Federal Register

Wednesday,
July 17, 2002

Part II

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–7241–5]

RIN 2050–AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency or we) is amending the Oil Pollution Prevention regulation promulgated under the authority of the Clean Water Act. This rule includes requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans, and for Facility Response Plans (FRPs). The final rule includes new subparts outlining the requirements for various classes of oil; revises the applicability of the regulation; amends the requirements for completing SPCC Plans; and makes other modifications. The final rule also contains a number of provisions designed to decrease regulatory burden on facility owners or operators subject to the rule, while preserving environmental protection. We expect that today's rule will reduce the paperwork burden associated with SPCC requirements by approximately 40%. We have also made the regulation easier to understand and use.

DATES: This rule is effective August 16, 2002.

ADDRESSES: The official record for this rulemaking is located in the Superfund Docket at 1235 Jefferson Davis Highway, Crystal Gateway 1, Arlington, Virginia 22202, Suite 105. The docket numbers for the final rule are SPCC–1P, SPCC–2P, and SPCC–7. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to review the docket by calling 703–603–9232. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you $0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, Oil Program Center, U.S. Environmental Protection Agency, at 703–603–8769 (*fleischman.hugo@epa.gov*); or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810)(*epahotline@bah.com*). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323). You may wish to visit the Oil Program's Internet site at *www.epa.gov/oilspill.*

SUPPLEMENTARY INFORMATION: The contents of this preamble are as follows:

I. Entities Affected by This Rule

Entities Potentially Regulated by this Rule Include:

CATEGORY	NAICS Codes
Crop and Animal Production	111–112.
Crude Petroleum and Natural Gas Extraction	211111.
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116.
Electric Power Generation, Transmission, and Distribution	2211.
Heavy Construction	234.
Petroleum and Coal Products Manufacturing	324.
Other Manufacturing	31–33.
Petroleum Bulk Stations and Terminals	42271.
Gasoline Stations/Automotive Rental and Leasing	4471/5321.
Heating Oil Dealers	454311.
Transportation (including Pipelines), Warehousing, and Marinas	482–486/488112–48819/4883/48849/492–493/71393.
Elementary and Secondary Schools, Colleges	6111–6113.
Hospitals/Nursing and Residential Care Facilities	622–623.

''NAICS'' refers to the North American Industry Classification System, a method of classifying various facilities. The NAICS was adopted by the United States, Canada, and Mexico on January 1, 1997 to replace the Standard Industrial Classification (SIC) code. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. It lists the types of entities of which we are now aware that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility could be regulated by this action, you should carefully examine the criteria in §§ 112.1 and 112.20 of title 40 of the Code of Federal Regulations and of today's rule, which explain the applicability of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

A. Statutory Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or Act), 33 U.S.C. 1251, requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President has delegated the authority to regulate non-transportation-related onshore facilities under section 311(j)(1)(C) of the Act to the U.S. Environmental Protection Agency. Executive Order 12777, section 2(b)(1), (56 FR 54757, October 22, 1991), superseding Executive Order 11735, 38 FR 21243. By this same Executive Order, the President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT), and authority over other offshore facilities, including associated pipelines, to the U.S. Department of the Interior (DOI). A Memorandum of Understanding (MOU) among EPA, DOI, and DOT effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA. *See* Executive Order 12777, section 2(i) regarding authority to redelegate. The MOU is included as Appendix B to 40 CFR part 112. An MOU between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080), established the definitions of non-transportation-related and transportation-related facilities. The definitions from the 1971 MOU are included as Appendix A to 40 CFR part 112.

B. Background of This Rulemaking

Part 112 of 40 CFR outlines the requirements for both the prevention of and the response to oil spills. The prevention aspect of the rule requires preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. This rulemaking affects SPCC and FRP requirements. The SPCC requirements were originally promulgated on December 11, 1973 (38 FR 34164), under the authority of section 311(j)(1)(C) of the Act. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related onshore and offshore facilities with aboveground storage capacity greater than 1,320 gallons (or greater than 660 gallons in a single container), or completely buried oil storage capacity greater than 42,000 gallons. Regulated facilities were also limited to those that, because of their location could reasonably be expected to discharge oil in harmful quantities into the navigable waters of the United States or adjoining shorelines.

We have amended the SPCC requirements a number of times, and those amendments are described in an October 22, 1991 **Federal Register** proposed rule. 56 FR 54612. In the October 1991 document, in addition to the description of past amendments, EPA proposed new revisions that involved changes in the applicability of the regulation and the required procedures for the completion of SPCC Plans, as well as the addition of a facility notification provision. The proposed rule also reflected changes in the jurisdiction of section 311 of the Act made by amendments to the Act in 1977 and 1978. We have finalized some of those proposed revisions, with modifications, in this rule.

