excluding production) such as a farm; Section B in the case of an onshore oil production facility; and Section C in the case of an onshore oil drilling and workover facility. The Agency did not include requirements for offshore oil drilling, production or workover facilities in the template because EPA is not aware of any offshore drilling, production or workover facility that would meet the Tier I qualification criteria.

EPA believes that this simplified approach to developing an SPCC Plan for Tier I qualified facilities is responsive to the concerns expressed by small businesses and the SBA Office of Advocacy, and is consistent with the characteristics of these facilities having a limited number of oil storage containers, smaller overall oil storage capacities, simple configurations, fewer oil transfers, and often have no further distribution of oil.

The Agency seeks comments on whether the proposed SPCC Plan template in Appendix G for Tier I qualified facilities addresses the concerns of owners and operators of facilities with relatively smaller volumes of oil, while maintaining the environmental protection intended by the regulation. The Agency also seeks comments on the clarity and ease-of-use of the Plan template.

b. Environmental Equivalence and Impracticability Determinations

Use of the Appendix G template would be limited to those facilities that do not use environmentally equivalent measures under § 112.7(a)(2) and that do not determine secondary containment to be impracticable as per § 112.7(d). An owner or operator of a Tier I qualified facility who wants to use such deviations may choose to prepare and implement a self-certified Plan in accordance with the Tier II qualified facility requirements in § 112.6(b) and can then have a licensed PE review and certify those portions of the SPCC Plan that provide for alternate measures to be implemented at the facility. However, these facilities would not be able to use the template in Appendix G to comply with the SPCC rule because Tier II facilities have additional SPCC requirements that are not included in the Plan template. Tier I qualified facilities may also choose to prepare and implement a PE-certified Plan in accordance with the full set of applicable requirements in § 112.7 and subparts B and C of the rule.

4. Self-Certification and Plan Amendments

The elements of the Tier I self-certification requirement currently being proposed are similar in scope to those required for an owner or operator of a qualified facility who chooses to self-certify a Plan (as promulgated in December 2006, 71 FR 77266). An owner or operator of a Tier I qualified facility who chooses to complete an Appendix G template Plan would be required to certify that: (1) He is familiar with the applicable requirements of the SPCC rule; (2) he has visited and examined the facility; (3) the Plan has been prepared in accordance with accepted and sound industry practices and standards; (4) procedures for required inspections and testing have been established in accordance with industry inspection and testing standards and recommended practices; (5) the Plan is being fully implemented; (6) the facility meets the qualification criteria set forth under § 112.3(g)(1); (7) the Plan does not utilize the environmental equivalence or impracticability provisions under § 112.7(a)(2) and 112.7(d); and (8) the Plan and the individual(s) responsible for implementing the Plan have the full approval of management and the facility owner or operator has committed the necessary resources to fully implement the Plan.

The template also includes a section that acknowledges the owner/operators' obligation to report oil discharges; review and amend the SPCC Plan; prepare an oil spill contingency plan and provide a written commitment of resources for qualified oil-filled operational equipment (in lieu of secondary containment) or for flowlines and intra-facility gathering lines at oil production facilities; implement the Plan; and certify that the information in the Plan is true.

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

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

The Agency seeks comments on the appropriateness of these self-certification elements and Plan amendment requirements, and on whether there are other requirements that should be included. Any suggestions for differentiation for the template must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action.

5. Tier II Qualified Facility Requirements

EPA proposes to designate qualified facilities that do not meet the additional criterion for Tier I qualified facilities (i.e., no individual oil storage container with a capacity greater than 5,000 U.S. gallons) as Tier II qualified facilities. Although EPA is proposing changes to the organization of the regulatory text in § 112.6 in order to accommodate the tiered approach, the requirements for Tier II qualified facilities remain the same as they were finalized in December 2006 (71 FR 77266). Tier II qualified facilities may choose to comply with the requirements in proposed § 112.6(b) by completing and implementing a self-certified SPCC Plan, in lieu of having a PE-certified Plan. The self-certified SPCC Plan must comply with all of the applicable requirements of section § 112.7 and subparts B and C of the rule. The following table illustrates the tiers, criteria and options for qualified facilities and all others as described in this notice:

Qualified facilities		All other facilities
Tier I	Tier II	
If the facility has 10,000 gallons or less in aggregate aboveground oil storage capacity; *and* If the facility has not had (1) a single discharge of oil to navigable waters exceeding 1,000 U.S. gallons, or (2) two discharges of oil to navigable waters each exceeding 42 U.S. gallons within any twelve-month period, in the three years prior to the SPCC Plan certification date, or since becoming subject to the SPCC rule if facility has been in operation for less than three years; *and* If the facility has no individual oil containers greater than 5,000 gallons;	If the facility has 10,000 gallons or less in aggregate aboveground oil storage capacity; *and* If the facility has not had (1) a single discharge of oil to navigable waters exceeding 1,000 U.S. gallons, or (2) two discharges of oil to navigable waters each exceeding 42 U.S. gallons within any twelve-month period, in the three years prior to the SPCC Plan certification date, or since becoming subject to the SPCC rule if facility has been in operation for less than three years;	If the facility has greater than 10,000 gallons in aggregate aboveground oil storage capacity, *or* If the facility has had (1) a single discharge of oil to navigable waters exceeding 1,000 U.S. gallons, or (2) two discharges of oil to navigable waters each exceeding 42 U.S. gallons within any twelve-month period, in the three years prior to the SPCC Plan certification date, or since becoming subject to the SPCC rule if facility has been in operation for less than three years; *or* If the owner/operator is eligible for qualified facility status, but decides not to take the option;

Qualified facilities		All other facilities
Tier I	Tier II	
Then: The facility may complete and self-certify an SPCC Plan template (proposed as Appendix G to 40 CFR part 112) in lieu of a full SPCC Plan reviewed and certified by a Professional Engineer (PE)	Then: The facility may prepare a self-certified SPCC Plan in accordance with all of the applicable requirements of § 112.7 and subparts B and C of the rule, instead of one reviewed and certified by a Professional Engineer (PE)	Then: The facility must prepare a PE-certified SPCC Plan in accordance with all of the applicable requirements of § 112.7 and subparts B and C.

It is important to note that Tier II qualified facilities would not be able to use the Appendix G template because it does not include all of the SPCC requirements that may apply for these facilities.

EPA is also proposing to remove the streamlined security and integrity testing requirements for qualified facilities. Under this proposal, the flexibility already available for qualified facilities would be extended to all facilities, so these requirements would be redundant.

6. Alternative Options Considered

In developing the amendments proposed in this notice, EPA considered the following alternatives for streamlining requirements for a subset of qualified facilities:

a. Exemption From SPCC Regulation

Under this option, EPA would exempt a certain subset of qualified facilities from the SPCC requirements altogether, based on a lower facility storage capacity threshold (e.g., 5,000 U.S. gallons). The exemption of Tier I qualified facilities from the SPCC regulation would significantly reduce the number of facilities subject to the SPCC requirements. This regulatory alternative would also simplify the applicability of the rule for qualified facilities. However, there is no rationale or basis for exempting Tier I qualified facilities completely from the SPCC rule. Furthermore, there are no data to support setting a facility capacity threshold lower than the current 10,000-gallon capacity threshold for qualified facilities.

b. Tier I Eligibility Criteria Based on Total Facility Storage Capacity

Under this option, EPA would determine the eligibility for Tier I qualified facilities by establishing a lower facility storage capacity threshold, such as 5,000 U.S. gallons. This action mirrors SBA's approach in its multi-tiered structure proposal (submitted as a public comment in response to the 2005 SPCC notice of proposed rulemaking, OPA–2005–0001–0120). One advantage of this option is its simplicity, since a facility owner or operator—once he determines that the facility is ''qualified'' according to the criteria promulgated in December 2006—would need only to consider the aggregate storage capacity to determine if the Tier I option is available.

However, there are no data to support setting a total facility capacity threshold for a subset of qualified facilities to establish a lower tier of differentiated requirements. Furthermore, no strong rationale exists to support some areas for differentiation in the template, based on a 5,000-gallon total facility storage capacity threshold alone. EPA's preferred option ties the container capacity threshold to existing differentiation in the STI SP001 standard for container inspections. Additionally, a lower tier at the 5,000-gallon threshold capacity may complicate applicability of the relief for facilities with fluctuating oil storage capacity.

The Agency seeks comments on these alternative options. Any suggestions for additional alternatives must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

H. General Secondary Containment

At a facility subject to the SPCC rule, all areas with the potential for a discharge as described in § 112.1(b) are subject to the general secondary containment provision, § 112.7(c). These areas may have loading/unloading areas (also referred to as transfer areas), piping, and/or mobile refuelers, and may include other areas of a facility where oil is present. The general secondary containment requirement requires that these areas be designed with appropriate containment and/or diversionary structures to prevent a discharge of oil in quantities that may be harmful (i.e., as described in 40 CFR part 110 into or upon navigable waters of the United States or adjoining shorelines; see § 112.1(b)). EPA clarified in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005) that ''appropriate containment'' should be designed to address the most likely discharge from the primary containment system, such that the discharge will not escape containment before cleanup occurs. With this proposed revision, EPA seeks to provide clarity consistent with the explanation found in the guidance document regarding the method, design, and capacity of secondary containment as required under § 112.7(c).

Furthermore, § 112.7(c)(1) and (2) list several example methods for providing secondary containment. These methods are examples only; other containment methods may be used, consistent with good engineering practice. To provide clarity for the regulated community, EPA is proposing to expand the list of examples of secondary containment methods for onshore facilities. By expanding this list of examples, EPA intends to include some additional prevention systems commonly used at facilities.

1. Proposed Revisions to the General Secondary Containment Requirement

a. Containment Method, Design, and Capacity

EPA proposes to clarify the general secondary containment requirement at § 112.7(c) by adding the text ''In determining the method, design, and capacity for secondary containment, you need only to address the typical failure mode, and the most likely quantity of oil that would be discharged. Secondary containment may be either active or passive in design.''

In the SPCC rule, the general secondary containment provision is complemented by various specific secondary containment requirements (e.g., §§ 112.7(h)(1), 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.12(c)(2), 112.12(c)(11)) which address the potential for oil discharges from specific parts of a facility where oil is stored or handled, such as at a bulk storage container or a loading/unloading rack. These specific secondary containment requirements address the design, sizing and freeboard capacity to account for a *major container failure.* In contrast, the general secondary containment provision is intended to address the *most likely oil discharge* from any part of a facility. Therefore, in determining how to provide appropriate general

secondary containment, a facility owner or operator would consider the typical failure mode and most likely quantity of oil that would be discharged. Based on these site-specific conditions, the owner or operator can determine what capacity of secondary containment is needed, and design the containment method accordingly. The most likely quantity of oil discharged is not often expected to be the maximum capacity of the container.

For example, at a regulated transfer area where a truck loads fuel into an oil tank, the owner or operator may determine that the reasonably expected source and cause of a discharge would be a ruptured hose connection, and that a shutoff valve is present and accessible to the attendant. To determine the most likely quantity of oil that would be discharged, the oil's rate of flow and the amount of time it would take for the attendant to close the valve need to be considered, in accordance with good engineering practice. Depending on the likely quantity of oil that would be discharged, the owner/operator may determine that the appropriate method of secondary containment is a passive containment measure, such as curbing around the area, or, if the likely quantity of oil is reasonably handled by spill kits, then such an active method of containment may be used.

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

The *SPCC Guidance for Regional Inspectors* (Version 1.0, November 28, 2005) provides several examples of the use of active measures at an SPCC-regulated facility. The efficacy of active containment measures to prevent a discharge depends on their technical effectiveness (e.g., mode of operation, absorption rate), placement and quantity, and timely deployment prior to or following a discharge. For discharges that occur only during attended activities, such as those occurring during transfers, an active measure (e.g., sock, mat, or other portable barrier, or land-based response capability) may be appropriate, provided that the measure is capable of containing the oil discharge volume and rate, and is timely and properly constructed/deployed.

The general secondary containment approach implemented at a facility need not be ''one size fits all.'' Different approaches may be taken for the same activity at a given facility, depending on the material and location. For example, the SPCC Plan may specify that drain covers and sorbent material be pre-deployed prior to transfers of low viscosity oils in certain areas of a facility located in close proximity to navigable waters/adjoining shorelines or drainage structures. For other areas and/or other products (e.g., highly viscous oils), the Plan may specify that sufficient spill response capability is available for use in the event of a discharge, so long as personnel and equipment are available at the facility and these measures can be effectively implemented in a timely manner to prevent oil from reaching navigable waters and adjoining shorelines.

Whatever method is used, the owner or operator must document in the SPCC Plan the rationale for each containment method (i.e., how the use of the measure is appropriate to the situation). The SPCC Plan must also describe the procedures to be used to deploy any active measures and explain the methods for discharge discovery that will be used to determine when deployment of the active measure is appropriate (§ 112.7(a)(3)(iii)).

EPA requests comments on the appropriateness of the proposed language for the general secondary containment provision to provide clarity regarding the method, design, and capacity of secondary containment as required under § 112.7(c), consistent with current Agency guidance. Any suggestions for alternative approaches must include an appropriate rationale in order for the Agency to be able to consider it for final action.

b. List of Secondary Containment Methods for Onshore Facilities

EPA also proposes to amend the general secondary containment provision at § 112.7(c)(1) to include the following additional example prevention systems for onshore facilities: Drip pans, sumps, and collection systems. Drip pans are typically used to isolate and contain small drips or leaks until the source of the leak is repaired. They are commonly used with product dispensing containers (such as drums), uncoupling of hoses during bulk transfer operations, and for pumps, valves, and fittings. Sumps and collection systems generally involve a permanent pit or reservoir and the troughs/trenches connected to it that collect oil.

By expanding the list of example secondary containment methods found in § 112.7(c)(1), EPA intends to increase the clarity and better represent current prevention practices. EPA emphasizes that the list of prevention systems are examples only; other containment methods may be used, consistent with good engineering practice.

EPA requests comments on the appropriateness of amending the general secondary containment provision to expand the list of example secondary containment methods found in § 112.7(c)(1). Any suggestions for alternative approaches must include an appropriate rationale in order for the Agency to be able to consider it for final action.

2. Alternative Option Considered: No Action

EPA considered taking no regulatory action regarding this issue. The current regulatory language currently allows for the facility owner/operator to design secondary containment based on a typical failure mode and likely quantity discharged. However, EPA believes that modifying the general secondary containment language at § 112.7(c) is appropriate to more clearly illustrate the flexibility already contained in the rule, as described in the guidance document.

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

In the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), EPA exempted mobile refuelers from the sized secondary containment requirements applicable to bulk storage containers. In the amended regulation, EPA defined a mobile refueler as ''a bulk storage container onboard a vehicle or towed, that is designed or used solely to store and transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container.'' (See § 112.2). EPA recognizes that non-transportation-related tanker trucks may operate similarly to mobile refuelers, though not specifically transferring fuel. Therefore, they may have the same difficulty in complying with the sized secondary containment requirements. EPA requests comment on whether the regulatory relief provided to mobile refuelers in 2006 (i.e., an exemption

from the sized secondary containment requirements) should be extended to non-transportation-related tank trucks at a facility subject to the SPCC rule. Such tank trucks include those used to store for short periods of time and transport fuel, crude oil, condensate, non-petroleum, or other oils for transfer to or from bulk storage containers, e.g., 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) would still apply. This approach is also consistent with the general secondary containment requirements that are already applicable at the SPCC facility that the tank truck is visiting, and would simplify compliance for the facility. However, this exemption to sized secondary containment would not apply to a vehicle used primarily for the bulk storage of oil in a stationary location, in place of a fixed oil storage container.

I. Security

In December 2005 (70 FR 73524, December 12, 2005), EPA proposed to allow the owner and operator of a qualified facility to comply with a set of streamlined facility security requirements (finalized in December 2006 at 71 FR 77266). In the preamble to that proposal, EPA recognized that there is no one single approach to ensure proper facility security. For example, the security requirements for fencing and lighting may not always be appropriate for sites such as a national, state, or local park subject to the SPCC requirements, where the site layout may be too extensive to fence, and where the lighting of a solitary container would invite, rather than deter, would-be intruders. EPA has received comments from the regulated community suggesting that the security requirements should be revised for *all* regulated facilities, for reasons consistent with those for a qualified facility. EPA agrees that, even for a facility that is not a qualified facility, it may not be appropriate to provide fencing around the entire perimeter, and that lighting requirements in remote areas may attract, rather than deter, vandals. Additionally, many oil storage sites at farms, parks, and similarly isolated facilities have no electricity, which makes compliance with the lighting requirement difficult. In other cases, oil storage sites, such as those at farms, may be located where an owner or operator is present around the clock. Furthermore, due to the increased focus on security requirements by the Department of Homeland Security (DHS) and other regulatory agencies to which a facility subject to the SPCC rule may also be subject, EPA believes that it is important to provide flexibility in complying with the security requirements to allow an owner/operator of a facility to customize a security program. By revising the facility security requirements to make them more performance-based, EPA expects to improve compliance rates, thereby enhancing environmental protection.

1. Proposed Revisions to the Security Requirements

The application of the SPCC security measures is often determined by the facility's geographical/spatial factors and there is no ''one-size-fits-all'' answer to this requirement. Therefore, EPA is proposing to modify the security requirements at § 112.7(g) to make them consistent with the streamlined, performance-based requirements currently found at § 112.6(c)(3)(ii) for qualified facilities. Because the proposed revised requirements at § 112.7(g) would apply to all facilities (excluding oil production facilities), EPA proposes to remove § 112.6(c)(3), as it would be redundant.

This proposal would allow 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 and operator would be required to document in his SPCC Plan how these security measures are implemented.

These proposed requirements would replace the more prescriptive fencing and other requirements, currently found in § 112.7(g)(1) through (5), and would allow the facility owner/operator to determine how best to secure and control access to areas where a discharge to navigable waters or adjoining shorelines may originate. With this proposed rule revision, EPA would also allow the facility owner/operator to determine how lighting can be used to deter intruders and to assist in the discovery of oil discharges, or whether there is a more appropriate, site-specific method. EPA believes that this proposed amendment would likely eliminate the need for PE-certified environmentally equivalent alternatives to the specified security requirements, because the proposed provision would already provide the flexibility for the owner/operator to provide whatever measures are most appropriate for the facility, as long as they accomplish the stated security goal.

EPA requests comments on the appropriateness of extending the streamlined security requirements already available to qualified facilities to all facilities regulated by the SPCC rule. Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Alternative Option Considered: No Action

EPA considered taking no regulatory action regarding this issue. A facility owner or operator could continue to use alternate measures in lieu of the more prescriptive requirements currently found at § 112.7(g), with a PE-certified explanation of how the alternate measures are environmentally equivalent. However, EPA believes that modifying the security requirements at § 112.7(g) to make them consistent with the streamlined, performance-based requirements currently provided for qualified facilities is appropriate. Therefore, EPA chose not to propose this ''no action'' option.

J. Integrity Testing

In December 2006, EPA promulgated an amendment (71 FR 77266, December 26, 2006) allowing the owner or operator of a qualified facility to comply with streamlined integrity testing requirements. This amendment allowed the owner or operator of a qualified facility to consult and rely on industry standards to determine appropriate qualifications for inspectors/testing personnel and the appropriate integrity testing method for a particular container based on size, configuration, and design, without the need for a PE-certified explanation for this environmentally equivalent deviation from the existing rule requirements at § 112.8(c)(6) or § 112.12(c)(6). In the preamble to the proposal for this amendment (70 FR 73524, December 12, 2005), EPA recognized that a facility owner or operator could rely on the appropriate use of industry standards for integrity testing requirements, and that in certain site-specific circumstances, visual inspection may be appropriate and sufficient for compliance with the integrity testing requirement. EPA has received comments from the regulated

community suggesting that the integrity testing requirements promulgated for qualified facilities should be extended to all regulated facilities, for reasons consistent with those for a qualified facility.

EPA believes that owners or operators of all types of facilities subject to either § 112.8(c)(6) or § 112.12(c)(6) would select particular testing methods to comply with these requirements based on industry inspection standards such as the Steel Tank Institute (STI) SP001 (*Standard for Inspection of Aboveground Storage Tanks*) and American Petroleum Institute (API) Standard 653 (*Tank Inspection, Repair, Alteration, and Reconstruction*). For containers that meet certain characteristics, industry standards may not require both visual inspection and another system of non-destructive shell testing, as is currently required in §§ 112.8(c)(6) and 112.12(c)(6).

For example, a facility may store oil in a mobile or portable container, such as a 55-gallon drum. Under the current requirements at §§ 112.8(c)(6) and 112.12(c)(6), drums are required to be visually inspected and are also subject to a non-destructive testing method on a regular schedule. Alternatively, a Professional Engineer may determine an environmentally equivalent measure, in accordance with § 112.7(a)(2). However, STI's SP001 standard specifies that the minimum inspection requirement for portable containers, such as drums, is visual inspection by the owner/operator unless no secondary containment is provided. Therefore, under this proposal to revise the integrity testing requirement, for portable containers provided with secondary containment, periodic visual inspection only by the owner/operator can be sufficient under §§ 112.8(c)(6) and 112.12(c)(6). For portable containers without secondary containment, the owner/operator must follow the requisite DOT leak testing and recertification requirements as outlined in 49 CFR 173.28 (reuse, reconditioning and remanufacturing of packaging), 49 CFR 178.803 (testing and certification of intermediate bulk containers (IBCs)), and 49 CFR 180.605 (or equivalent for portable container testing and recertification). Currently, an owner/operator of a non-qualified facility would need a PE to review and certify sections of his SPCC Plan demonstrating that such inspection procedures, which are based on provisions in the STI SP001 standard, are environmentally equivalent to § 112.8(c)(6) or § 112.12(c)(6), even if the owner or operator chooses to adopt inspection requirements directly from the industry standard.

Rather than require a PE-certified explanation of environmental equivalence every time a facility owner or operator chooses to base their integrity testing program on an industry standard instead of the more stringent requirements in § 112.8(c)(6) or § 112.12(c)(6), EPA is proposing to amend §§ 112.8(c)(6) and 112.12(c)(6) to replace these provisions with the more flexible language already provided for qualified facilities at § 112.6(c)(4)(ii).

1. Proposed Amendments to Integrity Testing Requirements

EPA proposes to replace the current regulatory requirements at §§ 112.8(c)(6) and 112.12(c)(6) with the regulatory requirements currently found at § 112.6(c)(4)(ii). EPA believes that any SPCC facility owner or operator subject to § 112.8(c)(6) or § 112.12(c)(6) should be allowed the increased flexibility offered by the inspection requirements at § 112.6(c)(4)(ii) (and corresponding reduction in burden associated with developing environmental equivalence determinations), particularly for portable containers. Because the proposed revised requirements at §§ 112.8(c)(6) and 112.12(c)(6) would apply to all facilities (excluding oil production facilities), EPA is proposing to remove § 112.6(c)(4), as it would be redundant.

This proposal requires a facility owner or operator to:

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

These provisions allow an owner/operator to adopt inspection requirements outlined in industry standards without the need for environmental equivalence determinations to be certified by a PE. The revised provision would continue to require an owner/operator 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 would also be required to conduct frequent inspection of the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas.

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

EPA requests comments on the appropriateness of extending the streamlined integrity testing requirements already available to qualified facilities to all facilities subject to § 112.8(c)(6) or § 112.12(c)(6). Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Alternative Option Considered: No Action

EPA considered taking no action to modify the requirements at §§ 112.8(c)(6) and 112.12(c)(6). However, the Agency believes that all SPCC facility owners and operators subject to § 112.8(c)(6) or § 112.12(c)(6) should be allowed the increased flexibility offered by the inspection requirements currently provided for qualified facilities, particularly for the inspection of portable containers and small shop-built tanks. Therefore, EPA chose not to propose this ''no action'' option.

K. Animal Fats and Vegetable Oils

Stakeholders have commented that animal fats and vegetable oils (AFVOs) merit differentiated requirements under the SPCC regulation. In particular, the regulated community points to differences between the toxicity and biodegradation profiles of AFVOs and those of petroleum oils. Because of these claims, and in response to the Edible Oil Regulatory Reform Act (EORRA), the Agency has on several occasions formally requested information and supporting scientific data that would inform such a determination.

The Agency provided a detailed review of AFVO toxicity and environmental effects as part of the denial of a petition requesting to amend the Facility Response Plan (FRP) rule (62 FR 54508, October 20, 1997). EPA has reviewed the data available at that time, as well as more recent data that the Agency has gathered (See *Technical Background Document for Animal Fats and Vegetable Oils Regulated under the Spill Prevention, Control, and Countermeasure (SPCC) Regulation (40 CFR part 112*) (September 12, 2007) in the docket for today's proposed rulemaking). Based on this review, EPA

has determined that not all AFVOs are non-toxic. Additionally, there are other non-AFVO oils which have toxicity profiles that are similar to some AFVOs. Therefore, the Agency continues to believe that it is not appropriate to differentiate between AFVOs and other oils based on toxicity.

In addition, in 1999, EPA issued an Advanced Notice of Proposed Rulemaking (ANPRM) regarding differentiation of the requirements for AFVOs from petroleum and other oils subject to the SPCC regulation (64 FR 17227, April 8, 1999). In the 2002 amendments to the SPCC rule, EPA provided new subparts to facilitate differentiation between categories of oil listed in EORRA (67 FR 47042, July 17, 2002). In December 2005, the Agency again requested comments and scientific evidence to support differentiation for AFVOs as part of a broader proposal to amend the SPCC requirements (70 FR 73524, December 12, 2005). In December 2006, the Agency promulgated amendments to the SPCC regulation, which included removing requirements that were not applicable for facilities that stored AFVO (71 FR 77266, December 26, 2006).

The Agency has again examined the data submitted in response to the aforementioned actions (*Technical Background Document for Animal Fats and Vegetable Oils Regulated under the Spill Prevention, Control, and Countermeasure (SPCC) Regulation (40 CFR part 112*), September 12, 2007). This data was submitted to support the claim that AFVOs biodegrade more readily than petroleum oils and therefore merit differentiated requirements under the SPCC rule. Although this data indicates that the AFVOs tested degraded to a greater extent than the petroleum oils tested, other data published in the scientific literature suggests that other non-AFVOs (e.g., some petroleum and synthetic oils) degraded equally to some AFVOs. EPA also notes that the biodegradation data submitted has been generated from laboratory tests, and therefore are only representative of the conditions set forth in the test, representing a relatively limited comparison of some vegetable oils with some petroleum oils. Additionally, other data published in the scientific and technical literature suggests that not all AFVOs are as readily biodegradable as some have claimed. These findings are consistent with the findings from other organizations that have used biodegradation tests to evaluate oils. That is, the laboratory tests suggest that there are petroleum and/or other oils that biodegrade similarly to AFVOs. As a result, EPA is unable to establish a ''bright line'' between AFVOs and all other oils based on biodegradability, and thus believes it is not appropriate to differentiate between them based on this criterion. For more information, see *Technical Background Document for Animal Fats and Vegetable Oils Regulated under the Spill Prevention, Control, and Countermeasure (SPCC) Regulation (40 CFR part 112*), (September 12, 2007), in the docket for this proposed rulemaking.

EPA is now considering whether there would be an alternative approach to differentiation that is not based on the oil's toxicity and its inherent physical/chemical properties, but rather based on the way these oils are stored and handled at a facility. EPA has focused specifically on the integrity testing requirements for bulk storage of AFVOs to address concerns raised by the regulated community. Therefore, the Agency is considering a compliance alternative for differentiated integrity-testing requirements for certain bulk storage containers that store AFVOs and that meet specific design and operational criteria.

Specifically, EPA is proposing to modify § 112.12(c)(6) to provide the PE or the owner or operator certifying an SPCC Plan the flexibility to determine the scope of integrity testing that is appropriate for certain AFVO bulk storage containers. This flexibility would apply to those bulk storage containers that are subject to the applicable sections of the Food and Drug Administration (FDA) regulation 21 CFR part 110, *Current Good Manufacturing Practice in Manufacturing, Packing or Holding Human Food,* and that meet the following additional criteria: (1) Are elevated; (2) made from austenitic stainless steel; have (3) no external insulation; and (4) are shop-built. That is, an owner or operator would be allowed to use industry standards for visual inspection of these containers, in lieu of the current integrity testing requirements (i.e., visual inspection and some other testing technique) or the proposed revisions to the integrity testing requirements as outlined under Section J in this proposal without having to make an environmental equivalence determination, including stating the reasons for nonconformance with the current integrity testing requirements, in accordance with § 112.7(a)(2). The owner or operator would be required to document procedures for inspections and testing in the SPCC Plan, including those for AFVO bulk storage containers that are eligible for the differentiated requirements in this proposal. EPA believes that AFVO bulk storage containers which meet the above criteria already have environmentally equivalent measures in place for integrity testing and thus, do not need to state reasons for nonconformance with the current integrity testing requirements (*i.e.*, visual inspection and some other testing technique). Therefore, we are proposing this alternative option for integrity testing and no environmental equivalence determination in accordance with § 112.7(a)(2) is necessary. This alternative would typically apply at food processing facilities that are subject to 21 CFR part 110 and store animal fats or vegetable oil that are intended for human consumption. The regulations at 21 CFR part 110 have specific requirements for the design, construction, and use of AFVO equipment. The Agency believes that the proposed criteria ensure that the AFVO containers are less prone to internal and external corrosion and that the design elements make visual inspection effective.

1. Differentiation Criteria

Properly designed and implemented integrity testing programs include practices and procedures to identify potential alterations to a bulk storage container's shell, bottom plate, foundation, and/or attached ancillary equipment, all of which may compromise a container's integrity. EPA generally believes it is important that the Plan include the scope of an integrity-testing program with consideration of established industry standards. Factors to consider when industry standards do not exist include, but are not limited to, the likelihood of the deterioration of the container foundation, stress-induced fractures in the shell wall or bottom plate, and internal and external corrosion. These are the factors the Agency considered in setting the proposed criteria. The FDA requirements for design and maintenance in addition to the criteria outlined in this proposal would be environmentally equivalent to the current integrity testing requirements under § 112.12(c)(6).

a. Containers Subject to FDA Regulations—21 CFR Part 110

When developing an integrity-testing program for AFVO bulk storage containers, FDA rule requirements may serve, in whole or in part, as alternative measures that provide equivalent environmental protection to an industry standard. Applicable requirements within 21 CFR part 110, when taken

together with the additional criteria in this proposal, can serve as equivalent alternative measures that include the main elements of an integrity-testing program under the SPCC regulation. The minimal elements for this type of integrity-testing program can be separated into three main structural integrity areas: (1) Container foundations, (2) container support structures, and (3) the container itself. FDA requirements in each of these areas serve to support this proposed rule for AFVO.

i. Container Foundations. FDA requires that facilities be constructed in such a manner that the floor, walls, and ceilings be adequately cleaned and kept clean and in good repair (21 CFR 110.20(b)(4)). Bulk storage containers that sit atop floors that fall under this requirement are expected to be maintained and kept in good repair. Substances that accumulate on the floor can present an unsanitary condition, which may lead to food contamination. In addition, cracks in the floor under and/or around the foundation of a bulk storage container can accumulate food particles, organic matter, pests, and other potentially unsanitary substances that also could lead to food contamination. EPA believes that the procedures and practices, such as frequent monitoring of the floor around a bulk storage container, that are implemented in order to address this requirement serve not only to comply with the FDA requirements, but also address the elements associated with the structural integrity of the container's foundation.

ii. Container Support Structures. FDA requires all plant equipment, including the container's structural supports, to be designed of such material and workmanship as to be adequately cleanable, and for it to be properly maintained (21 CFR 110.40(a)). Periodic maintenance of the structural support(s) of a bulk storage container is also an oil spill preventive measure, especially inside a facility where mobile equipment (e.g. forklifts) can strike and damage the container and/or its structural supports.

iii. Container Itself. When considering the potential for corrosion, EPA considered the FDA requirements for food contact surfaces (e.g., internal surface of a food oil bulk storage container) and non-food contact surfaces (e.g., external surface of a bulk storage container). In most cases, FDA requirements address only food contact surfaces. For the purpose of oil spill prevention, the potential for corrosion of the external surface of bulk storage container is equally important.

Internal Corrosion. FDA requires the design, construction, and use of equipment to preclude the adulteration of food with, among other potential contaminants, metal fragments (21 CFR 110.40(a)). FDA further requires that food contact surfaces shall be corrosion-resistant when in contact with food. While it is possible that corrosion of the interior surface of a bulk storage container can occur, it is also likely that any metal that dislodges from the interior surface is captured by a means that prevents metal inclusion. EPA believes that an owner or operator of a facility that monitors AFVOs for metal fragments as the oil exits the bulk storage container, either by sampling the oil itself for metal or by monitoring the inclusion prevention device for metal fragment accumulation, is a reasonable alternative approach to an internal inspection for corrosion. This, in conjunction with the design and applicable regulatory requirements are likely to prevent the corrosion of the internal contact surface in food grade AFVO bulk storage containers.

External Corrosion. For some bulk storage container configurations, external corrosion can be the primary concern with respect to their integrity. Significant corrosion to the exterior surface can occur from exposure to moisture and in some cases, may be enhanced if insulation is present. Significant corrosion can also occur from overfills of oil and/or any associated substance(s) that have accumulated on the exterior surface, as well as from cleaning and sanitizing agents.

FDA requires equipment that is in the manufacturing or food-handling area and that does not come into contact with food must be constructed to be kept in a clean condition (21 CFR 110.40(c)). Exterior surface of bulk storage containers that are located in the manufacturing or food-handling area and that are subject to this requirement, are expected to be maintained to a higher standard than other bulk storage containers, which are not subject to a similar requirement. Since plant equipment used in the manufacturing or food-handling area must be designed to be kept clean and withstand the corrosive effects of cleaning agents, it is generally constructed of austenitic stainless steel.

EPA requests comments on the appropriateness of using the FDA requirements under 21 CFR part 110 as a criterion for the proposed alternative approach for integrity testing. Any suggestions must include an appropriate rationale in order for the Agency to be able to consider it for final action.

b. Elevated Bulk Storage Containers

FDA recommends, but does not require, that all plant equipment be installed and maintained to facilitate its cleaning, including all adjacent spaces. According to 21 CFR 110.40(a), ''all equipment *should* be so installed and maintained as to facilitate cleaning of the equipment and of all adjacent spaces.'' In practice, an owner or operator of a facility implementing this recommended practice is likely to have a bulk storage container that is elevated off the floor, based upon discussion with AFVO container manufacturers and owners or operators of AFVO facilities. Food equipment is generally designed to stand on legs, which elevates the plant equipment off the floor so that the space between the plant equipment and the floor can be cleaned. For the purposes of oil spill prevention, elevated bulk storage containers allow visual inspections for oil discharges all around the container.

An elevated bulk storage container also facilitates complete drainage because the oil can be withdrawn from the lowest point in the container, so that foreign substances or materials do not accumulate and contaminate the food oil. For the purposes of oil spill prevention, self-draining containers operating using gravity flow allows complete drainage and prevents substances other than oil (e.g., water) from accumulating at the bottom of the container, thus minimizing corrosion. EPA believes that the self-drainage design, in conjunction with the applicable regulatory requirements, is likely to prevent the corrosion of the internal contact surface in food grade AFVO bulk storage containers.

EPA requests comments on this criterion for the proposed alternative approach for integrity testing for AFVO bulk storage containers. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

c. Containers Made From Austenitic Stainless Steel

AFVOs are not required explicitly to be stored in austenitic stainless steel bulk storage containers under 21 CFR part 110. For example, a carbon steel container with an internal liner may suffice for the corrosion resistant requirements under FDA because in this case the lining is the food contact surface that is corrosion resistant. Although this meets the regulatory requirements for food contact surfaces, it also may be an indication that the oil in the bulk storage container is

incompatible with an unlined bulk storage container of the same material.

In addition, EPA believes that non-homogenous container systems (e.g., containers with external insulation, external coating, mild-carbon steel shell, internal liner) are more complex than homogenous container systems (e.g., containers constructed solely of austenitic stainless steel) and may require additional inspection measures to ensure the integrity of the container. Furthermore, austenitic stainless steel containers are often used because cleaning agents and acidic detergents used to clean food and non-food contact surfaces can be corrosive if used on incompatible surfaces. Therefore, EPA proposes to limit this alternative approach for integrity testing to AFVO bulk storage containers made of austenitic stainless steel.

It is important to note that this limitation is only for an owner or operator that chooses to take advantage of the alternative compliance option. A facility Plan may still be certified with an environmental equivalence determination, in accordance with § 112.7(a)(2) of the SPCC rule, for other types of bulk storage containers that are similarly corrosion resistant.

EPA requests comments on this criterion for the proposed alternative approach for integrity testing for AFVO bulk storage containers. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

d. Containers With No External Insulation

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

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

EPA requests comments on this criterion for the proposed alternative approach for integrity testing for AFVO bulk storage containers. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action. Additionally, we seek input on any applicable standards, sanitary provisions, or other regulatory requirements that apply to the construction, design and/or inspection of AFVO bulk storage containers.

e. Shop-Fabricated Containers

EPA has stated that visual inspection might suffice for elevated shop-built bulk storage containers because these containers can be inspected on all sides (67 FR 47120, July 17, 2002). In the *SPCC Guidance for Regional Inspectors* document, EPA went on to say that ''* * * visual inspection provides equivalent environmental protection when accompanied by certain additional actions to ensure that the containers are not in contact with the soil. These actions include elevating the container in a manner that decreases corrosion potential and makes all sides of the container, including the bottom, visible during inspection.'' Shop-fabricated bulk storage containers, as opposed to field-erected, may best fit these conditions.

EPA proposes to limit this proposed alternative option to shop-fabricated containers (i.e., shop-built). Shop-fabricated containers are those containers that are shop-assembled in one piece before transport to the installation site which limits the maximum capacity of the container so that they can be transported over the road by truck. Shop-fabricated containers generally have lower volume capacities, smaller tank diameters, and a fewer number of welds than field-erected containers and are typically comprised of a single type of material with a single wall thickness.

Alternatively, field-erected (i.e., field-constructed) containers can store much larger volumes of oil because individual pieces of the container can be transported to and assembled at the installation site, leading to much larger container capacities. Because of their greater size and complexity, field-erected containers have more stringent engineering requirements than shop-fabricated containers which would need to be considered in developing an appropriate inspection program. For example, field-erected containers may have variable shell-wall thicknesses, and/or be comprised of different materials to account for variations in the stresses caused by hydrostatic pressure. These field-erected containers generally have a significantly greater number of welds as compared to a shop-fabricated container because they are fabricated on-site from individual pieces. The stress on the container walls and joints is greater as the diameter and/or height of the container increases. Finally, a brittle fracture evaluation of a field-erected container may be necessary if the thickness of the shell wall is above a certain value and the container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure. The complexity associated with the construction of field-erected containers is considered in designing the scope and frequency of an integrity testing program.

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

EPA requests comments on this criterion for the proposed alternative approach for integrity testing for AFVO bulk storage containers. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action.

2. Required Recordkeeping

The SPCC regulations require inspections and tests be conducted in accordance with the written procedures that the owner or operator or the certifying PE develop for the facility be kept with the SPCC Plan in accordance with the recordkeeping provisions of

§ 112.7(e). We believe that visual inspection that is part of periodic maintenance of bulk storage container's support and foundation must be documented. Records of inspections and tests kept under usual and customary business practices will suffice. To develop an appropriate inspection, evaluation, and testing program for an SPCC-regulated facility, the PE should refer to the appropriate requirements under 21 CFR part 110.

For these reasons, EPA believes that streamlined integrity-testing requirements for certain AVFO containers are warranted. This proposal does not relieve an owner or operator from complying with any other bulk storage container requirement in § 112.12(c). The Agency requests comments on the proposed approach and criteria. Any suggestions for alternative approaches must include a rationale and supporting data in order for the Agency to be able to consider it for final action.