On February 17, 1993, we again proposed clarifications of and technical changes to the SPCC rule. We also proposed facility response planning requirements to implement the Oil Pollution Act of 1990 (OPA). 58 FR 8824. The proposed changes to the SPCC rule included clarifications of certain requirements, response plans for facilities without secondary containment, prevention training, and methods of determining whether a tank would be subject to brittle fracture. We promulgated the facility response planning requirements of the 1993 proposal on July 1, 1994, (59 FR 34070), and they are codified at 40 CFR 112.20–112.21. We have finalized the proposed 1993 prevention requirements, with modifications, in this rule.

In 1996, EPA completed a survey and analysis of SPCC facilities. The survey was designed to ensure that data on the sampled facilities could be statistically extrapolated to the nation as a whole for all facilities regulated by EPA's SPCC regulation. We used the results of that survey and analysis to develop a proposed rule affecting SPCC facilities on December 2, 1997. 62 FR 63812. The survey and analytical results are part of the administrative record for this rulemaking.

The purpose of the 1997 proposal was to reduce the information collection burden imposed by the prevention requirements in the SPCC rule and the FRP rule without creating an adverse impact on public health or the environment. We also proposed changes in information collection requirements for facility response plans, but have withdrawn them in this rulemaking. Those changes would have affected the calculation of storage capacity at certain facilities for response plan purposes. 62 FR 63816. However, see new § 112.1(d)(6). The 1997 SPCC proposals, as modified, are finalized in this rule.

On April 8, 1999, we proposed revision to facility response plan requirements. 64 FR 17227. The main purpose of the proposal was to provide a more specific methodology for planning response resources that can be used by an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. We finalized that proposal on June 30, 2000. 65 FR 40776. The final rule included four new definitions that are applicable to all of part 112.

III. Summary of Major Rule Provisions

For your convenience, we have developed a table showing a summary of the major revisions in this rule. The table does not always use exact rule text, but summarizes rule provisions. For exact rule text, see 40 CFR part 112 (2000) for text of the current rule; for exact text of the revised rule, see the rule text following this preamble.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES

Current SPCC rule	Revised SPCC rule	Comment
Section 112.1: General Applicability		

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.1(b): Explains that the SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, or consume oil and oil products, and might reasonably be expected to discharge oil in harmful quantities into or upon navigable waters of the United States or adjoining shorelines.	§ 112.1(b): Explains that the SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, use, or consume oil and oil products, and might reasonably be expected to discharge oil in quantities that may be harmful into or upon navigable waters of the United States or adjoining shorelines, or waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or Deepwater Port Act, or affecting certain natural resources.	§ 112.1(b): The revised rule clarifies that users of oil are also subject to the rule. It also expands the scope of the rule to conform with the expanded jurisdiction in the amended Clean Water Act.
§ 112.1(d)(2)(i): Section 112.1(d)(2) exempts from the rule a facility which meets both criteria specified in § 112.1(d)(2)(i) and (ii). The first criterion, found in § 112.1(d)(2)(i) is: the completely buried storage capacity of the facility is 42,000 gallons or less of oil. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity contained in tanks.	§ 112.1(d)(2)(i): Section 112.1(d)(2) exempts from the rule a facility which meets both criteria specified in § 112.1(d)(2)(i) and (ii). The first criterion, § 112.1(d)(2)(i) is: 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 does not include the capacity of completely buried tanks, as defined in § 112.2, that are currently subject to all of the technical requirements of 40 CFR part 280 or all of the technical requirements of a State program approved under 40 CFR part 281. Also, the completely buried storage capacity of a facility does not include the capacity of completely buried tanks that are ''permanently closed,'' as defined in § 112.2. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity contained in tanks.	§ 112.1(d)(2)(i): The revised rule provides that completely buried tanks subject to all of the technical requirements of parts 280 or 281 do not count in the calculation of the 42,000 gallon threshold. It also clarifies that permanently closed tanks do not count in the calculation of that threshold. The threshold continues to apply to storage capacity contained in operating equipment as well as to storage capacity contained in tanks.
§ 112.1(d)(2)(ii): The second criterion, found in § 112.1(d)(2)(ii) is: the storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided that no single container has a storage capacity of greater than 660 gallons. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity in containers.	§ 112.1(d)(2)(ii): The second criterion found in § 112.1(d)(2)(ii) is: the aboveground storage capacity of the facility is 1,320 gallons or less of oil. For purposes of this exemption, only containers of oil with a capacity of 55 gallons or greater are counted. The aboveground storage capacity of a facility does not include the capacity of containers that are ''permanently closed,'' as defined in 112.2. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity in containers.	§ 112.1(d)(2)(ii): The revised rule raises the threshold for aboveground storage capacity by eliminating the provision that triggers the requirement to prepare and implement an SPCC Plan if any single container has a capacity greater than 660 gallons. It maintains the greater than 1,320 gallon threshold. The revised rule also establishes a de minimis container capacity size to calculate aboveground storage capacity. Only containers with a capacity of 55 gallons or greater are counted in the calculation of aboveground storage capacity. The revised rule clarifies that permanently closed containers do not count in the calculation of aboveground storage capacity. The threshold continues to apply to storage capacity contained in operating equipment as well as to storage capacity in containers.
§ 112.1(d)(4): No counterpart in current rule	§ 112.1(d)(4): Exempts from the SPCC requirements completely buried storage tanks, as defined in § 112.2, as well as connected underground piping, underground ancillary equipment, and containment systems, when such tanks are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281, except that such tanks must be marked on the facility diagram as required by § 112.7(a)(3), if the facility is otherwise subject to this part.	§ 112.1(d)(4): Completely buried storage tanks subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281 are no longer required to comply with SPCC provisions, except for the facility diagram. EPA estimates that under this new rule, most gasoline service stations will drop out of the SPCC program.
§ 112.1(d)(5): No counterpart in current rule	§ 112.1(d)(5): The revised rule exempts containers with a storage capacity of less than 55 gallons of oil from all SPCC requirements.	§ 112.1(d)(5): In response to comments, EPA has established a minimum size container for purposes of the regulatory threshold. Containers with a storage capacity of less than 55 gallons of oil are exempt from all SPCC requirements.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.1(d)(6): No counterpart in current rule	§ 112.1(d)(6): Exempts any facility or part thereof from the rule, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph.	§ 112.1(d)(6): A facility or part thereof used exclusively for wastewater treatment will no longer be subject to prevention planning unless it is used to meet part 112 requirements.
§ 112.1(f): No counterpart in current rule	§ 112.1(f): Notwithstanding any regulatory exemptions, the Regional Administrator may require that the owner or operator of any facility subject to EPA jurisdiction under section 311(j) of the Clean Water Act (CWA), prepare and implement an SPCC Plan, or any applicable part, to carry out the purposes of the CWA. The rule includes notice and appeal provisions.	§ 112.1(f): This amendment gives the Regional Administrator authority to require preparation of an entire SPCC plan, or applicable part, by an owner or operator of a facility exempted from SPCC requirements when it becomes necessary to achieve the purposes of the CWA. This authority will be exercised on a case-by-case basis. The decision to require a Plan could be based on the presence of environmental concerns not adequately addressed under other regulations, or other relevant environmental factors, for example, discharge history.
Section 112.2—Definitions		