L. 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 brought forth by the regulated community and by other federal agencies (e.g., DOE), EPA is considering several ways that SPCC requirements can be further streamlined, tailored, or clarified for oil production facilities.

As discussed in Section F above, EPA is proposing to exclude oil production facilities from the loading/unloading rack requirements at § 112.7(h) because oil production facilities typically do not have the equipment meeting the proposed definition for a loading/unloading rack. Such oil production facilities may also benefit from the proposed revisions to the definition of ''facility,'' as described in Section D above, which may allow greater flexibility in determining the extent of a facility. Consistent with the revisions to the definition of ''facility,'' EPA is also proposing revisions to the definition of ''production facility'' to clarify that the production facility definition does not govern the applicability of 40 CFR part 112, but rather establishes which specific provisions of the rule may apply at a particular facility.

Additional specific modifications being proposed in this notice, as discussed below, include: Extending the timeframe by which a new oil production facility must prepare and implement an SPCC Plan; exempting flow-through process vessels at oil production facilities from the sized secondary containment requirements while maintaining general secondary containment requirements and requiring additional oil spill prevention measures; establishing more prescriptive requirements for contingency planning and a flowline/intra-facility gathering line maintenance program, while exempting flowlines and intra-facility gathering lines at oil production facilities from secondary containment requirements; and clarifying the definition of ''permanently closed'' as it applies to an oil production facility. EPA also describes approaches for alternative criteria for an oil production facility to be eligible to self-certify an SPCC Plan as a qualified facility, and approaches to address produced water storage containers at an oil production facility.

1. Definition of Production Facility

As described in section D above, EPA is proposing to modify the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to specify that the ''facility'' definition governs the applicability of 40 CFR part 112. These proposed revisions would allow an owner or operator to separate or aggregate containers to determine the facility boundaries, based on such factors as ownership or operation of the buildings, structures, containers, the activities being conducted, property boundaries, and other relevant considerations. To provide clarity consistent with these proposed revisions, EPA is also proposing certain revisions to the definition of ''production facility.''

a. Proposed Revisions to the Definition of Production Facility

EPA is proposing to amend the definition of ''production facility,'' as found in § 112.2, in two ways. First, consistent with the proposed revision to the definition of ''facility,'' EPA seeks 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 of the type-specific sections of the rule may apply at a particular facility, in addition to the general rule sections. For example, if an onshore facility meets the definition of ''production facility,'' then the owner or operator is subject to the provisions of § 112.9, or potentially to the provisions of § 112.10 if the facility is involved in drilling or workover activities, in addition to §§ 112.1 through 112.7.

Second, consistent with the proposed revisions to the definition of ''facility'' that emphasize the flexibility in how a facility owner or operator can determine the boundaries of a facility, EPA is proposing to modify the definition of ''production facility'' to clarify the flexibility allowed in determining the extent of the facility. The current definition includes the phrase ''and located in a single geographical oil or gas field operated by a single operator.'' EPA proposes to modify the phrase to clarify that a production facility ''*may* be located in a single geographical oil or gas field operated by a single operator.'' Because the definition of facility is flexible, EPA recognizes that a production facility need not be located in a single geographical field operated by a single operator. Like other facilities, a production facility's boundaries may be determined based on site-specific factors such as ownership, management, or operation of the containers, buildings, structures, equipment, installations, pipes, or pipelines on the site; similarity in functions, operational characteristics, and types of activities occurring at the site; adjacency; or shared drainage pathways.

The Agency seeks comments on whether the proposed revision to the definition of ''production facility'' is appropriate. Specifically, EPA seeks comment on whether the phrase ''and located in a single geographical oil or gas field operated by a single operator'' should be deleted from the definition to provide greater clarity. Any suggestions for alternative language to amend the definition must include an appropriate rationale in order for the Agency to be able to consider it for final action.

b. Clarifications Related to Drilling and Workover Facilities

Under the SPCC rule, the term ''production facility'' can encompass drilling and workover activities, as well as production operations. However, different provisions of the rule apply to these different activities. Therefore, EPA seeks to clarify the requirements applicable to the various phases of activities at a production facility: drilling, production, and workover.

Both drilling and workover activities tend to be temporary in nature and are performed using mobile rigs and associated equipment. The owner or operator is required to develop an SPCC Plan under § 112.3(c) because a drilling or workover facility is considered a mobile facility. He is subject to the administrative and general requirements

of the SPCC rule (§§ 112.1 through 112.7), as well as the specific requirements in § 112.10 (for onshore facilities) or § 112.11 (for offshore facilities). EPA notes that under the requirements of §§ 112.10 and 112.11, a regulated oil storage container associated with a drilling or workover facility is subject to the general secondary containment requirement (§ 112.7(c)); however, no sized secondary containment requirements exist.

Drilling activities involve the initial establishment of an oil well: drilling the hole, inserting and cementing the casing, and completing the well to start the flow of oil to the surface. As noted above, a drilling facility must prepare and implement an SPCC Plan and is subject to the specific requirements in § 112.10 (for onshore facilities) or § 112.11 (for offshore facilities).

Once the oil is flowing, the drilling rig is removed from the site and production equipment, such as a pump or valve assembly, is set up to extract or control the flow of oil from the well. At this point, drilling activities have ceased and production has begun; the facility is considered a production facility. The processes performed at a typical oil production facility include extraction, separation and treatment, storage, and transfer. The owner or operator of a production facility is subject to the administrative and general requirements of the SPCC rule (§§ 112.1 through 112.7) as well as the specific requirements in § 112.9 (for onshore facilities) or § 112.11 (for offshore facilities).

During the life of an oil well, maintenance or remedial work may be necessary to improve productivity. A specialized workover rig, equipment, and associated containers are brought onsite to perform the maintenance or remedial activities. Workover operations are distinct from the normal production operations, and as such are not subject to the requirements of § 112.9, but are subject to the applicable requirements in § 112.10 (for onshore facilities) or § 112.11 (for offshore facilities). Because workover activities are a distinct operation and may be conducted by a separate owner or operator, a workover operation may be considered a separate, mobile facility, and described in a different SPCC Plan, separate from the production facility. EPA notes that although production activities may temporarily cease during workover, if the production equipment and containers (such as those found in a tank battery) remain operable then the production facility owner/operator must maintain his own SPCC Plan during workover activities. To clarify that drilling and workover activities are not subject to the provisions at § 112.9, EPA proposes to amend 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 proposes to amend the introductory sentence of the section accordingly.

The Agency seeks comments on whether the proposed revisions to the title and introductory sentence of § 112.9 adequately clarify that the section does not apply to drilling and workover facilities. Any suggestions for alternative approaches must include an appropriate rationale in order for the Agency to be able to consider it for final action.

2. SPCC Plan Preparation and Implementation

EPA proposes to amend § 112.3(b) to extend the timeframe by which an oil production facility that becomes operational after July 1, 2009 must prepare and implement an SPCC Plan. Under the current rule, any facility that becomes operational after July 1, 2009 (a ''new facility'') must prepare an SPCC Plan before beginning operations. Unlike other facilities subject to the SPCC rule, however, an oil production facility has unique characteristics during the start-up period of its operations, which lead to variability in the amount and type of oil handled. EPA recognizes that, based on the often variable conditions of the oil reservoir, for some oil fields, the type and proportion of products may be uncertain until after the processes of extraction have begun. Additionally, the amount of pressure in the reservoir and the changes introduced by drilling the well hole could lead to variable initial flowrates that may take time to stabilize. While a new oil production facility on an older oil field may have predictable flowrates and proportion of product, the Agency notes the importance of providing this proposed relief for newer oil fields. The variables associated with the start of operations could lead to significant changes in necessary storage capacity and facility design. Such changes would necessitate that an owner/operator of a new oil production facility continually amend his Plan until operations stabilize, and have a licensed PE certify (or owner or operator of a qualified facility self-certify) any technical amendment. To alleviate this burden, EPA proposes to extend the time by which a new oil production facility must prepare and implement an SPCC Plan.

a. Proposed Timeframe for Plan Preparation and Implementation

The proposed amendment would allow a new oil production facility that becomes operational after July 1, 2009 six months after the start of operations to prepare and implement a Plan. The ''start of operations'' for an oil production facility is indicated by the start of well fluid pumping, transfer via flowlines, separation, treatment or storage of crude oil. EPA proposes to exclude oil production facilities from the current requirements at § 112.3(b)(1), and to add a new paragraph at § 112.3(b)(3) to provide the requirement for an owner or operator of a new oil production facility to prepare and implement an SPCC Plan six months after the start of operations.

The timeframe by which EPA is proposing to extend SPCC Plan preparation and implementation was chosen based on EPA's professional judgment, because such oil production facilities are likely to stabilize within six months after the start of operations. The proposed amendment is extended to oil production facilities only due to the circumstances specific to an oil production facility—their unique characteristics of variable and uncertain initial flowrates.

Delaying SPCC Plan preparation and implementation for a period of time after operations begin is somewhat consistent with the requirements originally promulgated in 1973 (38 FR 34164, December 11, 1973). At the time the rule was originally promulgated, EPA required preparation of an SPCC Plan six months after the start of operations and implementation of the Plan no later than one year after the start of operations. This requirement was amended in 2002 (67 FR 47042, July 17, 2002) to require new facilities (those that become operational after the effective date of the rule) to prepare and implement an SPCC Plan before beginning operations. EPA made this change because new facilities generally should already be aware of the need for an SPCC Plan. That is, new facilities subject to the SPCC rule are able to take SPCC requirements into consideration and undertake the necessary construction, purchase equipment, or develop procedures before the start of operations. However, this amendment in 2002 did not take into consideration the unique nature of oil production facilities.

Unlike the requirements originally promulgated in 1973, the proposed amendment combines the date for Plan preparation and implementation,

allowing six months total time to both prepare and implement an SPCC Plan.

EPA notes that it is reasonable and usually less expensive to implement certain oil spill prevention measures, such as secondary containment around containers, at the time of the container installation. Therefore, EPA recognizes that even during the interim period before required Plan preparation and implementation, an oil production facility may already have certain environmentally protective measures in place. Under Section 311(b)(3) of the Clean Water Act, the oil production facility owner or operator would still be liable for any harmful quantities of oil discharged from the facility into navigable waters or adjoining shorelines, even before the requirement to prepare and implement an SPCC Plan comes into effect. Furthermore, the Regional Administrator would continue to have the authority under § 112.1(f) to require an owner or operator of an oil production facility to prepare and implement an SPCC Plan or any applicable part at any point during the six months after start of operations, if a determination is made that it is necessary to prevent a discharge of oil into navigable waters or adjoining shorelines. In addition, a facility owner/operator can request an extension of time to come into compliance in accordance with § 112.3(f) if circumstances are beyond his control, e.g., there are no qualified personnel available or construction or equipment delivery delays.

The proposed rule amendment would apply only to a new oil production facility. The proposed amendment would not apply to a drilling or workover facility. Drilling and workover facilities are subject to the requirement at § 112.3(c) for mobile facilities and may implement a general Plan. Therefore, during the initial drilling of the well, there are measures required for spill prevention and response for any oil discharges.

EPA requests comments on whether an amendment to the Plan preparation and implementation date is appropriate for new oil production facilities, and whether new facilities in other industry sectors have similar variability during the start-up period of operations and would therefore benefit from a similar compliance date extension. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

b. Alternative Option Considered: One Year for Oil Production Facilities To Prepare and Implement a Plan

EPA considered an alternate option to address the variability in start-up operations at a new oil production facility, wherein an owner/operator would be allowed one year for SPCC Plan preparation and implementation after the start of operations. A variation of this alternative is to allow six months after the start of operations for SPCC Plan preparation, and another six months (for a total of one year after the start of operations) for Plan implementation. EPA recognizes that providing one year is consistent with the original promulgation of the rule in 1973. However, in proposing this amendment, EPA intends to provide this relief given the unique characteristics of a new oil production facility. Given that an oil production facility is likely to stabilize operations within six months from start-up, one year for Plan preparation and implementation does not seem necessary. The date for SPCC Plan preparation and implementation was selected given the timeframe for stabilization of operations at a new oil production facility. Additionally, a facility owner/operator can request an extension of time to come into compliance in accordance with § 112.3(f) if circumstances are beyond his control, e.g., no qualified personnel available or construction or equipment delivery delays. Therefore EPA chose not to propose this option.

The Agency welcomes comments on this alternative or other alternatives regarding the variability during the start-up period of operations at a new oil production facility. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

3. Flowlines and Intra-Facility Gathering Lines

EPA proposes to exempt flowlines and intra-facility gathering lines from the secondary containment requirements under the SPCC rule. In lieu of a secondary containment requirement, EPA proposes to require a contingency plan and written commitment of manpower, equipment, and materials for flowlines and intra-facility gathering lines at an oil production facility, and to prescribe specific requirements for a flowline and intra-facility gathering line maintenance program.

a. Examples of Flowlines and Gathering Lines

For the purposes of the SPCC rule, flowlines are considered to be the piping that transfers oil and well fluids from the wellhead to the tank battery where separation and treatment equipment are typically found. A flowline may also connect a tank battery to an injection well. Flowlines are relatively small diameter steel or fiberglass piping (generally less than four inches). Depending on the size of the oil field, flowlines may run for hundreds of feet to a tank battery.

The term ''gathering lines'' is a general term referring to the piping or pipelines that transfer the crude oil product between tank batteries, within or between facilities. Gathering lines often emanate from an oil production facility's lease automatic custody transfer (LACT) unit, which transfers oil to other facilities involved in gathering, refining or pipeline transportation operations. EPA recognizes that gathering lines are often outside of the Agency's jurisdiction because they ''transport'' oil outside of an oil production facility. Based on a 1971 Memorandum of Understanding (MOU) with the Department of Transportation (DOT) (see Appendix A to 40 CFR part 112), EPA has jurisdiction only over non-transportation-related facilities, which includes pipelines that transport oil within a facility. Any pipeline, including a gathering line, that transports oil between facilities or from a facility to a vessel, is considered transportation-related and is therefore outside the jurisdiction of EPA and not subject to the SPCC rule. However, the definition of ''facility'' as it applies to the SPCC rule is flexible. As discussed in Section D of this preamble, an owner/operator can choose to determine the facility's boundaries based on a number of site-specific factors. A typical oil production facility includes a wellhead, a tank battery (including, but not limited to, separation equipment, stock oil containers and produced water containers), and the flowlines that transfer the oil and well fluids from the wellhead to the tank battery. Depending upon how an owner/operator defines his facility, an oil production facility may also include gathering lines. For example, if multiple tank batteries are included as part of the same facility for purposes of developing one SPCC Plan, then any gathering lines that connect the tank batteries, or flow to a central collection or gathering area or centralized tank battery within the facility boundaries, must also be included in the SPCC Plan. EPA

considers any gathering lines within the boundaries of a facility to be ''intra-facility gathering lines'' and within EPA's jurisdiction for the purposes of SPCC rule applicability.

EPA notes that the definition of ''production facility'' has included both the terms ''flowlines'' and ''gathering lines'' since it was promulgated in July 2002 (67 FR 47042), and that EPA is simply clarifying, not modifying, the applicability to these types of pipelines found within a facility (''intra-facility'').

Given the common understanding of the terms ''flowline'' and ''gathering line'' within the oil production sector, EPA does not believe that it is necessary to propose definitions for these terms under § 112.2. However, EPA requests comments as to whether regulatory definitions for ''flowline'' and ''intra-facility gathering line'' are necessary, and if so, suggestions for an appropriate definition. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

b. Requirements in Lieu of Secondary Containment

The SPCC rule requires secondary containment for all areas of a facility where there is a potential for discharge as described in § 112.1(b). This requirement, found at § 112.7(c), applies to flowlines and intra-facility gathering lines. However, EPA recognizes that providing secondary containment for these pipelines can be difficult and expensive for an owner/operator because these lines are often several miles long, buried, and can extend far from the main facility. Flowlines and intra-facility gathering lines often are placed across land that is not owned by the owner/operator of the oil production facility (e.g., agricultural land), and providing secondary containment for these lines can be difficult, intrusive, or disruptive to the property owner. When flowlines and intra-facility gathering lines are located in farm fields, providing a secondary containment structure may result in soil erosion and negative impacts to the land. Buried flowlines present additional difficulty, because their exact location may be uncertain, especially at an oil production facility that has changed ownership since the original installation of the flowlines.

The Agency is responding to the concerns described above by proposing tailored relief in an effort to improve compliance and enhance environmental protection. EPA believes that secondary containment is, in most cases, impracticable for flowlines and intra-facility gathering lines. Therefore, EPA is proposing an amendment to § 112.7(c) that would remove secondary containment requirements for flowlines and intra-facility gathering lines at an oil production facility, and instead require implementation of an oil spill contingency plan in accordance with 40 CFR part 109 (Criteria for State, Local and Regional Oil Removal Contingency Plans) and a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful, without having to make an impracticability determination for each piece of piping. This new requirement would be found in proposed revisions to § 112.9(d)(3). It should be noted that the use of a contingency plan does not relieve the owner/operator of liability associated with an oil discharge to navigable waters or adjoining shorelines that violates the provisions of Section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3).

In the preamble to the 2002 amendments (67 FR 47042, July 17, 2002), EPA discusses how any facility owner/operator who makes a determination of impracticability and has submitted a Facility Response Plan (FRP) under § 112.20 has satisfied the contingency planning requirement, because an FRP is more comprehensive than a contingency plan under 40 CFR part 109. Similarly, the Agency believes that the owner or operator of an oil production facility who has prepared an FRP would satisfy the contingency planning requirement for flowlines and gathering lines. If such a facility owner/operator has already developed an FRP to comply with § 112.20, then he or she would not need to also develop a contingency plan in accordance with 40 CFR part 109. However, the facility owner or operator would still be required to comply with the revised flowline/intra-facility gathering line maintenance program requirements proposed in this notice.

Finally, EPA acknowledges that given the characteristics of certain intra-facility gathering lines, these pipelines may be regulated under requirements of both EPA and DOT. Because DOT requirements for pipelines may be similar in purpose and scope, EPA recognizes that compliance with DOT requirements (e.g., 49 CFR part 194) for these gathering lines may be considered to satisfy the contingency planning requirement.

EPA requests comments on whether exempting flowlines and intra-facility gathering lines from the secondary containment requirement is appropriate, and whether the provision for a contingency plan and written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful is an adequate alternative measure. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

c. Flowline and Intra-Facility Gathering Line Maintenance Program

EPA recognizes that a contingency plan provides environmental protection in response to a discharge, but in order to implement such a plan, a discharge detection mechanism is necessary. Furthermore, EPA believes that with the elimination of the requirement for secondary containment, it is important to provide more prescriptive requirements for discharge prevention to ensure the integrity of the primary containment of the pipe. EPA believes that a strong program of flowline or intra-facility gathering line maintenance will provide additional preventative measures for these pipelines and increase discharge detection ability.

The current SPCC requirement to have a program of flowline maintenance, found at § 112.9(d)(3), is general in nature and offers the facility owner/operator a great deal of discretion in determining how best to prevent discharges from each flowline. The regulated community has expressed its desire for guidance on how to develop such a program. At this time, EPA is not aware of any industry standard for flowline maintenance. In the SPCC *Guidance for Regional Inspectors* (version 1.0, November 28, 2005), EPA provides a description of the elements that a comprehensive piping maintenance program should include, based on practices recommended by industry groups.

As stated in the SPCC *Guidance for Regional Inspectors*, a flowline maintenance program aims to manage the oil production operations in a manner that reduces the potential for a discharge. Common causes of such discharges include mechanical damage (e.g., impact, rupture) and corrosion. A maintenance program usually combines careful configuration, inspection, and ongoing maintenance of flowlines and associated equipment to prevent and mitigate a potential discharge.