§ 112.2—definition of *facility:* No counterpart in current rule.	§ 112.2—definition of *facility:* ''Facility'' is defined as any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil transfer, oil distribution, and waste treatment, or in which oil is used. . . .''	§ 112.2—definition of *facility:* The revised rule clarifies that a facility may be as small as a piece of equipment, for example, a tank, or as large as a military base.
Section 112.3: Requirement to prepare and implement Spill Prevention, Control, and Countermeasure Plan		
§ 112.3(a): An owner or operator of an onshore or offshore facility in operation on or before January 10, 1974, that has had a discharge to navigable waters or adjoining shorelines, or, due to its location, could reasonably be expected to have a discharge to navigable waters or adjoining shorelines, must prepare and fully implement an SPCC Plan, in writing and in accordance with § 112.7. The owner or operator must prepare the Plan within 6 months, and fully implement it as soon as possible, but not later than within 1 year.	§ 112.3(a): An owner or operator (O/O) of an onshore or offshore facility in operation on or before August 16, 2002, that has had a discharge as described in § 112.1(b), or, due to its location, could reasonably be expected to have a discharge as described in § 112.1(b), must prepare a written Plan in accordance with § 112.7 and any other applicable section within 6 months of the effective date of the rule, and implement it as soon as possible, but not later than within 1 year of the effective date of the rule. The O/O of facility that becomes operational after August 16, 2002 through August 18, 2003 must prepare and implement a Plan not later than August 18, 2003.	§ 112.3(a): For those facilities already in operation on the effective date of the rule, an owner or operator of a facility subject to the rule must prepare an SPCC Plan within the current time frame of six months. He may take up to an additional six months to implement the Plan. The revised rule extends this same time frame to amendments necessary to bring the Plan into compliance with rule revisions. An owner or operator of a facility becoming operational after August 16, 2002 through August 18, 2003 must prepare and implement a Plan not later than August 18, 2003.
§ 112.3(b): The owner or operator of an onshore and offshore facility that becomes operational after January 10, 1974, and that has had a discharge to navigable waters or adjoining shorelines, or could reasonably be expected to have a discharge to navigable waters or adjoining shorelines, must prepare an SPCC Plan. Unless the owner or operator is granted an extension of time to prepare and implement the Plan by the Regional Administrator, he must prepare the Plan within 6 months and fully implement it as son as possible, but not later than within 1 year.	§ 112.3(b): The owner or operator of an onshore or offshore facility that becomes operational after August 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), from that facility, must prepare and implement an SPCC Plan before beginning operations.	§ 112.3(b): The owner or operator of a facility that becomes operational after August 18, 2003 must now prepare and implement an SPCC Plan before beginning operations. The time frame in the current rule is up to 6 months for Plan preparation and up to 6 months more for Plan implementation.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.3(d): No SPCC Plan is effective to satisfy the requirements of the SPCC rule unless it has been reviewed and certified by a Registered Professional Engineer (PE). By means of this certification the PE, having examined the facility and being familiar with the provisions of the SPCC rule, attests that the SPCC Plan has been prepared in accordance with good engineering practices. The PE's certification does not relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement the Plan in accordance with all applicable requirements.	§ 112.3(d): No SPCC Plan is effective to satisfy the requirements of the SPCC rule unless it has been reviewed and certified by a PE. By means of this certification the PE attests that: (i) he is familiar with the requirements of the SPCC rule; (ii) he or his agent has visited and examined the facility; (iii) the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of the SPCC rule; (iv) procedures for required inspections and testing have been established; and, (v) the Plan is adequate for the facility. The PE's certification does not relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement the Plan in accordance with all applicable requirements.	§ 112.3(d): The revised rule adds specificity to the PE's attestation. The specificity includes a requirement that the PE consider applicable industry standards and certify that the Plan is prepared in accordance with part 112 requirements. Presently, the PE must attest only that the Plan has been prepared in accordance with good engineering practice. The revised rule allows an agent of the PE to visit and examine the facility in place of the PE, but the PE must review the agent's work, and certify the Plan.
§ 112.3(e): An owner or operator of a facility for which an SPCC Plan is required must maintain a complete copy of the Plan at the facility if the facility is attended as least 8 hours per day, or at the nearest field office if the facility is not so attended, and must make the Plan available to the Regional Administrator for on-site review during normal working hours.	§ 112.3(e): An owner or operator of a facility for which an SPCC Plan is required must maintain a complete copy of the Plan at the facility if the facility is attended at least 4 hours per day, or at the nearest field office if the facility is not so attended, and must make the Plan available to the Regional Administrator for on-site review during normal working hours.	§ 112.3(e): The revised rule requires the facility owner or operator to maintain a copy of the Plan at the facility if it is attended at least 4 hours a day, in contrast to the current requirement to maintain it at the facility if it is attended at least 8 hours a day.
§ 112.3(f): The Regional Administrator may authorize an extension of time for the preparation and implementation of an SPCC Plan, when he finds that the owner or operator cannot comply with all SPCC requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond his control and without his fault, or the fault of his agents or employees. The rule also specifies what the letter requesting an extension must contain.	§ 112.3(f): The Regional Administrator may authorize an extension of time for the preparation and implementation of an SPCC Plan, or any amendment thereto, when he finds that the owner or operator cannot comply with all SPCC requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond his control and without his fault, or the fault of his agents or employees. The rule also specifies what the letter requesting an extension must contain.	§ 112.3(f): The revised rule provides for extension for amendments of the Plan, as well as the entire Plan.