EPA is now proposing to move the requirement for a flowline maintenance program to § 112.9(d)(4), add specificity to the provision, and to clarify that the requirement applies to intra-facility gathering lines, as well as flowlines at an oil production facility. Intra-facility

gathering lines pose the same potential for discharge as flowlines; EPA never intended to regulate the two types of piping differently.

EPA proposes § 112.9(d)(4) to require a performance-based program of flowline/intra-facility gathering line maintenance that addresses the facility owner/operator's procedures, and is documented in the SPCC Plan, to:

• *Ensure that flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids and their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment.* This preventative measure is intended to help preserve the integrity of the lines and reduce the potential effects of corrosion or other factors that may lead to a discharge.

• *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 40 CFR part 109. This measure is intended to ensure that any discharges, potential problems or conditions related to the flowline/intra-facility gathering line that could lead to a discharge will be promptly discovered; the Agency believes that an oil spill contingency plan cannot be effective unless the discharge is discovered in a timely manner so that the oil discharge response operations described in the contingency plan may be implemented. The proposed inspection requirements are consistent with the requirements for aboveground valves, piping, and appurtenances at non-production facilities under § 112.8(d)(4), which include regular inspection and assessment of the general condition of associated appurtenances such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, valve locks, and metal supports. The Agency notes that due to changes in flowrates and corrosivity of production fluids over time in an oil field, the frequency of inspection may need to change over the lifetime of the well in order to prevent discharges. For buried piping, a facility owner or operator would develop an inspection program to identify evidence of leaks at the surface or other conditions that which may lead to a discharge to navigable waters or adjoining shorelines.

• *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.* EPA intends for this proposed requirement to be implemented in conjunction with the proposed requirement for periodic inspection and testing; the results of the inspection or test would inform the owner/operator of any corrections or repairs that need to be made. Corrective action is necessary in order to prevent a discharge from occurring, as well as in response to a discharge. This measure is intended to prevent discharges as described in § 112.1(b) by ensuring that flowlines and intra-facility gathering lines are well maintained.

• *Promptly remove any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.* EPA recognizes the importance of removing oil accumulations to prevent a discharge as described in § 112.1(b). Section 311(j)(1)(C) of the CWA provides EPA with the authority to establish procedures, methods, and equipment and other requirements to prevent discharges of oil from onshore and offshore facilities. EPA considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil must be in accordance with applicable Federal, State, and local requirements; under § 112.7(a)(3)(v), a facility owner or operator is required to describe the methods of disposal of recovered materials in accordance with applicable legal requirements. For the purposes of this provision, removal of recoverable oil may be combined with physical, chemical, and/or biological treatment methods to address any residual oil. These treatment methods must be consistent with other Federal, state or local requirements as applicable, and must be properly managed to prevent a discharge as described in § 112.1(b).

Consistent with the current flowline maintenance program requirements, the proposed amendments to the maintenance program requirements would be subject to the environmental equivalence provision found at § 112.7(a)(2). That is, the facility owner/operator may deviate from the requirements if an environmentally equivalent alternate measure is implemented instead. EPA recognizes that other Federal or State requirements may be environmentally equivalent to certain SPCC requirements, including the proposed flowline and intra-facility gathering line maintenance program requirement. An environmental equivalence determination is subject to review and certification by a PE. A Tier I qualified facility, as described in this proposal, would not be able to use environmentally equivalent measures and therefore would need to comply with the flowline/intra-facility gathering line maintenance program requirements as outlined above.

While no industry standard for a flowline or intra-facility gathering line maintenance program currently exists, EPA acknowledges that in the future, an industry standard may be established. If such an industry standard is developed, the certifying PE would be able consider whether compliance with that standard is environmentally equivalent to the requirements of the proposed § 112.9(d)(4). Additionally, for a facility owner/operator that has installed, or chooses to install, secondary containment systems for flowlines or intra-facility gathering lines, such measures are likely to be considered environmentally equivalent to one or more of the proposed maintenance program requirements.

Additionally, EPA acknowledges that given the characteristics of certain intra-facility gathering lines, these pipelines may be regulated under requirements of both EPA and DOT. Because DOT requirements for pipelines may be similar in purpose and scope, EPA recognizes that compliance with DOT requirements (e.g., 49 CFR part 195) for these gathering lines may be considered by the certifying PE to be environmentally equivalent alternatives to certain SPCC requirements associated with oil production facility piping.

Similarly, EPA recognizes that state requirements governing flowlines and gathering lines may be environmentally equivalent to certain SPCC requirements applicable to flowlines and gathering lines. In accordance with the Memorandum of Understanding between the Interstate Oil and Gas Compact Commission and the U.S. Environmental Protection Agency, signed in 2002, and renewed in 2005 and 2007, the Agency intends to continue regulatory cooperation among the states and EPA that promotes protection of the environment in a cost-effective manner, and minimizes duplication.

EPA requests comments on whether the proposed requirements for a flowline/intra-facility gathering line maintenance program are appropriate, and whether the proposed requirements conflict with state regulatory requirements. Any suggestions must include an appropriate rationale and

supporting data in order for the Agency to be able to consider it for final action.

d. Alternative Options Considered

EPA considered other options to address the impracticability of secondary containment for flowlines and intra-facility gathering lines. EPA considered allowing a contingency plan and strengthened maintenance program requirements as an optional alternative to secondary containment. That is, the secondary containment requirement would remain as a compliance option. This would provide additional flexibility. EPA concluded, however, that since secondary containment for flowlines/intra-facility gathering lines is, in most cases, impracticable and few oil production facilities are likely to use this measure, providing an optional alternative could potentially increase confusion regarding the requirements for these lines. EPA recognizes that given the long lengths and placement of flowlines and intra-facility gathering lines, and the cost of secondary containment for these lines, facilities are more likely to choose a contingency plan with inspection requirements.

The Agency also considered taking no action for flowlines and intra-facility gathering lines, because the owner or operator of an oil production facility already has the ability to determine that secondary containment is impracticable under § 112.7(d). However, EPA recognizes that in most cases secondary containment is impracticable for this type of equipment.

For these reasons, the Agency decided to propose an alternative for secondary containment for flowlines and intra-facility gathering lines. The Agency welcomes comments on these or other alternatives. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

4. Flow-Through Process Vessels

Separation and treating installations at an oil production facility typically include equipment whose primary purpose is to separate the well fluid into its marketable or waste fractions (e.g., oil, gas, wastewater, and solids), and to treat the crude oil as needed for further storage and shipping. Under the current SPCC requirements, separation and treatment equipment are required to have sized secondary containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation (§ 112.9(c)(2)). EPA recognizes that similar flow-through process equipment (i.e., oil-filled manufacturing equipment, such as reaction vessels, fermentors, high pressure vessels, mixing tanks, dryers, heat exchangers, and distillation columns) at a non-production facility is not subject to the more stringent sized secondary containment and inspection requirements required for bulk storage containers; only the general secondary containment requirements at § 112.7(c) apply (71 FR 77276, December 26, 2006). In addition, EPA acknowledges concern among the regulated community regarding the requirement to provide sized secondary containment around heater-treaters, due to a potential fire-hazard if spilled oil collects around the equipment. As a result, EPA is proposing to exempt flow-through process vessels at an oil production facility from the sized secondary containment requirements. However, EPA recognizes that process equipment at a non-production facility, such as at a manufacturing facility, is typically attended during hours of operation. Therefore, there is a greater potential to immediately discover and correct a discharge at a non-production facility than at an oil production facility, which is generally unattended. For this reason, EPA is also proposing to require the inspection of flow-through process vessel components; prompt removal of any oil accumulations, and corrective action should a discharge occur.

a. Examples of Flow-Through Process Vessels

Flow-through process vessels, such as horizontal or vertical separation vessels (e.g., heater-treater, free-water knockout, gun-barrel, etc.), have the primary purpose of separating the oil from other fractions (water and/or gas) and sending the fluid streams to the appropriate container. It is the intended use of this equipment that differentiates flow-through process vessels from bulk storage containers and end-use storage containers, such as produced water containers. Produced water containers store well fluids (which may also contain various amounts of oil) after they have been separated and/or treated, prior to disposal or reinjection. Under this proposal, produced water containers are not considered flow-through process vessels; they continue to be considered bulk storage containers if oil is present.

b. Exemption From Sized Secondary Containment Requirements for Flow-Through Process Vessels

EPA proposes to amend the requirements in § 112.9(c)(2) as follows: ''Construct all tank battery, separation, and treating facility installations, except for flow-through process vessels so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.'' This proposed amendment removes the requirement to provide such sized containment for flow-through process vessels without making an impracticability determination. The general secondary containment requirement of § 112.7(c) would still apply to flow-through process vessels; they must be provided with secondary containment so that any discharge does not escape the containment system before cleanup occurs.

Many oil production facilities currently provide secondary containment berms around the entire tank battery, which includes separators and other treatment installations, including flow-through process vessels, along with oil stock tanks and other bulk storage containers. Such a facility design is appropriate and EPA encourages oil production facility owners and operators to continue this practice to provide the maximum environmental protection. However, under this proposal, it would no longer be necessary to locate flow-through process vessels within a secondary containment system sized for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

The Agency requests comments on the proposal to exempt flow-through process vessels from the sized secondary containment requirements. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

c. Additional Requirements for Flow-Through Process Vessels

Because oil production facilities are typically unattended during the hours of operation, EPA is also proposing to add a provision at § 112.9(c)(5)(i) through (iii) to provide additional requirements for flow-through process vessels. These additional requirements would include periodic inspection and/or testing, corrective action, and prompt removal of any oil accumulations.

The proposed amendment to require periodic inspection and/or testing of the flow-through process vessels and associated appurtenances on a regular schedule for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b) is intended to increase the likelihood that a discharge will be prevented or detected promptly, especially for components such as dump valves, that typically cause spills.

The proposed inspection and/or testing requirements for flow-through process vessels are consistent with the inspection requirements for bulk storage containers under § 112.9(c)(3). EPA recognizes that because oil production facilities are typically unattended and remote and have a constant flow of oil and well fluids, sized secondary containment measures provide environmental protection for any potential discharge. Because EPA is proposing that this equipment be subject to the general secondary containment requirement (§ 112.7(c)) instead of sized secondary containment, EPA seeks to ensure that any leak, or potential for a leak, is detected promptly enough to prevent a discharge of the entire contents of the separation or treating equipment.

EPA is also proposing to require the owner/operator of an oil production facility to correct or repair the flow-through process vessels and any associated components as indicated by regularly scheduled inspections or tests. EPA intends for this proposed requirement to be implemented in conjunction with the proposed requirement for periodic inspection and testing; the results of the inspection or test would inform the owner/operator of any corrections or repairs that need to be made. Corrective action is necessary in order to prevent a discharge from occurring, as well as in response to a discharge. This measure is intended to prevent discharges as described in § 112.1(b) by ensuring that separation and treatment equipment are well maintained.

EPA also proposes to require prompt removal upon discovery of any spills, discharges, or accumulations of oil associated with the flow-through process vessels. EPA considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil must be in accordance with applicable Federal, state, and local requirements; under § 112.7(a)(3)(v), a facility owner or operator is required to describe the methods of disposal of recovered materials in accordance with applicable legal requirements. For the purposes of this provision, removal of recoverable oil may be combined with physical, chemical, and/or biological treatment methods to address any residual oil. These treatment methods must be consistent with other Federal, state or local requirements as applicable, and must be properly managed to prevent a discharge as described in § 112.1(b).

The Agency requests comments on these proposed additional requirements (inspections, corrective action, and prompt removal of oil discharges) for flow-through process vessels. EPA also requests comments on whether this approach, a general secondary containment requirement and additional requirements for flow-through process vessels should be an optional compliance alternative, in lieu of sized secondary containment. Under an optional approach, a facility owner or operator could choose whether to provide sized secondary containment for flow-through process vessels, or to provide general containment and comply with the additional requirements. (A facility owner or operator who already provides sized secondary containment for his flow-through process vessels would not be required to comply with the additional requirements, as long as he maintains the sized secondary containment.) Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

d. Secondary Containment Requirements for Flow-Through Process Vessels if Facility Experiences Reportable Discharge

EPA also is proposing a provision at § 112.9(c)(5)(iv) stating that if an oil production facility has discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharged 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, from a flow-through process vessel, then the facility owner or operator must provide sized secondary containment for all flow-through process vessels at the facility within six months from the discovery of the spill(s). When determining spill history, the gallon amount specified in the criterion (either 1,000 or 42) refers to the amount of oil that actually reaches navigable waters or adjoining shorelines, or in connection with specified activities in waters and not the total amount of oil spilled. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism would not be considered toward this requirement.

The discharge criterion proposed in this notice is similar to the provision in § 112.4(a) for discharges that must be reported to the EPA Regional Administrator (RA). Under § 112.4, a facility owner or operator must report certain information to EPA whenever the facility experiences a discharge reportable under § 112.4.

The Agency requests comment on the proposed requirement for providing sized secondary containment for flow-through process vessels following a reportable discharge as described above. EPA also requests comments on whether a facility owner or operator who experiences such a discharge and subsequently provides sized secondary containment for separation and treating facility equipment at the facility should continue to be required to comply with the additional requirements described above (proposed as § 112.9(c)(5)(i) through (iii)). Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

e. Alternative Option Considered

EPA considered another option to address secondary containment for flow-through process vessels. Under this option, EPA would allow a contingency plan and written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful, without the need to develop a written impracticability determination as an optional alternative to all secondary containment requirements for flow-through process vessels. This option would be available for eligible flow-through process vessels: those that have had no discharges of oil reportable to EPA under § 112.4 in the past three years. In addition, this option would require a facility owner or operator to conduct periodic integrity testing of the process vessels and periodic integrity and leak testing of the associated valves and piping.

EPA recognizes that this alternative to secondary containment would provide flexibility. However, EPA also recognizes that a typical oil production facility is remote and/or unattended, and therefore secondary containment is a preferable measure to prevent a discharge to navigable waters or adjoining shorelines in the event of an oil spill than a contingency plan. Some form of general secondary containment is practicable for this type of equipment. Therefore, EPA chose not to propose this option.

The Agency welcomes comments on this alternative or other alternatives to address separation and treatment equipment, while maintaining environmental protection. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

5. Small Oil Production Facilities

In this proposed rule, EPA has included a number of amendments to

the SPCC requirements that are designed to reduce the burden on oil production facilities, while maintaining protection of the environment. Specifically, EPA is proposing to amend the definition of ''facility'' to clarify the flexibility associated with defining a facility's boundaries; exclude oil production facilities from the loading/unloading rack requirements at § 112.7(h); extend the timeframe by which a new oil production facility must prepare and implement an SPCC Plan; exempt flowlines and intra-facility gathering lines at oil production facilities from all secondary containment requirements, while establishing requirements for a flowline/intra-facility gathering line maintenance program and contingency planning; exempt flow-through process vessels at oil production facilities from the sized secondary containment requirements, while maintaining general secondary containment requirements and requiring additional oil spill prevention measures; clarify the applicability of the rule to containers at a natural gas facility; and clarify the definition of ''permanently closed'' as it applies to an oil production facility. In addition, the Agency is taking comment on a number of approaches regarding the management of produced waters at oil production facilities.

The regulated community has expressed particular concern regarding the regulation of small oil production facilities under the SPCC rule, suggesting that the cost of complying with the SPCC requirements is disproportionate to the risk these small facilities pose to the environment. While EPA is sensitive to these concerns, the Agency believes that spills from small oil production facilities have and can continue to pose a threat of an oil discharge to navigable waters and adjoining shorelines, and that smaller oil production facilities should remain subject to the SPCC rule.

In evaluating the appropriate application of the SPCC rules to these facilities, the Agency is guided by Executive Order 13211, which directs federal agencies to evaluate and respond to effects that governmental regulatory action can have on the supply of energy (Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001)).[3] Accordingly, the Agency believes it is appropriate to consider the impacts of existing regulations on the energy sector and to identify regulatory alternatives that reduce those impacts when implementing the statutory authorization of Section 311(j)(1)(C) of the Clean Water Act at oil production facilities.

While assessing opportunities for tailoring and streamlining the SPCC requirements, EPA considered whether there are alternative regulatory approaches to Section 311(j)(1)(C) for small oil production facilities that would further reduce the compliance burden associated with the current rule requirements, while still maintaining protection of human health and the environment. In particular, EPA considered regulatory alternatives for oil production facilities that have wells that produce 10 barrels or less of crude oil per day and are known as ''stripper wells.'' [4]

The owner or operator of an oil production facility generally provides adequate container capacity at his facility to ensure sound and continuous operations, and so that a container will not overfill if there is a delay in the removal of oil from the tanks. This practice would meet the SPCC rule provisions at § 112.9(c)(4) to prevent overfills from the containers. However, this practice may prevent some small oil production facilities from being eligible for the burden reduction available to qualified facilities because they would likely have greater than 10,000 gallons in aggregate aboveground oil storage capacity. Therefore, the Agency is requesting comment on an approach described below that identifies specific criteria for an oil production facility that produces oil from a limited number of stripper wells to be considered a qualified facility, notwithstanding the tank storage capacity at the facility. The approach has been shaped by the specific characteristics of this category of facilities and, as such, could result in the application of SPCC requirements in a manner better suited to these facilities. In addition, the Agency is also requesting comment on some additional options for reducing the burden on small oil production facilities that have been suggested by the Department of Energy (DOE). Following consideration of public comments received in response to this notice, one or more of these approaches may be finalized as the applicable SPCC requirements for these facilities. Commenters may provide input on variations to these approaches for consideration by the Agency.

a. Alternative Qualified Facility Eligibility Criteria for Oil Production Facilities

This approach is intended as an alternative for oil production facilities to be considered qualified facilities because they do not meet the current qualified facility requirements under 40 CFR 112.3(g). Under this alternative, an oil production facility would be eligible as a qualified facility if it meets the following criteria: (1) The oil production facility must have no more than four wells associated with a single tank battery; (2) all four of the wells must be stripper wells each producing 10 barrels or less of crude oil per day—that is, a tank battery at an oil production facility could not include any non-stripper wells under this option; (3) the facility must have no injection wells; and (4) the facility must not have had a single discharge exceeding 1,000 U.S. gallons or two discharges each exceeding 42 U.S. gallons within any twelve month period in the three years prior to Plan certification. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism will not disqualify a facility owner or operator from the alternative option described above. The owner or operator of an oil production facility could avail himself of the streamlined requirements for a ''qualified facility'' at § 112.6, if the facility meets all four of the proposed criteria, notwithstanding the total aboveground oil storage capacity at the facility. That is, a qualified facility owner/operator would have the option to prepare a self-certified SPCC Plan in lieu of a Plan certified by a PE. An oil production facility owner or operator exercising this option may be required to make available production or shipping records to support his eligibility. Records may be kept under usual and customary business practices, and must be kept for a period of three years, in accordance with § 112.7(e).

EPA based this potential qualified production facility approach on input from the oil production sector regarding concerns for the burden of preparation of a PE-certified Plan for small oil producers. As stated above, EPA notes that this option would be available to those oil production facilities with up to four stripper wells per tank battery; each well producing 10 barrels or less of crude oil per day; and no injection wells or other wells associated with secondary or tertiary recovery techniques. EPA is

[3] The overall effect of the proposed rule is to decrease the regulatory burden on facility owners or operators subject to its provisions. Accordingly, the proposed rule is not a ''significant energy action'' as defined in this Executive Order.

[4] EPA established differentiated requirements for ''stripper wells'' under the Clean Water Act and codified it in 1979. See 40 CFR 435.60. See also 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).

considering a maximum of four wells per tank battery in identifying a ''qualified oil production facility'' based on discussions with EPA regional personnel and the Texas Railroad Commission who suggest that this number of wells is fairly typical of oil production facilities.[5] EPA, therefore, believes that the maximum of four stripper wells per tank battery adequately captures the smaller operators targeted by the self-certification option. EPA believes that these facilities are less complex than other oil production facilities based on the limited number of wells per tank battery operating at a low flow rate.