Section 112.4: Amendment of Spill Prevention, Control, and Countermeasures Plan by Regional Administrator		
§ 112.4(a): Whenever an SPCC facility has: (1) discharged more than 1,000 U.S. gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single discharge to navigable waters or adjoining shorelines, or (2) discharged oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines in each of 2 discharges to navigable waters or adjoining shorelines, reportable under section 311(b)(5) of the Clean Water Act, within any 12-month period, the owner or operator of the facility must submit to the Regional Administrator (RA), within 60 days from the time the facility becomes subject to this section, 10 different items of information, plus additional information pertinent to the Plan if the RA requests it.	§ 112.4(a): Whenever an SPCC facility has: (1) discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or (2) discharged more than 42 U.S. gallons of oil, as described in § 112.1(b), in each of 2 discharge, within any 12-month period, the owner or operator of the facility must submit to the RA, within 60 days from the time the facility becomes subject to this section, 8 different items of information, plus additional information pertinent to the Plan if the RA requests it.	§ 112.4(a): We have revised the geographic scope of the rule in accordance with the CWA amendments, by using the phase ''discharge as described in § 112.1(b).'' We also raised the threshold for reporting two discharges as described in § 112.1(b), from a ''reportable'' quantity under the Clean Water Act, to a threshold of more than 42 U.S. gallons, or 1 barrel, in each of those discharges. The 1,000 gallon threshold for a single discharge as described in § 112.1(b) remains unchanged. We also reduced the amount of information that must minimally be submitted to the RA.
§ 112.4(b): Section 112.4 does not apply until the expiration of the time permitted for the preparation and implementation of the Plan under § 112.3.	§ 112.4(b): Section 112.4 does not apply until the expiration of the time permitted for the preparation and implementation of the Plan under § 112.3.	§ 112.4(b): Section 112.3 in the revised rule allows more time for some facilities for preparation and implementation of a Plan, or any amendments thereto, than in the 1991 proposed rule. Therefore, the implementation of the requirements of § 112.4 is postponed until the new time frames in § 112.3 have passed.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.4(c): The owner or operator is required to provide the same information he provided to EPA, under § 112.4(a), to the State agency in charge of water pollution control activities in and for the State in which the facility is located at the same time he provides it to EPA. After receiving that information, the State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from the facility.	§ 112.4(c): The owner or operator is required to provide the same information he provided to EPA, under § 112.4(a), to the State agency in charge of oil pollution control activities in the State in which the facility is located at the same time he provides it to EPA. After receiving that information, the State agency or agencies may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from the facility.	§ 112.4(c): The revised rule changes the requirement from notification to the State agency in charge of water pollution control activities to notification to the State agency in charge of oil pollution control activities. There may be more than one such agency in some States.
§ 112.4(d): This section allows the Regional Administrator to require a facility owner or operator to amend his Plan after review of materials the owner or operator submits under § 112.4 (a) and (c).	§ 112.4(d): This section allows the Regional Administrator to require a facility owner or operator to amend his Plan after review of materials the owner or operator submits under § 112.4 (a) and (c), or after on-site review of the Plan.	§ 112.4(d): The revised rule provides that the Regional Administrator may require Plan amendment after on-site review of the Plan.
Section 112.5: Amendment of Spill Prevention, Control, and Countermeasures Plan by owners or operators		
§ 112.5(b): This section requires an owner or operator to review his Plan at least every 3 years from the date a facility becomes subject to the SPCC rule. As a result of this review and evaluation, the owner or operator must amend the SPCC Plan within 6 months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a discharge to navigable waters or adjoining shorelines from the facility; and (2) if such technology has been field-proven at the time of the review.	≤§ 112.5(b): This section requires an owner or operator to review his Plan at least every 5 years from the date a facility becomes subject to the SPCC rule; or for an existing facility, 5 years from the date the last review was required under this part. The owner or operator must amend the SPCC Plan within 6 months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a discharge as described in § 112.1(b) from the facility; and (2) if such technology has been field-proven at the time of the review. Implementation of amendments is required within 6 months following amendment. The owner or operator must document completion of the review and evaluation, and must sign a statement as to whether he will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following will suffice, ''I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result.''	§ 112.5(b): The revised rule changes the period of review for SPCC Plans from 3 to 5 years. It also requires documentation of completion of the review and evaluation.
§ 112.5(c): This section requires that a Professional Engineer certify any amendments to an SPCC Plan.	§ 112.5(c): This section requires that a Professional Engineer certify any technical amendments to an SPCC Plan.	§ 112.5(c): The revised rule clarifies that a Professional Engineer must certify only technical amendments. PE certification is not required for non-technical amendments, like changes to phone numbers, names, etc.
Section 112.7: Spill Prevention, Control, and Countermeasure Plan general requirements. We have reorganized § 112.7 of the current regulation into §§ 112.7, 112.8, 112.9, 112.10, 112.11, 112.12, 112.13, 112.14, and 112.15 of the final rule based on facility type and type of oil.		

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.7: This section specifies that a Plan must be prepared in accordance with good engineering practices, and have the full approval of management at a level with authority to commit the necessary resources. The SPCC Plan must follow the sequence specified in the rule, and include a discussion of the facility's conformance with the requirements of the rule.	§ 112.7: This section specifies that a Plan must be prepared in accordance with good engineering practices, and have the full approval of management at a level with authority to commit the necessary resources. The SPCC Plan must follow the sequence specified in the rule, and include a discussion of the facility's conformance with the requirements of the rule. If you do not follow the sequence specified in the rule, you must prepare an equivalent prevention Plan acceptable to the Regional Administrator that meets all applicable requirements, and you must supplement it with section cross-referencing the location of requirements listed in the SPCC rule to the equivalent requirements in the other prevention plan.	§ 112.7: The revised rule allows differing formats for the Plan, other than the one format now specified. While you may use the format specified in the rule, you may also use other formats, such as State plans, Integrated Contingency Plans, and any other formats acceptable to the Regional Administrator. If you use another format, you must cross-reference its provisions to the requirement listed in the SPCC rule. Also, if you use another format, you must ensure that the format includes all applicable SPCC requirements, or you must supplement that format to include all applicable SPCC requirements.
§ 112.7(a)(2): No counterpart in current rule	§ 112.7(a)(2): This provision explicitly allows deviations from most of the rule's substantive requirements (except for secondary containment requirements), provided that you explain your reasons for nonconformance with the requirement, and provide equivalent environmental protection with an alternate measure. If the Regional Administrator determines that the alternate measure described in your Plan does not provide equivalent protection, he may require that you amend the Plan.	§ 112.7(a)(2): The revised rule explicitly allows deviations from most of the rule's substantive requirements (except for secondary containment requirements), provided that you explain your reasons for nonconformance with the requirement, and provide equivalent environmental protection with an alternate measure. If the Regional Administrator determines that the alternate measure described in your Plan does not provide equivalent protection, he may require that you amend your Plan.
§ 112.7(a)(3): No counterpart in current rule	§ 112.7(a)(3): This section requires a facility owner or operator to describe the physical layout of the facility and include a facility diagram in the Plan.	§ 112.7(a)(3): The facility diagram must include completely buried tanks exempted from other SPCC requirements.
§ 112.7(c): This section is the general provision requiring secondary containment.	§ 112.7(c): This section is the general provision requiring secondary containment.	§ 112.7(c): The revised rule maintains the current standard that dikes, berms, or retaining walls must be ''sufficiently impervious'' to contain oil. We withdrew the proposed standard that such secondary containment must be impermeable for 72 hours.
§ 112.7(d): When it is not practicable to install secondary containment at your facility, this section requires that you explain why and provide a strong oil spill contingency plan in your SPCC Plan. The contingency plan must follow the provisions of 40 CFR part 109. You must also provide in your SPCC Plan a written commitment to manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged.	§ 112.7(d): When it is not practicable to install secondary containment at your facility, this section requires that you explain why and provide a strong oil spill contingency plan in your SPCC Plan. The contingency plan must follow the provisions of 40 CFR part 109. You must also provide in your SPCC Plan a written commitment to manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful; conduct periodic integrity testing of the containers; and, conduct periodic integrity and leak testing of the valves and piping.	§ 112.7(d): The revised rule adds new requirements for periodic integrity testing of containers, and periodic integrity and leak testing of valves and piping. We clarify that if you have submitted a facility response plan under § 112.20 for a facility, you need not provide for that facility either a contingency plan following the provisions of part 109, nor a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.
§ 112.7(e)(8): This section requires that the owner or operator conduct required inspections in accordance with written procedures developed for the facility. The owner or operator must maintain these written procedures and a record of inspections, signed by the appropriate supervisor or inspector, as part of the SPCC Plan, and maintain them for a period of 3 years.	§ 112.7(e): This section requires that the owner or operator conduct required inspections and tests in accordance with written procedures developed by him or by the certifying engineer for the facility. The owner or operator must maintain these written procedures and a record of inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan, and maintain them for a period of 3 years. Records of inspections and tests kept pursuant to usual and customary business practices are sufficient for purposes of the rule.	§ 112.7(e): The revised rule allows use of usual and customary business records to serve as a record of tests or inspections, instead of keeping duplicate records. It also allows the owner or operator to keep those records as an appendix to the Plan, or in a separate log, etc., with the Plan, rather than requiring that those records be a part of the Plan. The rule also acknowledges that the certifying engineer, as well as the owner or operator, has a role in the development of inspection procedures.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.7(e)(10): The owner or operator of a facility is responsible for properly instructing personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules, and regulations. An owner or operator must designate a person at each facility who is accountable for oil discharge prevention and who reports to facility management. An owner or operator must schedule and conduct discharge prevention briefings for operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges to navigable waters or adjoining shorelines, or failures, malfunctioning components, and recently developed precautionary measures.	§ 112.7(f): The owner or operator of a facility, at a minimum, must train oil-handling personnel in the operation and maintenance of equipment to prevent the discharge of oil; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility Plan. An owner or operator must designate a person at each facility who is accountable for oil discharge prevention and who reports to facility management. An owner or operator must schedule and conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in § 112.1(b), or failures, malfunctioning components, and recently developed precautionary measures.	§ 112.7(f): The revised rule mandates training only for oil-handling employees, instead of all employees. It specifies additional topics for the training of these employees. It also specifies that discharge prevention briefings must be conducted at least once a year, instead of at ''intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility.''
§ 112.7(i): No counterpart in current rule	§ 112.7(i): This section requires evaluation for field-constructed aboveground containers undergoing repair, alteration, reconstruction, or change in service that might affect the risk of a discharge or failure due to fracture or other catastrophe. It also requires such evaluation when there has actually been a discharge or failure due to brittle fracture or other catastrophe.	§ 112.7(i): The brittle fracture requirement was triggered by the Ashland Oil tank collapse in 1988 due to brittle fracture.
Section 112.8: Requirements for onshore facilities (excluding production facilities).		
§ 112.7(e)(2)(iii): This section establishes substantive requirements for stormwater drainage from diked areas, and recordkeeping requirements for stormwater bypass events.	§ 112.8(c)(3): This section establishes substantive requirements for stormwater drainage from diked areas, and recordkeeping requirements for stormwater bypass events. The revised rule provides that records required under permits issued in accordance with the National Pollutant Discharge Elimination Systems (NPDES) rules are sufficient for recording stormwater bypass events.	§ 112.8(c)(3): The revised rule allows records required by NPDES permit regulations to record stormwater bypass events to be used for SPCC purposes in lieu of events records specifically prepared for purpose.
§ 112.7(e)(2)(vi): This provision requires that aboveground containers be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection, or a system of non-destructive shell thickness testing. The owner or operator must keep comparison records where appropriate, and must include tank supports and foundations in these inspections. In addition, operating personnel must frequently inspect the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas.	§ 112.8(c)(6): The revised rule requires that aboveground containers be tested for integrity on a regular schedule, and when material repairs are done. The frequently and type of testing must take into account container size and design (floating roof, skid-mounted, elevated, partially buried, for example). The owner or operator must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other system of non-destructive shell testing. The owner or operator must keep comparison records and must include tank supports and foundations in these inspections. In addition, operating personnel must frequently inspect the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas. Records of inspections and tests kept pursuant to usual and customary business practices are sufficient for purposes of the rule.	§ 112.8(c)(6): The revised rule requires that an owner or operator test aboveground containers for integrity on a regular schedule, and when material repairs are done. The rationale for adding a testing requirement when material repairs are done is that material repairs might increase the potential for oil discharges. Usual and customary business records may be used for the purpose of integrity testing, instead of records specifically created for this purpose.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.7(e)(3)(i): This section requires that buried piping installations have protective wrapping and coating and cathodic protection, if soil conditions warrant.	§ 112.8(d)(1): This section requires that buried piping that is installed or replaced on or after August 16, 2002 must have protective wrapping and coating and cathodic protection, or otherwise satisfy the corrosion protection provisions for piping in 40 CFR part 280 or a State program approved under 40 CFR part 281.	§ 112.8(d)(1): The revised rule requires that all buried piping that is installed or replaced on or after August 16, 2002 must have protective wrapping and coating and cathodic protection, or otherwise satisfy the corrosion protection provisions for piping in 40 CFR part 280 or a State program approved under 40 CFR part 281, for all soil conditions.
Section 112.9: Requirements for onshore oil production facilities.		
§ 112.7(e)(5)(ii): This section provides requirements for stormwater drainage events.	§ 112.9(b)(1): This section provides requirements for stormwater drainage events.	§ 112.9(b)(1): The revised rule provides that records required by NPDES permit regulations are allowable to record stormwater bypass events for SPCC purposes in lieu of records specifically generated for that purpose.
§ 112.7(e)(5)(iii)(B): This section requires secondary containment for onshore production facilities.	§ 112.9(c)(2): This section requires secondary containment for onshore production facilities.	§ 112.9(c)(2): The revised rule clarifies that the secondary containment must include sufficient freeboard to contain precipitation.