As discussed in the preamble to the December 2006 rule amendments, in which EPA finalized the qualified facility approach, the basis for the exemption from the requirement for a PE certification is that facilities with smaller oil volumes tend to be less complex (71 FR 77270, December 26, 2006). The Agency believes that a facility meeting the potential criteria for a ''qualified oil production facility'' as described above (i.e., no more than four stripper wells to one tank battery, no injection wells, and meets the current spill history criterion for qualified facilities) would be less complex than other oil production facilities for the following reasons. At oil production facilities with no more than four wells per tank battery, the flowlines and the stripper well(s) are commonly co-located within the immediate area of the tank battery therefore reducing the length of flowlines. Additionally, it is likely that an oil production facility that meets the proposed qualification criteria would have fewer valves, less piping, smaller separation equipment, and fewer locations where transfers and discharges could occur because there are fewer wells associated with one tank battery.

The underground injection process adds complexity to the design of an oil production facility; consequently, EPA has included a ''no injection wells'' criterion for an oil production facility to qualify for this alternative option. The injection well process adds complexity because the flowlines from a produced water container to the injection wellhead adds valves, pumps and piping to the facility. In addition, the produced water tanks associated with injection may have high level indicators, floats and actuators/switches that further add complexity. At small production facilities, these systems may not be automated due to cost. The design of the production facility is based on the ability to inject the produced water; generally no extra storage capacity is available to contain fluids if there is a failure or system upset. This leads to a greater likelihood of a discharge. Finally, the water in the produced oil/water mixture is usually corrosive, especially if it is saline, leading to a greater potential for discharge from injection equipment as a result of this corrosion which would be present at more complex facilities.

This alternative set of criteria for identifying a qualified oil production facility would only be available to oil production facilities, and not oil drilling or workover facilities. Due to the nature of its operations, a drilling facility has not yet established an oil production flow rate, and thus a well at such a facility cannot be determined to meet the definition of a ''stripper well.'' However, the owner/operator of an oil drilling and/or workover facility considers the capacity of oil that is maintained for his operations to determine applicability of the SPCC rule and therefore may still be eligible for qualified facility status based on the current criteria in § 112.3(g), i.e., the 10,000-gallon total facility oil storage capacity threshold and discharge history criteria.

It should also be noted that under the current regulations, the owner or operator of an oil production facility can make a determination that sized secondary containment is impracticable. The owner or operator of an oil production facility that meets the proposed criteria for a Tier II qualified facility (as described elsewhere in this proposed rulemaking) would still be able to determine that secondary containment is impracticable and implement the alternative measures under § 112.7(d) (i.e., develop a contingency plan and a written commitment of resources and conduct integrity testing of the bulk storage container and associated piping) if a PE certifies that the secondary containment is impracticable, under the ''hybrid'' approach in which a PE certifies a portion of the SPCC Plan.

EPA is requesting comment on this approach, including the specific criteria identified and whether changes to these criteria would properly assess the complexity of such small oil production facilities. This proposed action may provide a reduction in regulatory burden to those oil production facilities with no more than four stripper extraction wells per tank battery that nonetheless is likely to exceed the current qualified facility threshold criterion of 10,000 gallons. For example, the difference in compliance costs between an oil production facility that prepares an SPCC Plan requiring PE-certification and one that can be self-certified is about $950.

EPA is also requesting comment on whether a small oil production facility may be further eligible for the Tier I qualified facility status, as described elsewhere in today's preamble, if the facility meets the criterion proposed in the rulemaking for a Tier I qualified facility—i.e., the facility has no oil storage containers with an individual storage capacity greater than 5,000 gallons, notwithstanding the total aboveground oil storage capacity at the facility. That is, at a Tier I oil production qualified facility, the owner or operator could avail himself of the streamlined Tier I Qualified Facility SPCC Plan template, as found in the proposed Appendix G to the SPCC rule. An owner or operator of an oil production facility qualifying for and opting to use the Tier I Qualified Facility SPCC Plan template would not be able to make an impracticability determination for secondary containment requirements. Instead, the owner or operator may choose the Tier II approach and develop a ''hybrid'' Plan in which the P.E. certifies the portion of the Plan pertaining to impracticability of secondary containment.

Finally, the Agency specifically solicits comment on the number of oil production facilities that would be able to take advantage of this approach.

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

The Department of Energy (DOE) requested that the Agency seek input on several approaches that DOE believes may be more suited to address the concerns of small oil production facilities. One approach would have different eligibility criteria to enable the owner or operator of a small oil production facility to be considered a ''qualified facility'' under § 112.6, and allow for the development of a self-certified SPCC Plan, or a ''Tier I Qualified Facility,'' and allow the use of a streamlined SPCC Plan template, similar to that found in the proposed Appendix G to the SPCC rule. Under the existing qualified facilities criteria at § 112.3(g), a facility that has an

[5] EPA assumed an average of four wells per tank battery at a facility to estimate the number of oil production facilities that are subject to the SPCC requirements (see *Regulatory Impact Analysis for the Proposed Amendments to the Oil Pollution Prevention Regulations*). DOE also conducted an analysis of the impact of the SPCC rule on the oil production sector and assumed an average of three stripper wells per oil production facility.

aggregate aboveground storage capacity of 10,000 gallons or less and has not had a single discharge exceeding 1,000 U.S. gallons or two discharges each exceeding 42 U.S. gallons within any twelve-month period in the three years prior is eligible for the qualified facility Plan requirements at § 112.6 (i.e., a self-certified Plan in lieu of a PE certified Plan). DOE suggests that because of the unique characteristics of small oil production facility operations, such facilities may merit the establishment of small oil production facility-specific eligibility criteria, including a different aggregate oil storage capacity threshold [6] or stripper well definition [7] for identifying qualified facilities. In light of this request, EPA seeks comment on whether there are unique circumstances at small or marginally economic oil production facilities and the alternative criteria based on these circumstances for the possible establishment of a ''qualified facility'' provision specific to small oil production facilities that would serve to increase SPCC compliance and reduce the likelihood of a harmful oil discharge. Any alternative approaches submitted must include an appropriate rationale in order for the Agency to be able to consider it for final action.

The other approach DOE requested that EPA take comment on is to outright exempt existing stripper oil and natural gas wells from all SPCC requirements, except those applicable to crude oil and condensate tanks (e.g., tanks which store gas condensate (which is an oil) at oil and gas production facilities). The eligibility criteria for the exemption would include those facilities that meet the Internal Revenue Service (IRS) Tax Code definition of stripper well property at 26 U.S.C. 613A, which defines a stripper well property, with respect to any calendar year, as any property producing 15 barrel equivalents or less per day, where this rate is calculated by dividing:

(i) The average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year, by

(ii) The number of such wells.

DOE, states and industry have raised concerns that the SPCC regulation has the potential to result in the premature abandonment of stripper wells. They argue that stripper wells are marginally economic and can be particularly burdened by increased regulatory compliance and other operating costs. These wells are often operated by small independent producers in mature oil and gas producing regions, have low oil productivity and low oil volumes, and thus could be viewed as presenting a low oil spill risk. According to DOE, stripper wells are vital to sustaining production from conventional oil and natural gas resources in the United States. More than 321 million barrels of oil and 1.7 trillion cubic feet of natural gas were produced from stripper wells in 2005, representing 17 percent of domestic oil production and 9 percent of domestic natural gas production respectively. The Interstate Oil and Gas Compact Commission has estimated that if oil production from stripper wells active in 2005 did not exist, imports would have to increase 6.7 percent to make up for this shortage.[8]

Eligibility criteria for relief would not be limited to the presence of injection wells or the use of secondary and tertiary recovery techniques which are common in more mature oil and gas producing regions. DOE has commented that such criteria have no direct relationship to the spill risk posed by marginal well facilities and may serve as a disincentive to enhanced oil and gas recovery and well maintenance. Production and injection operations for disposal or enhanced recovery may be regulated under existing Federal and State regulatory programs, e.g., under Clean Water Act NPDES, Safe Drinking Water Act underground injection control, and state production or environmental permits to reduce or manage pollutants that could be introduced into the environment. For NPDES and underground injection control, these regulatory programs are intended to address the discharge of known pollutants that are to be introduced to navigable waters (in the case of NPDES) or to underground sources of drinking water (in the case of UIC). In contrast to these measures, SPCC is designed to prevent the non-routine accidental discharge of oil that might be held in an oil container at a facility. DOE has suggested that these regulations may accomplish certain SPCC objectives in a different manner, such as prohibiting pollution or unlawful discharges rather than requiring an SPCC Plan. Therefore, the Agency specifically solicits comment on the extent that these regulatory programs, particularly state production or environmental permits, address the objectives of the SPCC rules, and if so, how they are achieved. Finally, EPA would note that under this approach, new facilities and existing non-marginal facilities would not be exempted from the SPCC regulation, but once their production declines below the marginal level as defined above, these wells would be excluded from continuing or periodic SPCC requirements under this approach.

EPA requests comments on the scope of a stripper well exemption, including the eligibility criteria, and whether such an exemption can reduce the regulatory burden on marginally economic properties while protecting the environment. Any alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider these for a final action.

6. Produced Water Storage Containers

At an oil or natural gas production facility, ''produced water'' is the oil and water mixture resulting from the separation of marketable crude oil from the fluid extracted from the geological formation. Produced water chemical and physical characteristics vary considerably depending on the geologic formation, usually being commingled with oil and gas at the wellhead, and changing in composition as the oil or natural gas fraction is separated and sent to market. The management of produced water may typically entail the use of separation and treatment process vessels, tanks both near the point of separation and at the point of its disposal or reuse (e.g., in an injection well for disposal or enhanced oil recovery, discharge to a stream, or agricultural water resource), and flowlines and gathering lines.

In the current SPCC rule, the term ''bulk storage container'' is defined as ''any container used to store oil.'' EPA considers a produced water container that also contains oil to be a bulk storage container, and therefore subject to applicable provisions under § 112.9(c). Produced water containers are typically located within a tank battery at a production facility where they are used to store well fluids after separation and prior to subsequent use (e.g., re-injection or re-use), further treatment, or disposal. Because the separation process is not completely effective, under normal operating conditions, a layer of oil may be present above the produced water in the container. The amount of oil by volume observed in produced water storage containers varies, but based on EPA's assessment, is generally estimated to range from less than one to

[6] The Oklahoma Independent Petroleum Association and the Independent Petroleum Association of America suggest an aggregate oil capacity threshold of 50,000 gallons.

[7] DOE suggests that a stripper well be defined using the Internal Revenue Service (IRS) tax code definition of 15 barrels or less of oil per day equivalence (see 26 U.S.C. 613A).

[8] See Interstate Oil and Gas Compact Commission, 2006: ''Marginal Wells: Fuels for Economic Growth.''

up to ten percent, and can be greater. This estimate is based on a review of National Response Center (NRC) spill reports, observations from EPA inspectors, and comments made by industry representatives and the accompanying document ''*Consideration for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasures Regulation*'' (May 30, 2007), in the docket for today's rulemaking. The Department of Energy (DOE) and the industry believe that the oil layer may be much less.

Many production sites operate in geographically remote areas and are typically unattended. At these production sites, fluids extracted from the well flow through the production and separation equipment and into various storage containers provided at the facility. The produced water storage containers are usually the last containers in the separation process stream where fluids accumulate; consequently, produced water containers are a potential source of discharge due to overfill when there is an upset in operations (e.g., such as separator failure) or when an operator is delayed in making a scheduled visit to the facility to empty the produced water containers. In an overfill situation, the oil floating at the surface of the water may be first to be discharged, followed by water which could serve to transport the oil for longer distances. Oil discharges to navigable waters or adjoining shorelines from an oil/water mixture in a produced water container may cause harm. Such mixtures are regulated as oil under the SPCC rule.

The regulated community has expressed concern regarding the regulation of produced water containers under the SPCC rule, suggesting that the cost of complying with the SPCC requirements is disproportionate to the risk these containers pose to the environment. For this reason, EPA is considering whether there are regulatory options for produced water containers that can protect the environment at lesser cost than the current rule requirements along with the amendments proposed in this action. The Agency is requesting comments on three options, as described below.

EPA requests comment on the characteristics of produced water containers at production facilities that may uniquely distinguish these containers from containers used at other types of facilities that hold oil mixtures. EPA also requests comment on whether the approaches outlined below appropriately address industry concerns, while protecting the environment. In particular, EPA requests comment on an approach that would require general secondary containment combined with additional requirements in lieu of sized secondary containment. A second approach, advanced by DOE, would require inspection, maintenance, and periodic oil skimming of produced water storage containers in lieu of both sized and general secondary containment.

Finally, comment is requested on whether a third approach, advanced by DOE, that exempts produced water treatment facilities altogether would be appropriate. In connection with this approach, the regulated community and DOE have suggested that produced water containers should be exempt from all SPCC requirements, arguing that these containers have only incidental amounts of oil and a low risk of discharge. Published data used to establish national effluent limitations for coastal oil and gas production facilities show that the oil content of produced water in tanks after initial separation is low, e.g., averaging 50 parts per million, with a maximum of 200 parts per million in samples taken.[9]

Data EPA received in the past suggest that produced water containers may hold up to 10% of free-phase oil floating on the surface of the produced water. EPA is asking that commenters provide additional data on the amount of oil commonly observed in produced water containers. EPA is primarily interested in data on the amount of free-phase oil present in produced water containers, for example as a layer of oil floating at the surface of the produced water, rather than oil present in solution, suspension or emulsion within the produced water mixture. EPA also requests comment, and supporting data, on the efficiency of oil and water separation and treatment at onshore production facilities, how the efficiency of oil-water separators changes over time as equipment ages and production of oil from the formation evolves, the efficiency of oil skimming on oil volume, and the frequency and consequences of equipment failure. Finally, EPA requests data on oil spills, the source, and the cause of such oil spills from these produced water containers.

Any suggestions on alternative approaches must include an appropriate rationale and information and data in order for the Agency to be able to consider it for final action.

[9] SAIC, 1993, draft ''Coastal Oil and Gas Production Sampling Summary Report'' April 30, and SAIC 1994, ''Statistical Analysis of Effluent from Coastal Oil and Gas Extraction Facilities'' September 30.

a. General Secondary Containment, Inspection, Integrity Testing & Maintenance of Produced Water Bulk Storage Containers

One approach on which EPA requests comment would allow an owner/operator of a production facility to comply with the general secondary containment requirements along with additional measures for existing produced water containers as an option in lieu of the current regulatory requirement for sized secondary containment for these containers. That is, a production facility owner/operator would provide general secondary containment and comply with additional measures for existing produced water containers, or the owner/operator could choose to comply with the current sized secondary containment requirements for produced water containers and not be subject to the new additional set of measures. Under this approach, an owner/operator that chooses to carry out additional measures in addition to the general secondary containment requirement for existing produced water containers (see § 112.7(c)) would be exempted from the sized secondary containment requirement at § 112.9(c)(2). The general secondary containment requirements (§ 112.7(c)) apply to all parts of a facility that could be involved in a discharge. If an owner or operator has already provided sized secondary containment for the facility produced water bulk storage container, the owner or operator may choose not to select this new option. EPA expects many operators may be in this situation, as a recent DOE report stated that over two-thirds of produced water tanks ''were assumed to be already contained within existing SPCC Plans and have secondary containment.'' [10]

This approach would be limited to existing produced water containers because this approach is intended to balance the cost of retrofitting existing containers with EPA's belief that sized secondary containment is the most effective method to prevent oil discharges from these containers. Existing produced water containers would be those at oil production facilities in operation on the effective date of the final rule addressing this approach. Newly constructed oil

[10] See ''*Assessment of the Potential Costs and Energy Impacts of Spill Prevention, Control, and Countermeasure Requirements for U.S. Oil and Natural Gas Production*'' prepared for U.S. DOE Office of Fossil Energy by Advance Resources International, Inc., August 17, 2006 (Revised). Available at *http://www.fossil.energy.gov/programs/oilgas/publications/environment_otherpubs/SPCC_Impact_Exploration_and_Production_8.pdf*.

production facilities and newly installed produced water containers at existing facilities would not be eligible to use these alternative measures in lieu of sized secondary containment because it is EPA's best professional judgment that because construction crews and equipment are already present at a facility during the installation of new produced water containers, the incremental cost for adding/installing sized secondary containment for these containers would not be significant.

In addition, if a facility experiences a discharge reportable to EPA under § 112.4, then sized and general secondary containment would be required for all produced water containers at the facility within six months from the discovery of the spill(s).[11] When determining spill history, the gallon amount specified in the criterion (either 1,000 or 42) refers to the amount of oil that actually reaches navigable waters or adjoining shorelines, or in connection with specified activities in waters and not the total amount of oil spilled. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism will not disqualify a facility owner or operator from the alternative measures described above.

To maintain environmental protection under this approach, the following additional measures for produced water containers would be required:

• *Periodic inspections on a regular schedule of equipment and appurtenances that typically cause spills from produced water containers (e.g. piping, valves, pumps and the container itself).* A requirement for periodic inspection of the produced water containers and associated appurtenances on a regular schedule for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b) would increase the likelihood that a discharge will be prevented or detected promptly, especially for appurtenances that typically cause spills. Inspection of produced water containers and appurtenances would be consistent with the inspection requirements for bulk storage containers under § 112.9(c)(3). Facilities would outline, in writing, procedures for routine inspection and keep records of these inspections in accordance with § 112.7(e).

• *Conduct a condition examination*[12] *and integrity testing of produced water containers on a regular schedule and after completing material repairs.* In lieu of the protection offered by sized secondary containment, this approach would require a formal integrity inspection/condition examination of the produced water bulk storage container(s) on a regular schedule. The frequency, inspector qualifications and the scope of the inspections, integrity testing, and condition examinations must be in accordance with good engineering practice and documented in the SPCC Plan. For condition examinations and integrity testing, the industry recommended practices for tanks in production service provide the scope and frequency of examinations necessary to ensure the suitability of tanks for continued service, based on the type of tank, fluid stored, and service conditions. For an example of such practices, a facility owner or operator may refer to American Petroleum Institute, Recommended Practice 12R1, fifth edition, August 1997. These practices include the routine visual operational examination of produced water bulk storage containers by facility personnel according to written procedures, and external and/or internal condition examination of these same containers according to a schedule and following an operational alert, malfunction, or other condition noted during the routine operational examination. The external condition examination[13] would cover the tank exterior, and check for leaks, shell distortion, and evidence of corrosion; it would also look at the condition of the foundation, pad, drainage, coatings, appurtenances and connections. The internal condition examination would check for leaks, shell distortion, cracks, condition of any internal coating, and evidence and severity of internal corrosion. The external and internal condition examinations would be complemented by integrity testing (e.g., using non-destructive evaluation methods, such as ultrasonic thickness measurements of the shell) used to assess the suitability of the container for continued production service, as appropriate for the type of container. Facilities would outline in writing procedures for routine visual examination, external condition examination, internal condition examination, and integrity testing and keep records of the examinations and testing in accordance with § 112.7(e).

• *Prompt removal of any oil discharges from produced water containers and appurtenances.* This approach also would require prompt removal upon discovery of any spills, discharges, or accumulations of oil associated with the produced water containers. EPA considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil must be in accordance with applicable Federal, State, and local requirements; under § 112.7(a)(3)(v), a facility owner or operator is required to describe the methods of disposal of recovered materials in accordance with applicable legal requirements. For the purposes of this provision, removal of recoverable oil may be combined with physical, chemical, and/or biological treatment methods to address any residual oil. These treatment methods must be consistent with other Federal, state or local requirements as applicable, and must be properly managed to prevent a discharge as described in § 112.1(b).

• *Corrective action to repair or replace any container, or associated equipment and appurtenances in order to prevent a discharge from occurring, as well as in response to a discharge.* Finally, this approach would require the owner/operator of an oil production facility to take corrective action to repair any produced water container, and associated equipment and appurtenances as indicated by regularly scheduled inspections or tests. This requirement could be implemented in conjunction with the requirement for periodic inspection and testing; the results of the inspection or test would inform the owner/operator of any corrections or repairs that need to be made. Corrective action is necessary in order to prevent a discharge from occurring, as well as in response to a discharge. This measure would prevent discharges as described in § 112.1(b) by ensuring that produced water containers are well maintained.

In evaluating this potential regulatory approach, the Agency examined oil production operations as they relate to the storage, treatment, and handling of these oil/water mixtures. EPA conducted a study of the exploration and production sector (see *Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation* (May 30, 2007), in the docket

[11] See the similar discussion in Section V.L.4 of this proposal pertaining to flow-through process vessels.

[12] ''Condition examination'' is defined in API Recommended Practice 12R1 as a review of history and physical observation of a tank and its adjacent equipment by a competent person.

[13] API Recommended Practice 12R1 provides guidelines on developing the scope of a program for condition examination and integrity testing for tanks at production facilities. While the RP does not include mandatory requirements, this approach would include a mandatory requirement to conduct a condition examination and integrity testing for produced water containers.

for this rulemaking). In this study, EPA reviewed the spills reported to the National Response Center (NRC) during calendar years 2000 through 2005. The NRC spill reports specifically attribute 3% of the spill incidents from oil production facilities to produced water containers. Some of the spill incidents attributed to unspecified tank batteries (4%) or unspecified tanks (6%) may also involve produced water containers. Based on these reports, 5% of the volume of oil spills from oil production facilities is attributed specifically to produced water containers, 6% is attributed to unspecified tank batteries, and 20% is attributed to unspecified tanks. The NRC reports also attribute 3% of the spill incidents to water disposal, which is 16% of the total volume of oil and oil mixtures discharged from oil production facilities. The NRC data does not show the ratio of oil and water in spills. Incidents associated with water disposal may involve produced water containers, although the review found that water disposal piping frequently suffers from corrosion damage and accidental impacts and incidents associated with water disposal may also be associated with the water disposal piping. Based on the information reported to the NRC, the most common causes of oil spill incidents from oil production facilities were equipment failure (18%), corrosion (20%), and leaks, holes and ruptures (20%). Twenty-four percent of the spill reports have unspecified causes.

Many onshore production facilities already locate produced water containers within the same containment structure as other oil containers, and size this containment structure to the capacity of the largest oil container plus freeboard for precipitation. Therefore, those oil production facilities that include sufficient containment already meet the existing sized secondary containment requirement and would not need to comply with these additional measures. A review of spill incident reports from the NRC and selected state data sources shows that containment structures are an effective means of containing oil spills within the facility and preventing discharges to navigable waters and adjoining shorelines.

EPA requests comment on whether this approach, an exemption from the sized secondary containment requirement, with additional measures for produced water containers (including integrity testing and condition examinations), appropriately addresses industry concerns, while preserving environmental protection. Additionally, EPA requests comment on whether there are other measures that should be considered in developing this alternative approach in lieu of the sized secondary containment requirements. Finally, as EPA previously indicated, the Agency also requests comment on the characteristics of produced water containers at production facilities that may uniquely distinguish these containers from containers used at other types of facilities to hold oil mixtures.

b. Inspection and Maintenance of Produced Water Storage Containers

DOE has requested that EPA take comment on a second approach which would allow an owner/operator of a production facility to comply with additional measures for produced water storage containers in lieu of both sized and general secondary containment requirements. That is, a production facility owner/operator would be able to comply with these specific tailored measures for produced water containers, or the owner/operator could choose to comply with the current sized secondary containment requirements for produced water containers and not be subject to an additional set of measures. Under this approach, an owner/operator that chose to comply with these tailored requirements would be exempted from the sized secondary containment requirement at § 112.9(c)(2) and the general secondary containment requirements at § 112.7(c).

However, if a facility experiences a discharge reportable to EPA under § 112.4, then sized and general secondary containment would be required for all produced water containers at the facility within six months from the discovery of the spill(s).[14] When determining spill history, the gallon amount specified in the criterion (either 1,000 or 42) refers to the amount of oil that actually reaches navigable waters or adjoining shorelines, or in connection with specified activities in waters and not the total amount of oil spilled. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism will not disqualify a facility owner or operator from using these tailored requirements in lieu of sized and general secondary containment.

This approach is based on input DOE received from the production sector that suggested that an inspection and maintenance approach may be more appropriate for these containers. Additionally, DOE believes that the volume of oil in the storage container can be significantly reduced further after separation by periodic skimming of the oil layer that may reside in the top of the container.

To maintain environmental protection under this approach, the following additional measures for produced water containers would be required:

- *Visually inspect on a regular schedule the equipment and appurtenances which typically cause spills from produced water containers (e.g., piping, valves, pumps, and the container itself) to assess the suitability of the equipment for continued service, as appropriate for the type of fluids.* Facility owners and operators must outline in writing procedures for routine visual inspection and keep records of these inspections in accordance with § 112.7(e).
- *Implement a program to periodically skim the fluids in the produced water container as necessary to prevent an oil layer that would increase the potential for a discharge of oil as described in § 112.1(b).* The skimming program must be appropriate for the fluids stored, the rate of production, the container size, and the facility configuration.
- *Promptly remove any oil discharges from produced water containers and appurtenances.* This approach would require prompt removal upon discovery of any spills, discharges, or accumulations of oil associated with produced water containers that are subject to these tailored requirements. As noted previously, EPA considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil must be in accordance with applicable Federal, State, and local requirements; under § 112.7(a)(3)(v), a facility owner or operator is required to describe the methods of disposal of recovered materials in accordance with applicable legal requirements. For the purposes of this provision, removal of recoverable oil may be combined with physical, chemical, and/or biological treatment methods to address any residual oil. These treatment methods must be consistent with other Federal, State, or local requirements as applicable, and must be properly managed to prevent a discharge as described in § 112.1(b).
- *Corrective action to repair or replace any produced water container, or associated equipment and appurtenances in order to prevent an oil discharge from occurring, as well as in response to a discharge.* This approach would require the owner or operator of an oil production facility to take corrective action to repair any produced water container and associated

[14] See the similar discussion in Section V.L.4 of this proposal pertaining to flow-through process vessels.

equipment or appurtenances as indicated by regularly scheduled inspections. This requirement could be implemented in conjunction with the requirement for periodic inspection; the results of the inspection would inform the owner or operator of any corrections or repairs that need to be made. Corrective action is necessary in order to prevent a discharge from occurring, as well as in response to a discharge. This measure is intended to prevent discharges as described in § 112.1(b) by ensuring that produced water equipment is well maintained.

The requirement for periodic inspection of produced water equipment on a regular schedule is intended to increase the likelihood that a discharge as described in § 112.1(b) will be prevented or detected promptly. The inspection requirements for produced water equipment would be consistent with the inspection requirements for oil containers at oil production tank batteries under § 112.9(c)(3). The requirement for periodic skimming of the container should reduce the impact of a spill by limiting the amount of oil held in a produced water storage container.

The Agency seeks comments on this approach, including comment on the proper methodology, procedures, industry standards/practices, equipment and frequency for an oil ''skimming program.'' Any suggestions on alternative approaches or language must include an appropriate rationale in order for the Agency to be able to consider it for final action.

c. Exemption for Produced Water Treatment

Due to several factors including the growing interest in produced water for beneficial uses, and the understanding that the increased use of produced water for beneficial uses will reduce the potential for oil spills, DOE also requested that EPA consider alternatives to current SPCC requirements for produced water at oil and natural gas operations. In the July 2002 (67 FR 47139; July 17, 2002) amendments to the SPCC rule under § 112.1(d)(6), EPA exempted wastewater treatment facilities or parts thereof from the SPCC rule. In the amended regulation, EPA defined wastewater treatment as not including oil production, recovery, or recycling of oil, and clarified that treatment of produced water was not considered wastewater treatment.

Since the 2002 amendments were issued, industry, states, and DOE have commented on the low incremental environmental benefit of regulating produced water under the SPCC regulation. Concern has also been expressed by the regulated community regarding the perceived inequity of the SPCC regulation relative to oil production wastewater treatment, because the wastewater treatment facilities of publicly owned treatment works and other industries were exempted from the SPCC rule in 2002. Therefore, DOE has requested that EPA request comment on an exemption from the SPCC rule for produced water altogether, similar to that previously provided to wastewater treatment systems.

Produced water treatment facilities or parts thereof may be subject to the National Pollutant Discharge Elimination System (NPDES), Safe Drinking Water Act (SDWA), Underground Injection Control (UIC), or State permitting requirements that limit the level of pollutants in produced water that could be introduced into the environment. For example, under 40 CFR 122.41(e), NPDES permits require permittees to properly operate and maintain all facilities and systems of treatment or control. 40 CFR 122.41(d) requires the NPDES permit holder to take all reasonable steps to minimize or prevent any discharge in violation of a permit that has a reasonable likelihood of adversely affecting health or the environment. Underground sources of drinking water are protected under 40 CFR 144.12, whereby any underground injection, except into wells authorized by rule or authorized by permit issued under the UIC program, is prohibited. These measures are intended to address the discharge of known pollutants contained in water that is to be introduced to water bodies (in the case of NPDES) or to groundwater (in the case of UIC). In contrast to these measures, SPCC is designed to prevent the non-routine accidental discharge of oil that might be held in an oil container at a facility.

Produced water treatment facilities or parts thereof are often regulated under state laws and regulations applicable to oil and natural gas production which address operations and pollution prevention. Oil and natural gas operations, including produced water treatment facilities on Federal lands managed by the Department of the Interior Bureau of Land Management are subject to environmental review, lease stipulations, and operational guidelines that include best management practices for reducing environmental impacts.[15]

The characteristics of produced water in the United States vary widely, ranging from produced water that is potable to produced water that can be discharged, injected underground or used as a beneficial water resource following varying levels of treatment to remove oil, salt, or other chemical constituents. Similarly, factors such as high energy prices, advances in water treatment technology, and changing perspectives on the value of produced water for beneficial uses including agriculture irrigation, livestock watering, recreation, aquifer recharge, and enhanced oil recovery are factors that may encourage the industry to separate oil and natural gas fluids from produced water and to manage the produced water in a manner that will reduce oil spills. The docket of this proposed rule contains several documents relating to produced water provided to EPA by DOE.[16]

Therefore, as requested by DOE, EPA seeks comment on an exemption for produced water treatment facilities or parts thereof from the SPCC regulation. At oil or natural gas drilling, production, recovery, or recycling facilities, produced water treatment facilities or parts thereof that would be exempted from SPCC regulation include the storage, treatment, or beneficial use of produced water in containers, pits, ponds, piping, flowlines, and injection or discharge systems including pumps and other appurtenances necessary for the operation of these systems. Specifically, this approach would amend § 112.1(d)(iii)(6) pertaining to the general applicability of the SPCC rule, to read, ''Any facility or part thereof used exclusively for waste water treatment and not used to satisfy any requirement of this part. This would include produced water treatment in oil or natural gas production, recovery, or recycling.''

Produced water managed prior to the initial separation of co-mingled oil or natural gas fluids that are produced

[15] For example, see Argonne National Laboratory, 2007, ''Produced Water Management Information System'' at *http://web.evs.anl.gov/pwmis/* and U.S. Department of the Interior, 2007, Bureau of Land Management Best Management Practices for Fluid Minerals Web site at *http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices.html.*

[16] Relevant documents include:

Interstate Oil and Gas Compact Commission and ALL Consulting, 2006, ''A Guide to Practical Management of Produced Water from Onshore Oil and Gas Operations in the United States.'' Available at *http://www.iogcc.state.ok.us.*

Veil, J.A., M.G. Puder, D. Elcock, and R.J. Redweik, Jr., 2004, ''A White Paper Describing Produced Water from Production of Crude Oil, Natural Gas, and Coal Bed Methane,'' prepared by Argonne National Laboratory for the U.S. Department of Energy, National Energy Technology Laboratory, January. Available at: *http://www.ead.anl.gov/pub/dsp_detail.cfm?PubID=1715.*

from the wellhead would not be exempted from the SPCC regulation.

Whether a produced water treatment facility or part thereof is used exclusively for wastewater treatment (i.e., not storage or other use of oil) or used to satisfy a requirement of part 112 will often be a facility-specific determination based on the activity associated with the facility or part thereof. Only the portion of the facility (including produced water treatment associated with production, recovery, or recycling of oil or natural gas) used exclusively for produced water treatment and not used to meet any part 112 requirement would be exempt from part 112 under this approach. Examples of produced water treatment facilities or parts thereof used to meet a part 112 requirement which would not be part of this exemption include an oil/water separator.

It should also be noted that under this approach, a discharge of produced water containing oil to navigable waters or adjoining shorelines in a ''harmful quantity'' (40 CFR part 110) is still prohibited. Thus, to avoid such discharges, EPA would expect owners or operators to comply with the applicable permitting requirements under Federal or State statutes, including best management practices and operations and maintenance provisions contained therein. EPA would require that if a facility experiences a discharge reportable to EPA under § 112.4, then the facility would no longer be exempt and sized and general secondary containment would be required for all produced water containers at the facility within six months from the discovery of the spill(s).

The Agency seeks comments on whether exempting produced water treatment facilities from the SPCC regulation is appropriate. In particular, EPA requests comment on the rationale for this approach, i.e., the assumption that the oil content of equipment handling produced water (e.g., tanks, piping, and related appurtenances) after initial separation is low. Any suggestions on alternative approaches or language must include an appropriate rationale in order for the Agency to be able to consider it for final action.

7. Clarification of the Definition of Permanently Closed Containers

The SPCC rule exempts from applicability and from capacity threshold determinations any oil storage container that is permanently closed. EPA seeks to clarify 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. According to the definition, for a container to be permanently closed, all liquid and sludge must be removed from the container and connecting lines, all connecting lines and piping must be disconnected from the container and blanked off, all valves (except ventilation valves) must be closed and locked, and conspicuous signs must be posted on each container stating that it is a permanently closed container and noting the date of closure. Once permanently closed, a container is no longer required to be counted toward the total facility storage capacity, nor is it subject to the other requirements under the SPCC rule.

Variable economic conditions and production rates at an oil production facility may cause certain containers to be unused for long periods of time. Regulated community members have indicated that permanent closure of such containers is undesirable because the requirements for closing a container makes it costly and difficult to return a container to use if production rates surge or if economic conditions become more favorable.

Members of the regulated community have suggested that EPA provide an option to ''temporarily'' close a container, to exempt it from SPCC applicability, but allow it to be returned to service if needed. Specifically, ''temporary closure'' would have less stringent requirements than permanent closure, and would be intended for situations where containers would only be closed for short periods of time. The significant difference in closure requirements between EPA's current ''permanent'' requirements and the suggested ''temporary'' requirements appears to be the removal of liquid and sludge from the container and connecting lines. EPA believes that allowing liquid and sludge to remain in the container, without the benefit of the SPCC rule protections, such as containment and inspection, creates the potential for a discharge. Therefore, EPA does not believe that it is appropriate to exempt containers without requiring that all liquid and sludge be removed.

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

EPA notes, however, that the definition of permanently closed does not require a container to be removed from a facility; permanently closed containers may be brought back into use as needed for variations in production rates and economic conditions. (A facility owner or operator should review state and local requirements, which may require removal of a container when it is taken out service.)

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

production was determined to be unwarranted are described in the **Federal Register** notice ''Regulatory Determination for Oil and Gas and Geothermal Exploration, Development, and Production Wastes'' (July 6, 1988; 53 FR 25446).)

Given the clarifications provided here, EPA does not believe that further regulatory action is needed to address this issue. Nevertheless, EPA welcomes comments on whether further clarification regarding the definition of permanently closed is necessary. Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

8. Oil and Natural Gas Pipeline Facilities

In developing this proposed rulemaking, questions have been raised concerning the jurisdictional lines between EPA and the Department of Transportation (DOT) in relation to oil and gas pipeline systems and associated equipment. Our objective, in keeping with the Executive Order 12777 and earlier executive orders, as well as the 1971 DOT and EPA Memorandum of Understanding (MOU), is to differentiate between ''transportation'' and ''non-transportation'' facilities in a manner that provides clear and definitive standards, while eliminating regulatory gaps, and overlapping regulation and oversight. To these ends, EPA and DOT have committed to revise or augment their 1971 MOU to more clearly define the jurisdictional scope over oil and gas-related infrastructure by delineating the specific equipment and appurtenances that are part of the pipeline system subject to DOT jurisdiction. In the case of a natural gas pipeline, EPA and DOT will evaluate the appropriate jurisdictional divide for equipment such as compressor stations, lubricating systems and tanks. EPA and DOT have committed to diligently pursue resolution of this issue and, early next year, to make available for public comment the document memorializing the culmination of this effort. EPA, intends to give notice of completion of this process in connection with publication of the final version of this rule by incorporating by reference or otherwise a provision outlining the agencies' relative jurisdiction in this area.

M. Man-Made Structures

The SPCC rule is applicable to a facility that, due to its location, could reasonably be expected to have a discharge of oil as described in § 112.1(b). As described in a 1976 amendment to the rule (41 FR 34164, December 11, 1976), this determination must be based solely upon consideration of the geographical aspects of the facility, and excludes consideration of manmade features such as dikes, equipment, or other structures that may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in § 112.1(b). As EPA noted in the 1976 rule preamble, ''manmade features, such as drainage control structures and dikes, are not to be used in concluding there is no reasonable expectation that a discharge will reach navigable waters. If there is a reasonable expectation that a discharge from the facility would reach navigable waters but for or in the absence of such containment or other structures, the facility is subject to the requirements of this part.'' (41 FR 34164, December 11, 1976). This policy has been an important foundation for the applicability of the SPCC rule for over 30 years.

Although the issue was addressed in 1976, members of the regulated community continue to raise questions regarding the use of man-made structures. In the preamble to the 2002 SPCC rule revisions, EPA responded to comments by explaining that, ''To allow consideration of manmade structures (such as dikes, equipment, or other structures) to relieve a facility from being subject to the rule would defeat its preventive purpose. Because manmade structures may fail, thus putting the environment at risk in the event of a discharge, there is an unacceptable risk in using such structures to justify relieving a facility from the burden of preparing a prevention plan.'' (67 FR 47062, July 17, 2002). However, members of the regulated community continue to suggest that man-made features, such as basements or containment structures, should be taken into consideration when determining whether the SPCC requirements apply.

EPA continues to uphold this applicability criterion, but seeks to clarify that certain man-made features, such as building walls, basement structures, and drainage systems may be taken into consideration in determining how to comply with the SPCC requirements.

1. Secondary Containment

If an oil storage container at a regulated facility is located inside a building, the PE or facility owner/operator certifying the SPCC Plan may take into consideration the ability of the building walls and/or drainage systems to serve as secondary containment for the container. The SPCC regulation is performance-based and provides flexibility to the facility owner or operator in terms of the design and implementation of the secondary containment system that will provide adequate protection. Secondary containment may be achieved by use of dikes, berms, or other barriers, engineered drainage structures, or other active or passive containment methods. The regulation provides general design criteria for secondary containment of bulk storage containers by requiring simply that the containment be of a size sufficient to contain the capacity of the largest container, with freeboard for precipitation, as appropriate. EPA does not require the use of specific sizing criteria to account for precipitation (e.g., 110 percent of capacity); instead it allows the facility owner or operator, or the PE certifying the Plan, to consider location specific conditions, including the possibility that a bulk storage container is located indoors where precipitation does not occur. The SPCC rule also requires that the containment structure provided around bulk storage containers be sufficiently impervious to oil. Therefore, the containment structure must not be equipped with open floor drains unless the drainage system has been purposefully equipped to treat any discharge, for example by use of an adequately sized oil-water separator (any indoor drainage system that leads directly to a sewer authority, Publicly Owned Treatment Works (POTW), or a waterbody may serve as a conduit for a discharge to navigable waters). Additionally, any doorways, windows, or other openings thatwould permit a discharge to flow out of the building must also be taken into consideration. To the extent that an existing building structure meets the SPCC performance criteria for secondary containment, the owner/operator can consider such a building as an appropriate containment structure. In cases where the building walls may be used for secondary containment, it should be noted, that the calculation of the capacity of the secondary containment structure would need to consider the displacement by other containers, equipment, and items sharing the containment structure.