IV. Discussion of Issues

Below is a discussion of the major issues for which we solicited comments in the 1991, 1993, and 1997 proposals. We also discuss the use of industry standards to comply with the rule. Following these issues, we discuss the revisions to each section and the major comments received, as well as responses to those comments. A detailed Response to Comments document addressing all comments is also part of this rulemaking and may be found in the administrative record for this rule.

A. Reorganization of the Rule

Background

In 1991, EPA proposed to reorganize the SPCC rule based on facility type. The purpose of that proposed reorganization was to clarify SPCC Plan requirements for different types of facilities. In this rulemaking, we are dividing the rule into subparts. Subpart A consists of an applicability section, definitions, and general requirements for all facilities. Subparts B and C outline the requirements for different types of facilities storing and using different types of oils. Subpart B is for facilities storing or using petroleum oils or other non-petroleum oils, except those oils covered by subpart C. Subpart C is for facilities storing or using animal fats and oils and greases, or fish and marine mammal oils; and, oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response requirements.

If you have already prepared an SPCC Plan, you were required to follow the sequence of § 112.7 of the current rule, prior to today's revisions. Today, we are reorganizing that portion of the rule into §§ 112.7 through 112.15, based on facility type and type of oil. Under the introduction to § 112.7 of today's rule, if your Plan does not follow the revised sequence, you must supplement it with a section cross-referencing the location of requirements listed in the revised rule and the equivalent requirements in your Plan. To assist you in preparing this cross-reference, the following table lists each requirement in the revised rule, provides the corresponding paragraph of the current rule, and leaves a space where you can show the location of the provision in your Plan. We have put this rule, including the table below, on our website for your convenience. You may download it for your use. *See* our Web site at *www.epa.gov/oilspill.*

Under the revised rule, § 112.7 sets out the general requirements for SPCC Plans for all facilities and all types of oil. Sections 112.8 to 112.11 set out the SPCC Plan requirements for petroleum oil and for non-petroleum oils other than animal fats and vegetable oils. Sections 112.12 to 112.15 set out the SPCC Plan requirements for animal fats and oils and greases, and fish and marine mammal oils; and for oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels.