Where applicable, containers may be subject to the National Fire Protection's Flammable and Combustible Liquids Code (NFPA 30) in addition to the SPCC requirements. In these situations, the building may serve as both general and sized secondary containment. For containers located in buildings, NFPA 30 prescribes specific requirements to control fire hazards involving

flammable or combustible liquids, particularly in the areas of design, construction, ventilation, and ultimately facility drainage. More specifically, NFPA 30 requires curbs, scuppers, drains or similar features to prevent the flow of liquids in emergencies to adjacent buildings, including provisions to handle water from fire protection systems. In the area of facility drainage, NFPA 30 requires that a facility be designed and operated to prevent the discharge of liquids to public waterways, public sewers, or adjoining property. Thus, if a facility is designed, constructed and maintained to applicable fire codes, such as NFPA 30, the building may serve as secondary containment under the SPCC rule.

Given the clarifications provided here, EPA does not believe that further regulatory action is needed to address this issue. EPA welcomes comments on whether further clarification regarding the use of building structures to meet the SPCC secondary containment requirements is necessary.

2. Integrity Testing

The SPCC rule requires that bulk storage containers be made of compatible materials and are appropriate for the conditions of storage, such as pressure and temperature (§§ 112.8(c)(1) and 112.12(c)(1)), and are tested for integrity on a regular schedule (§§ 112.8(c)(6), and 112.12(c)(6)). If, at a regulated facility, indoor conditions are such that they reduce external corrosion and potential for discharges, these operating conditions may be considered in the development of a site-specific inspection program. Tank inspection standards, such as the American Petroleum Institute's (API) Standard 653 and the Steel Tank Institute's (STI) SP001, detail the appropriate inspection scope and frequency depending on container type and configuration. However, in developing a regulated facility's inspection program, it should be recognized that although indoor oil storage containers are generally shielded from precipitation, precipitation is only one of the many factors that promote corrosion. Even indoors, high humidity acidic dust settling on the container surface or some other factor may promote external corrosion. Furthermore, indoor containers may be comparatively more susceptible to accidental impacts from mobile equipment (e.g., forklifts) given the more restricted space. Indoor containers also remain subject to internal corrosion that can lead to pitting and leaking.

The SBA requested that EPA consider whether there should be differentiated integrity testing requirements for containers located indoors. With respect to integrity testing of aboveground storage tanks located indoors, applicable industry inspection standards, such as API 653 and STI SP001 do not specifically differentiate inspection requirements for indoor versus outdoor containers. However, SP001, for example, does differentiate based on container size and configuration, and, for tanks with storage capacities up to 5,000 gallons provided with sized secondary containment and a release prevention barrier (such as a liner, concrete pad, or an elevated tank in secondary containment), the standard requires visual inspection and recordkeeping by the owner/operator per the SP001 schedule. For tanks greater than 5,000 gallons in the same configuration, SP001 requires visual inspection by the owner/operator coupled with a formal external inspection by a certified inspector on a 20-year cycle versus a more stringent inspection scope and schedule for tanks located outdoors in earthen secondary containment. Therefore, the Agency believes that the industry standards already provide flexibility to the owner/operator of the facility based on tank size and configuration. Additionally, the owner/operator in conjunction with the certifying PE has the flexibility under the SPCC regulation to develop an alternate container inspection program.

Given the clarifications provided here, EPA does not believe that further regulatory action is needed to address this issue. Nevertheless, EPA welcomes comments on whether further clarification regarding requirements for integrity testing of containers located indoors, or a regulatory amendment is necessary.

N. Underground Emergency Diesel Generator Tanks at Nuclear Power Stations

Under the U.S. Nuclear Regulatory Commission (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 (10 CFR part 50, Appendix A). The NRC design criteria cover the design, fabrication, installation, testing and operation of structures, systems, and components important to safety. Nuclear power stations are required to provide redundant on-site electric power system and an off-site power system to allow functioning of structures, systems, and components important to safety. These on-site power systems typically consist of diesel-powered emergency or standby generators, which may include day fuel tanks, either integral to the generator or immediately adjacent to the unit. Additional reserve capacity may also be provided by aboveground and/or underground storage tanks (USTs) to meet the NRC requirement to provide a seven-day supply of fuel oil on-site. Each utility develops its particular systems and procedures for ensuring their operability and integrity; these elements become part of the safety program that is reviewed and approved by NRC in granting an operating license for the utility.

EPA currently exempts from the SPCC requirements any completely buried storage tank that is subject to all of the technical requirements for USTs under 40 CFR part 280 or a state program approved under part 281. However, as discussed in the preamble to the final rule for parts 280 and 281 (53 FR 37082, September 23, 1988), the Agency chose to defer the requirements of Subparts B, C, D, E, and G for these tanks pending completion of a review of the NRC regulations (10 CFR part 50, Appendix A) governing these tanks to determine whether further regulation under the UST regulations is necessary to protect human health and the environment or whether such regulation would be inconsistent with the NRC regulations. Thus, UST tanks that are part of an emergency generator system at a nuclear power generation facility regulated by the NRC are still subject to some of the UST regulations. For example, deferred tanks must still comply with the release response and corrective action requirements under Subpart F (§§ 280.60 through 280.67). Consequently, because these tanks are not subject to all of the UST requirements, they are currently subject to the SPCC requirements.

Nuclear power plant stakeholders have provided comments to the Agency questioning whether dual regulation of these USTs under relevant NRC requirements and SPCC requirements is appropriate or necessary. The industry has also indicated that to comply with SPCC requirements, the unit would need to be shut down to properly address secondary containment and integrity testing and inspection requirements; to do so otherwise would violate stringent NRC operating safety requirements. A shutdown to address SPCC requirements is costly and jeopardizes public power supply needs. To further analyze the potential overlap and concerns relative to the SPCC requirements in light of NRC requirements, EPA conducted a site visit to a nearby nuclear power station and consulted NRC.

EPA compared the NRC regulations and guidelines with the relevant SPCC requirements. Under 10 CFR Part 50, Appendices A and B, nuclear power generation facility operators must identify the relevant codes and standards, develop and implement a quality assurance program, and maintain appropriate records of the design, fabrication, erection, and testing throughout the life of the nuclear unit. The quality assurance program required per Appendix B must be documented by written policies, procedures or instructions and implemented as documented. To assist nuclear power unit licensees in complying with the license requirements, the NRC has developed a number of guidance documents, including documents pertaining to the operation of standby diesel generators. Specifically, NRC Regulatory Guide 1.137, ''Fuel-Oil Systems for Standby Diesel Generators'' details the requirements for inspection and testing of fuel oil systems, corrosion protection, and the periodic cleaning of fuel supply tanks. These measures are similar to the measures required under the SPCC regulation for completely buried tanks, which include corrosion protection of buried tanks (§ 112.8(c)(4)) and of buried piping (§ 112.8(d)(1)), and inspection and testing of buried piping (§ 112.8(d)(4)). According to NRC, this guideline represents one acceptable method to meet the NRC requirements for these standby systems. If a licensee chooses an alternative approach then equivalency must be demonstrated through an engineering review by the NRC as part of the licensing process.

In conducting the site visit to a nearby nuclear power station, EPA observed that the standby generators had both aboveground and underground storage tanks on-site to meet the requisite fuel demands. The USTs were installed in 1973 and consist of single-walled steel tanks equipped with automatic tank gauging and are subjected to nondestructive evaluation (ultrasonic thickness testing) every 10 years. Associated piping is tested every 10 years. EPA then reviewed the relevant SPCC requirements associated with USTs that meet the definition of completely buried tanks in § 112.2 of the SPCC rule and conducted a comparative analysis as detailed below.

- All containers: § 112.8(c)(2): Sized secondary containment requirements.
- Buried Tanks: § 112.8(c)(4): Protection and leak testing of buried metallic tanks.
- All Containers: § 112.8(c)(8): Engineering of each container to prevent overfills.
- Buried Piping: § 112.8(d): Protection and leak testing of buried piping.

Since the USTs are single-walled steel tanks, the tanks may not meet the secondary containment requirements at § 112.8(c)(2); however, an argument could be made that secondary containment is impracticable under § 112.7(d). Since these USTs remain subject to Subpart F of Part 280 (Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances), the requirements of § 112.7(d)(1) and 112.7(d)(2) may be met. Additionally, since the tanks were installed prior to January 10, 1974, the completely buried tanks are not subject to the cathodic protection requirements at § 112.8(c)(4). However, since the tanks are subjected to a non-destructive evaluation on a 10-year cycle, the leak testing requirement under § 112.8(c)(4) would be met. Completely buried tanks are also subject to the engineering requirement at § 112.8(c)(8) to prevent overfills. The observed tanks were equipped with automatic tank gauging. Buried piping associated with the completely buried tanks is subjected to pressure testing on a 10-year cycle; however, since the piping was installed prior to 2002, the buried piping is not subject to the coating, wrapping and cathodic protection requirements at § 112.8(d)(1).

The case summarized above illustrates the similarities between UST safety measures implemented under the NRC regulations and SPCC requirements applicable to completely buried tanks. EPA believes that nuclear power plants have unique characteristics that differentiate them from other types of regulated facilities. Thus, EPA understands that certain actions necessary to comply with the SPCC rule could be impracticable at NRC facilities because they may compromise the availability of the emergency diesel generation tank and consequently affect the reliability of the nuclear power supply and result in the shut down of a nuclear power plant. EPA believes that the NRC operating safety requirements best address the specific and unique operational challenges represented by completely buried tanks at nuclear power plants. EPA is, therefore, proposing to exempt completely buried oil storage tanks at NRC-regulated facilities that are subject to the safety requirements under the NRC regulations. The exemptions would apply only to completely buried tanks as defined in § 112.2 of the SPCC regulation. Similar to completely buried tanks subject to all the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281, completely buried tanks at NRC-regulated facilities would not be counted as part of the aggregate aboveground storage capacity of the facility, but the tanks would need to be marked on the facility diagram as provided in § 112.7(a)(3) if the facility is otherwise subject to the SPCC rule.

EPA seeks comments on the proposed exemption of completely buried oil storage tanks at NRC facilities. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

O. Wind Turbines

The Agency was requested to address the applicability of the rule to wind turbines used to produce electricity. In consultation with DOE, EPA's research shows that the larger 1.5-mega watt (MW) turbines have gearbox capacities typically ranging between 55 and 65 gallons. Additionally, other wind turbine components, such as the gear reducers within the turbine for yaw and pitch control may contain up to 10 gallons of lubricating oil. Based on these capacities, wind turbine farms at locations where there is a reasonable expectation of a discharge to navigable waters or adjoining shorelines could meet the 1,320-gallon aggregate aboveground oil storage capacity applicability threshold for the SPCC rule and would be required to prepare a Plan. The Agency believes that these wind turbines meet the definition of oil-filled operational equipment promulgated in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) and thus can take advantage of the alternative compliance option provided for this type of equipment.

The amendments to the SPCC rule promulgated in December 2006 allow owners and operators of facilities with eligible oil-filled operational equipment the option to prepare an oil spill contingency plan and a written commitment of manpower, equipment, and materials to expeditiously control and remove any oil discharged that may be harmful without having to make an individual impracticability determination as required in § 112.7(d). If an owner or operator takes this option, he or she 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.

The Agency defined ''oil-filled operational equipment'' as ''equipment

that includes an oil storage container (or multiple containers) in which the oil is present solely to support the function of the apparatus or the device. Oil-filled operational equipment is not considered a bulk storage container, and does not include oil-filled manufacturing equipment (flow-through process). Examples of oil-filled operational equipment include, but are not limited to, hydraulic systems, lubricating systems (e.g., those for pumps, compressors and other rotating equipment, including pumpjack lubrication systems), gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, electrical switches, and other systems containing oil solely to enable the operation of the device.'' (71 FR 77290)

These examples the Agency included in definition of oil-filled operational equipment were intended to provide additional clarity and not to exclude other such equipment. Based on their characteristics, the Agency considers wind turbines to meet the definition of oil-filled operational equipment. Wind farm facilities can take advantage of the oil spill contingency plan compliance option as an alternative to secondary containment requirements.

In addition, in examining the design of a wind turbine, a PE (or owner/operator of a qualified facility) may determine that it inherently provides sufficient secondary containment for its oil reservoirs. The nacelle, or structure that contains the key components of the turbine, including the gearbox and the electrical generator, may be determined to serve as sufficient secondary containment in the event of an oil discharge. Thus, the PE or owner/operator of a qualified facility may certify a wind turbine as being in compliance with the § 112.7(c) requirements for secondary containment. As such, the alternative measures described in § 112.7(k) (i.e., an oil spill contingency plan, the commitment of resources and manpower, and an inspection or monitoring program) would not be necessary.

It is important to note that a wind farm that meets the criteria for qualified facility status has additional compliance alternatives, and flexibility is available, the most significant being the option for self-certification of his SPCC Plan. EPA seeks comments on whether this discussion provides adequate clarity on the applicability of the SPCC rule to wind turbines, or whether further clarification is needed.

P. Technical Corrections

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

EPA also proposes a technical correction to the introductory paragraph of § 112.12, to delete the phrase ''(excluding a production facility.)'' In the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), EPA amended Subpart C of part 112 by removing several sections because they were not appropriate for animal fats and vegetable oils. At that time, as a point of clarification, EPA also removed the phrase ''for onshore facilities (excluding production facilities)'' from the title of § 112.12, because, having removed the inapplicable production facility requirements from Subpart C, it was no longer necessary to differentiate onshore oil production facilities from other facilities in § 112.12. However, EPA inadvertently neglected to remove the corresponding phrase from the introductory paragraph of the section. EPA currently seeks to correct this inadvertent omission. EPA seeks comments on this proposed technical correction.

VII. 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 recommendations have been documented in the docket for this action. In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the regulatory impact analysis (RIA) entitled, ''Regulatory Impact Analysis for the Proposed Amendments to the Oil Pollution Prevention Regulations (40 CFR Part 112)'' (September 2007). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. EPA requests comments from the public on the costs and benefits of any of the proposed regulatory alternatives and preferred options discussed in this proposed rulemaking action.

For the economic impact analysis of these proposed amendments to the SPCC rule, EPA used the SPCC rule requirements at 40 CFR part 112, as amended in 2002 (67 FR 47042, July 17, 2002) as the baseline to estimate the potential cost savings to regulated facilities from these proposed amendments. The cost savings are not adjusted for the estimated, potential cost savings for the final 2006 rule amendments and may overestimate the cost savings for these proposed amendments, particularly for proposed Tier 1 qualified facilities, proposed revisions to the integrity testing requirement, and the proposed amendments to delay SPCC Plan preparation and implementation for oil production facilities. The regulatory impact analysis developed in support of this proposal compares the compliance costs for owners and operators of facilities affected by the proposed amendments to the costs owners and operators would face under the 2002 SPCC rule amendments. The proposed regulatory amendments have twelve major components: (1) Exempt hot-mix asphalt; (2) exempt pesticide application equipment and related mix containers used at farms; (3) exempt heating oil containers at single-family residences; (4) amend the definition of ''facility'' to clarify the flexibility

associated with defining a facility's boundaries; (5) amend the facility diagram requirement to provide additional flexibility for all facilities; (6) define ''loading/unloading rack'' to clarify the equipment subject to the provisions for facility tank car and tank truck loading/unloading racks; (7) provide streamlined requirements for a subset of qualified facilities; (8) amend the general secondary containment provision to provide more clarity; (9) amend the security requirements for all facilities; (10) amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards at all facilities; (11) amend the integrity testing requirements for containers that store animal fats or vegetable oils and meet certain criteria; (12) streamline a number of requirements at oil production facilities; and (13) exempt completely buried oil storage tanks at nuclear power generation facilities. EPA is also providing clarification in the preamble to this proposed rule on three additional issues identified by the regulated community: (1) the consideration of man-made structures in determining how to comply with the SPCC rule requirements; (2) the applicability of the rule to underground emergency diesel generator tanks at nuclear power stations, and (3) the applicability of the rule to wind turbines for electricity generation.

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

- Develop the baseline universe of SPCC-regulated facilities;
- Estimate the number of facilities affected by the proposed rule amendments;
- Estimate changes in unit compliance cost for each regulated facility affected by the proposed rule;
- Estimate total compliance cost savings to owners and operators of potentially affected facilities; and
- Annualize compliance cost savings over a ten-year period, 2008 through 2017, and discount the estimates using 3 and 7 percent discount rates.

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

Exhibit 1 presents the estimated cost savings for each rule component and for the proposed rule amendments in total. For several proposed rule amendments, such as the security requirements and facilities handling AFVO, EPA did not have numeric data on the number of affected facilities within a general industry sector; thus, it developed three scenarios to evaluate a range of cost savings.[17] The exhibit below presents the estimated cost savings for the proposed options for this proposed rule. The total potential cost savings are calculated taking into account the mid-point values of the estimated ranges of statistical distributions for unit costs. These estimates are not necessarily additive, given that they do not account for interactions among the various components of the proposed rule.[18]

The oil production sector and farms would benefit from multiple components of the proposed rule. Farms would benefit from the proposed requirements for Tier I qualified facilities, amendments to the definition of ''facility'', amendments to the security, integrity testing, facility diagram requirements, amendments to the definition of ''loading/unloading rack'', and the exemption for single-family residential heating oil containers, in addition to the exemption of pesticide application equipment. The total cost savings to farm owners and operators from these amendments are estimated at $263 million on an annualized basis.

The oil production sector would benefit from proposed revisions to the facility diagram requirements, and amendments to the definition of ''loading/unloading rack'', and some would benefit from the new requirements for Tier I qualified facilities, in addition to amendments specific to the oil production sector such as the six-month delay in preparation and implementation of SPCC Plans and the exemption of flow-through separation and treating equipment from sized secondary containment requirements. The total savings to owners and operators of oil production facilities from all of the proposed amendments that affect this sector are estimated at $83 million on an annualized basis.

[17] 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.

[18] Certain industry sectors are affected by multiple rule components. For example, farms would benefit from the new requirements for Tier I qualified facilities, amendments to the definition of ''facility'', amendments to the security, integrity testing, facility diagram requirements, amendments to the definition of ''loading/unloading rack'', and the exemption for single-family residential heating oil containers, in addition to the exemption of pesticide application equipment. As a result, taking advantage of one new requirement might preclude a facility from benefiting from other proposed requirements.

EXHIBIT 1.—ESTIMATED COMPLIANCE COST SAVINGS FOR THE PROPOSED REGULATORY AMENDMENTS

Rule component/scenario	Annualized cost savings ($2006, in millions, 7% discount rate)
Hot-Mix Asphalt:	
Exempt HMA containers	$7
Farms:	
Exempt pesticide application equipment; clarification on nurse tanks being mobile refuelers	$4
Residential Heating Oil Containers:	
Exempt single-family residential heating oil containers	$2
Definition of Facility:	
Revise the definition of ''facility''	$251
Facility Diagram:	
Revise facility diagram requirement	$1
Loading/Unloading Racks:	
Define ''loading/unloading rack''	$48
Tier I Qualified Facilities:	
Provide streamlined requirements for Tier I qualified facilities	$24
General Secondary Containment:	
Amend the general secondary containment provision to provide more clarity	No cost impact.
Security Requirements:	
Revise security requirements [1]	$7
Integrity Testing:	
Amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards at all facilities.	$9
Animal Fats and Vegetable Oil:	
Amend integrity testing requirements for containers that store animal fats or vegetable oil and that meet certain criteria [2].	$2
Oil Production Facilities:	
Six month delay for Plan preparation and implementation	$25
Exempt flowlines and gathering lines from secondary containment	No net cost impact.
Flow-through separation and treatment equipment	$8
Man-Made Structures:	
Consider manmade structures in determining SPCC rule applicability	No cost impact.
Nuclear Power Stations:	
Exempt completely buried 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	$387

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

B. Paperwork Reduction Act

The information collection requirements for this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 0328.14.

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

Although facility personnel are the primary data user, EPA also uses the data in certain situations. 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 the EPA's inspection program. State and local governments also use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness efforts. Preparation of the information for affected facilities is required under section 311(j)(1) of the Clean Water Act as implemented by 40 CFR part 112.

EPA estimates that in the absence of this proposed rulemaking, approximately 592,000 existing facilities would be subject to the SPCC rule in 2008 and have SPCC Plans. In addition, EPA estimates that approximately 18,100 new facilities would become subject to the SPCC requirements during that year, resulting in a total of about 610,000 regulated facilities in 2008.[19]

Under this proposed action, the storage capacity of containers solely containing hot-mix asphalt would be exempt from the SPCC rule; the proposal would also exempt all heating oil containers for single-family residences; pesticide application equipment and related mix containers used at farms would no longer be regulated; the definition of ''facility'' would be amended to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to specify that the ''facility'' definition governs the applicability of 40 CFR part 112; EPA would amend the facility

[19] To estimate the number of SPCC-regulated facilities in 2008, EPA used the estimated number of facilities for 2005 (571,000) and applied annual, industry-specific growth rates that resulted in about 610,000 facilities.

diagram requirement to provide additional flexibility for all facilities; EPA would provide a definition for the term ''loading/unloading rack,'' which would determine whether a facility is subject to the provisions at § 112.7(h), as well as specifically exclude onshore oil production facilities and farms from the requirements of § 112.7(h); a subset of qualified facilities (Tier I) would be allowed to complete and implement an SPCC Plan template (proposed as Appendix G to 40 CFR part 112) in order to comply with the SPCC rule requirements; the security requirements at § 112.7(g) would be modified to allow an owner or operator to tailor his security measures to the facility's specific characteristics and location; the current integrity testing requirements at §§ 112.8(c)(6) and 112.12(c)(6) would be replaced with the requirements provided for qualified facilities, as promulgated in December 2006; the PE or an owner/operator certifying an SPCC Plan would have the flexibility to determine the scope of integrity testing that is appropriate for containers that store animal fats or vegetable oil that is intended for human consumption and that meet other criteria; lastly, this proposed rulemaking would streamline the requirements for oil production facilities by modifying the definition of production facility to be consistent with the proposed amendments to the definition of facility, extending the timeframe by which a new oil production facility must prepare and implement an SPCC Plan, exempting flow-through process vessels at oil production facilities from the sized secondary containment requirements, while maintaining general secondary containment requirements and requiring additional oil spill prevention measures, establishing more specific requirements for contingency planning and a flowline/intra-facility gathering line maintenance program, while exempting such flowlines and intra-facility gathering lines at oil production facilities from the secondary containment requirements, clarifying the applicability of the SPCC rule to oil containers at a natural gas facility, clarifying the SPCC provisions to which a natural gas facility may be subject, and clarifying the definition of ''permanently closed'' as it applies to an oil production facility.

Under this proposed action, an estimated 610,000 regulated facilities would be subject to the SPCC information collection requirements of this rule in 2008.[20] The Agency estimates that as a result of the proposed amendments to tailor, clarify, and streamline certain SPCC requirements, the reporting and recordkeeping burden would decrease by approximately 1.4 million hours. The proposed amendments would reduce capital and O&M costs by approximately $43 million on an annualized basis.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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.

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 proposed rule on small entities, a small entity is defined as: (1) A small business as defined in the U.S. Small Business Administration (SBA)'s 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 proposed rule, generally defines small businesses as having less than $0.5 million to $27.5 million per year in sales receipts, depending on the industry, or 500 or fewer employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, the Agency certifies that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed 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 this proposal, the following issues will be addressed: exempt hot-mix asphalt from SPCC requirements; exempt specific oil storage equipment on farms from the SPCC rule requirements; exempt heating oil containers at single-family residences; clarify how containers, fixed and mobile, are identified on the facility diagram; modify 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 that the definition of ''facility'' governs the applicability to the SPCC rule; 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 facility security requirements at § 112.7(g) to allow an owner or operator to tailor security measures to his facility's specific characteristics and location; replace the current integrity testing requirements at §§ 112.8(c)(6) and 112.12(c)(6) with the current regulatory requirement for a qualified facility; provide the PE or an owner/operator certifying an SPCC Plan with the flexibility for integrity testing

[20] To estimate the number of SPCC-regulated facilities in 2008, EPA used the estimated number of facilities for 2005 (571,000) and applied annual industry-specific growth rates.

for bulk storage containers that store animal fats or vegetable oil and that meet other criteria; and initiate several amendments to streamline the requirements for oil production facility to address concerns raised by the production sector, respectively.

Overall, EPA estimates that this proposed action would reduce annual compliance costs by approximately $387 million for owners and operators of affected facilities. Total costs were annualized over a 10-year period using a 7 percent discount rate. EPA derived these savings by estimating the number of facilities affected by each proposed amendment; identifying the specific behavioral changes that may occur (e.g., choosing to prepare an SPCC Plan template instead of a full SPCC Plan); estimating the unit costs of compliance measures under the baseline and proposed scenarios; and applying the change in unit costs to the projected number of affected facilities.

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

D. Unfunded Mandates Reform Act

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

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

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed action would reduce compliance costs on owners and operators of affected facilities by approximately $387 million annually, although EPA acknowledges this total estimate is derived from analyses of individual major components of the proposed rule that are not necessarily additive, given that they do not account for interactions among the various components. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

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

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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

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 proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule would not significantly or uniquely affect communities of Indian trial governments. Thus, Executive Order 13175 does not apply to this proposed rule.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This proposed rule 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 proposed rule 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 proposed 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. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 112

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

Dated: October 1, 2007.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 112 of the Code of Federal Regulations is proposed to be 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 paragraphs (d)(2)(i) and (d)(2)(ii).

b. By revising paragraph (d)(4).

c. By adding paragraphs (d)(8) through (d)(10).

§ 112.1 General applicability.

* * * * *

(d) * * *

(2) * * *

(i) The completely buried storage capacity of the facility is 42,000 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 which, in the case of a nuclear power generation facility, meets the Nuclear Regulatory Commission design criteria at 10 CFR part 50, Appendices A and B. The completely buried storage capacity of a facility also excludes the capacity of a container that is ''permanently closed,'' as defined in § 112.2.

(ii) The aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. For the purposes of this exemption, only containers with a capacity of 55 gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes: the capacity of a container that is ''permanently closed'' and the capacity of a ''motive power container'' as defined in § 112.2; the capacity of hot-mix asphalt or any hot-mix asphalt container; the capacity of a container for heating oil used solely at a single-family residence; and the capacity of pesticide application equipment and related mix containers used at farms.

* * * * *

(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 which, in the case of a nuclear power generation facility, meets the Nuclear Regulatory Commission design criteria at 10 CFR part 50, Appendices A and B, except that such a tank must be marked on the facility diagram as provided in § 112.7(a)(3), if the facility is otherwise subject to this part.

* * * * *

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

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

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

* * * * *

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

§ 112.2 Definitions.

* * * * *

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

* * * * *

Loading/unloading rack means a structure necessary for loading or unloading a tank truck or tank car, which is located at a facility subject to

the requirements of this part. A loading/unloading rack includes a platform, gangway, or loading/unloading arm; and any combination of the following: piping assemblages, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices.

* * * * *

Production facility means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil, or associated storage or measurement, and may be located in a single geographical oil or gas field operated by a single operator. This definition governs whether a facility is subject to a specific section of this part.

* * * * *

4. Amend § 112.3 as follows:

a. By revising the introductory text.

b. By revising paragraph (b)(1).

c. By adding paragraph (b)(3).

d. Revising paragraph (g).

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

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

* * * * *

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

* * * * *

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

* * * * *

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

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

(2) A Tier II qualified facility is one that:

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

(ii) 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).

5. Revise § 112.6 to read as follows:

§ 112.6 Qualified Facilities Plan Requirements.

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

(a) *Tier I Qualified Facilities*—(1) *Preparation and Self-Certification of the Plan.* If you are an owner or operator of a facility that meets the Tier I qualified facility criteria in § 112.3(g)(1), you may choose to prepare an SPCC Plan that meets the requirements of paragraph (a)(3) of this section to serve as the Plan for your facility, instead of preparing a Plan meeting requirements of paragraph (b) of this section or the general Plan requirements in § 112.7 and applicable requirements in subparts B and C of this part, including having the Plan certified by a Professional Engineer as required under § 112.3(d). The template in Appendix G to this part has been developed to meet the requirements of 40 CFR part 112 and must be used as the SPCC Plan. To complete the template in Appendix G, you must certify that:

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

(ii) You have visited and examined the facility;

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

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

(v) You will fully implement the Plan;

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

(vii) The Plan does not deviate from any requirement of this part as allowed by 112.7(a)(2) and 112.7(d); and

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

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

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

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

(3) *Plan Template and Applicable Requirements.* The following requirements under § 112.7 and in subparts B and C of this part apply to qualified Tier I facilities choosing the self-certification Tier I option: §§ 112.7(a)(3)(i), 112.7(a)(3)(iv), 112.7(a)(3)(vi), 112.7(a)(4), 112.7(a)(5), 112.7(c), 112.7(e), 112.7(f), 112.7(g), 112.7(k), 112.8(b)(1), 112.8(b)(2), 112.8(c)(1), 112.8(c)(3), 112.8(c)(4), 112.8(c)(5), 112.8(c)(6), 112.8(c)(10), 112.8(d)(4), 112.9(b), 112.9(c), 112.9(d)(1), 112.9(d)(3), 112.9(d)(4), 112.10(b), 112.10(c), 112.10(d), 112.12(b)(1), 112.12(b)(2), 112.12(c)(1), 112.12(c)(3), 112.12 (c)(4), 112.12(c)(5), 112.12(c)(6), 112.12(c)(10), and 112.12(d)(4). Additionally, you must meet the following requirements:

(i) *Failure analysis, in lieu of the requirements in § 112.7(b).* Where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any

other equipment known to be a source of discharge), include in your Plan a prediction of the direction and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

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

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

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

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

(ii) You have visited and examined the facility;

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

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

(v) You will fully implement the Plan;

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

(vii) The Plan does not deviate from any requirement of this part as allowed by § 112.7(a)(2) and 112.7(d), except as provided in paragraph (b)(3) of this section; and

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

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

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

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

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

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

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

(4) *Professional Engineer Certification of Portions of a Qualified Facility's Self-certified Plan.* As described in paragraph (b)(3) of this section, the facility owner or operator may not self-certify alternative measures allowed under § 112.7(a)(2) or (d), that are included in the facility's Plan. Such measures must be reviewed and certified, in writing, by a licensed Professional Engineer as follows:

(i) For each alternative measure allowed under § 112.7(a)(2), the Plan must be accompanied by a written statement by a Professional Engineer that states the reason for nonconformance and describes the alternative method and how it provides equivalent environmental protection in accordance with § 112.7(a)(2). For each determination of impracticability of secondary containment pursuant to § 112.7(d), the Plan must clearly explain why secondary containment measures are not practicable at this facility and provide the alternative measures required in § 112.7(d) in lieu of secondary containment.

(ii) By certifying each measure allowed under § 112.7(a)(2) and (d), the Professional Engineer attests:

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

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

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

(iii) The review and certification by the Professional Engineer under this paragraph is limited to the alternative method which achieves equivalent environmental protection pursuant to § 112.7(a)(2) or to the impracticability determination and measures in lieu of secondary containment pursuant to § 112.7(d).

6. Amend § 112.7 as follows:

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

b. By revising paragraphs (c) introductory text and (c)(1).

c. Revising paragraph (g).

d. Revising paragraphs (h) introductory text, (h)(1) and (h)(2).

§ 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 include completely buried 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. You must also address in your Plan:

(i) The type of oil in each fixed container and its storage capacity. For mobile or portable containers, either provide the type of oil and storage capacity for each container or provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities;

* * * * *

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

(1) For onshore facilities:

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

(ii) Curbing or drip pans;

(iii) Sumps and collection systems;

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

(v) Weirs, booms, or other barriers;

(vi) Spill diversion ponds;

(vii) Retention ponds; or

(viii) Sorbent materials.

* * * * *

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

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

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

* * * * *

Subpart B—[Amended]

7. Amend § 112.8 by revising paragraph (c)(6) to read as follows:

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

* * * * *

(c) * * *

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

* * * * *

8. Amend § 112.9 as follows:

a. By revising the section heading.

b. By revising the introductory text.

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

d. By adding paragraph (c)(5).

e. By revising paragraph (d)(3).

f. By adding paragraph (d)(4).

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

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

* * * * *

(c) * * *

(2) Construct all tank battery, separation, and treating facility installations, except for flow-through process vessels, so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Except for flow-through process vessels, periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

* * * * *

(5) *Flow-through process vessels.* (i) In lieu of the requirements in paragraph (c)(3) of this section, periodically and on a regular schedule visually inspect and/or test flow-through process vessels and associated components (e.g., dump valves) for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b).

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

(iii) Promptly remove any accumulations of oil discharges associated with flow-through process vessels.

(iv) If your facility discharges more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharges more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b) within any twelve month period, from flow-through process vessels (excluding discharges that are the result of natural disasters, acts of war, or terrorism) then you must, within six months from the time the facility becomes subject to this paragraph, provide flow-through process vessels with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

(d) * * *

(3) For flowlines and intra-facility gathering lines, unless you have

submitted a response plan under § 112.20, provide in your Plan the following:

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

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

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

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

(ii) Visually inspect and/or test flowlines and intra-facility gathering lines and associated appurtenances on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b). The frequency and type of testing must allow for the implementation of a contingency plan as described under part 109 of this chapter.

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

(iv) Promptly remove any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.

Subpart C—[Amended]

9. Amend § 112.12 by revising the introductory text and paragraph (c)(6) to read as follows:

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

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

* * * * *

(c) * * *

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

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

* * * * *

10. Add Appendix G to part 112 to read as follows:

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

This template constitutes the SPCC Plan for the facility, when completed and signed by the owner or operator of a facility that meets the applicability criteria in §112.3(g)(1). This template meets the requirements of 40 CFR part 112. Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or for a facility attended less than 4 hours per day, at the nearest field office.

Facility Description

Facility Name _____

Facility Address _____

City _____ State _____ ZIP _____

County _____ Tel. Number ( ) - _____

Owner/Operator Name _____

Owner/Operator Address _____

City _____ State _____ ZIP _____

County _____ Tel. Number ( ) - _____

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

The owner/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:
   a. The aggregate oil storage capacity of the facility is 10,000 U.S. gallons or less;
   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 a 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).
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:

- To report an oil discharge to navigable waters and adjoining shorelines to the appropriate authorities. Notification information is included in this Plan.
- 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 5 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.]
- A contingency plan:
  - may be used in lieu of secondary containment for qualified oil-filled operational equipment, in accordance with the requirements under §112.7(k), and
  - must be prepared for flowlines and/or intra-facility gathering lines at an oil production facility.

  A contingency plan must include: an established and documented inspection or monitoring program; an oil spill contingency plan following the provisions of 40 CFR 109; and a written commitment of manpower, equipment and materials to expeditiously remove any quantity of oil discharged that may be harmful. If applicable, a copy of the contingency plan and any additional documentation will be attached to this Plan as Attachment 2.
- By completing this Plan template, I certify that I have satisfied the requirement to prepare and implement a Plan under §112.3 and all of the requirements under §112.6(a).
- I certify that the information contained in this Plan is true.

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

II. Record of Plan Review and Amendments

Five Year Review (§112.5(b)):

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

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)):

This table includes a complete list of all oil storage containers (aboveground containers and completely buried tanks) with capacity of 55 gallons or more, (e.g. tanks & oil-filled equipment.) For mobile/portable containers, estimated 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 _____ gallons
Total Completely Buried Storage Capacity _____ gallons
Facility Total Oil Storage Capacity _____ gallons

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

Appropriate containment and/or diversionary structures or equipment* is provided for all oil handling containers, equipment, and transfer areas to prevent a discharge to navigable waters or adjoining shorelines. The entire 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.	☐

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

Area	Type of failure (discharge scenario)	Potential discharge volume (gallons)	Direction of flow for uncontained discharge	Secondary containment method*	Secondary containment capacity (gallons)
*Bulk Storage Containers and Mobile/Portable Containers***					
Oil-filled Operational Equipment (e.g., hydraulic equipment, transformers)†					
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)					

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

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

Inspections, tests, and records	
An inspection and testing program is implemented for all aboveground storage containers and piping at this facility. *[§112.8(c)(6), 112.12(c)(6)]* The following is a description of the inspection and testing program (e.g. reference to industry standard utilized, scope, frequency, method of inspection or test, and person conducting the inspection) for all aboveground storage containers and piping at this facility:	☐
Inspections, tests, and records are conducted in accordance with written procedures developed for the facility. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph. *[§112.7(e)]*	☐
A record of the inspections and tests are kept at the facility or with the SPCC Plan for a period of three years. *[§112.7(e)]* [See Inspection Log and Schedule in Attachment 3.1]	☐
Inspections and tests are signed by the appropriate supervisor or inspector. *[§112.7(e)]*	☐
Personnel, training, and discharge prevention procedures [§112.7(f)]	
Oil-handling personnel are trained in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC Plan. *[§112.7(f)]*	☐
A person who reports to facility management is designated and accountable for discharge prevention. *[§112.7(f)]* Name/Title:_____	☐
Discharge prevention briefings are conducted for oil-handling personnel annually to assure adequate understanding of the SPCC Plan for that facility. Such briefings highlight and describe past reportable discharges or failures, malfunctioning components, and any recently developed precautionary measures. *[§112.7(f)]* [See Oil-handling Personnel Training and Briefing Log in Attachment 3.4]	☐

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

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)):

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)):

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)	

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

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

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 [see the 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

* * * * *

NOTE: Complete one of the following sections (A, B or C) as appropriate for the facility type.

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

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

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

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.

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: • Visually inspected and/or tested periodically and on a regular schedule for leaks, corrosion, or other conditions that could lead to a discharge to navigable waters; and • Corrective action or repairs are applied to flow-through process vessels and any associated components as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge; and	☐ ☐

• Any accumulations of oil discharges associated with flow-through process vessels are promptly removed; and • Flow-through process vessels are provided with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation within six months of a discharge from flow-through process vessels of more than 1,000 U.S. gallons of oil in a single discharge as described in §112.1(b), or a discharge more than 42 U.S. gallons of oil in each of two discharges as described in §112.1(b) within any twelve month period. *[§112.9(c)(5)]* *(Leave blank until such time that this provision is applicable.)*	☐ ☐
All aboveground valves and piping associated with transfer operations are inspected periodically and upon a regular schedule. The general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items are included in the inspection. [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(d)(1)]*	☐
An oil spill contingency plan and written commitment of resources is provided for flowlines and intra-facility gathering lines [See Oil Spill Contingency Plan and Checklist in Attachment 2 and Inspection Log and Schedule in Attachment 3.1] *[§112.9(d)(3)]*	☐
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.

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.

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.

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 in place of 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 performed.

109.5–Development and implementation criteria for State, local and regional oil removal contingency plans*	
(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.	☐
(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.	☐

*** The contingency plan should 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

Date of Inspection	Container / Piping / Equipment	Describe Scope (or cite Industry Standard)	Observations	Name/ Signature of Inspector	Records maintained separately*
					☐
					☐
					☐
					☐
					☐
					☐

* 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 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.

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 gallon with sized secondary containment	
1,101 to 5,000 gallon with sized secondary containment and elevated above the secondary containment floor	
1,101 to 5,000 gallons with sized secondary containment and NOT elevated above the secondary containment floor	Inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas, plus any other specific integrity tests that may be required per industry inspection standards

ATTACHMENT 3.3 – 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

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]:

Discharge/Discovery Date		Time	
Facility Name			
Facility Location (Address)			
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 ☐ Cleanup contractor (Specify) ☐ Facility personnel (Specify) ☐ State Agency (Specify) ☐ Other (Specify)		Time _____ Time _____ Time _____ Time _____ Time _____

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