Revised rule	Current rule	Description of rule	Page
§ 112.7	§ 112.7	General requirements for SPCC Plans for all facilities and all oil types.	
§ 112.7(a)	§ 112.7	General requirements; discussion of facility's conformance with rule requirements; deviations from Plan requirements; facility characteristics that must be described in the Plan; spill reporting information in the Plan; emergency procedures.	
§ 112.7(b)	§ 112.7(b)	Fault analysis	
§ 112.7(c)	§ 112.7(c)	Secondary containment	
§ 112.7(d)	§ 112.7(d)	Contingency planning	
§ 112.7(e)	§ 112.7(e)(8)	Inspections, tests, and records	
§ 112.7(f)	§ 112.7(e)(10)	Employee training and discharge prevention procedures	
§ 112.7(g)	§ 112.7(e)(9)	Security (excluding oil production facilities)	
§ 112.7(h)	§ 112.7(e)(4)	Loading/unloading (excluding offshore facilities)	
§ 112.7(i)	n/a	Brittle fracture evaluation requirements	
§ 112.7(j)	§ 112.7(e)	Conformance with State requirements	

Revised rule	Current rule	Description of rule	Page
§ 112.8 § 112.12	§ 112.7(e)(1)	Requirements for onshore facilities (excluding production facilities).	
§ 112.8(a), § 112.12(a)	n/a	General and specific requirements	
§ 112.8(b), § 112.12(b)	§ 112.7(e)(1)	Facility drainage	
§ 112.8(c), § 112.12(c)	§ 112.7(e)(2)	Bulk storage containers	
§ 112.8(d), § 112.12(d)	§ 112.7(e)(3)	Facility transfer operations, pumping, and facility process	
§ 112.9, § 112.13	§ 112.7(e)(5)	Requirements for onshore production facilities	
§ 112.9(a), § 112.13(a)	n/a	General and specific requirements	
§ 112.9(b), § 112.13(b)	§ 112.7(e)(5)(ii)	Oil production facility drainage	
§ 112.9(c), § 112.13(c)	§ 112.7(e)(5)(iii)	Oil production facility bulk storage containers	
§ 112.9(d), § 112.13(d)	§ 112.7(e)(5)(iv)	Facility transfer operations, oil production facility	
§ 112.10, § 112.14	§ 112.7(e)(6)	Requirements for onshore oil drilling and workover facilities	
§ 112.10(a), § 112.14(a)	n/a	General and specific requirements	
§ 112.10(b), § 112.14(b)	§ 112.7(e)(6)(i)	Mobile facilities	
§ 112.10(c), § 112.14(c)	§ 112.7(e)(6)(ii)	Secondary containment—catchment basins or diversion structures.	
§ 112.10(d), § 112.14(d)	§ 112.7(e)(6)(iii)	Blowout prevention (BOP).	
§ 112.11, § 112.15	§ 112.7(e)(7)	Requirements for offshore oil drilling, production, or workover facilities.	
§ 112.11(a), § 112.15(a)	n/a	General and specific requirements	
§ 112.11(b), § 112.15(b)	§ 112.7(e)(7)(ii)	Facility drainage	
§ 112.11(c), § 112.15(c)	§ 112.7(e)(7)(iii)	Sump systems	
§ 112.11(d), § 112.15(d)	§ 112.7(e)(7)(iv)	Discharge prevention systems for separators and treaters	
§ 112.11(e), § 112.15(e)	§ 112.7(e)(7)(v)	Atmospheric storage or surge containers; alarms	
§ 112.11(f), § 112.15(f)	§ 112.7(e)(7)(vi)	Pressure containers; alarm systems	
§ 112.11(g), § 112.15(g)	§ 112.7(e)(7)(vii)	Corrosion protection	
§ 112.11(h), § 112.15(h)	§ 112.7(e)(7)(viii)	Pollution prevention system procedures	
§ 112.11(i), § 112.15(i)	§ 112.7(e)(7)(ix)	Pollution prevention systems; testing and inspection	
§ 112.11(j), § 112.15(j)	§ 112.7(e)(7)(x)	Surface and subsurface well shut-in valves and devices	
§ 112.11(k), § 112.15(k)	§ 112.7(e)(7)(xi)	Blowout prevention	
§ 112.11(l), § 112.15(l)	§ 112.7(e)(7)(xiv)	Manifolds	
§ 112.11(m), § 112.15(m)	§ 112.7(e)(7)(xv)	Flowlines, pressure sensing devices	
§ 112.11(n), § 112.15(n)	§ 112.7(e)(7)(xvi)	Piping; corrosion protection	
§ 112.11(o), § 112.15(o)	§ 112.7(e)(7)(xvii)	Sub-marine piping; environmental stresses	
§ 112.11(p), § 112.15(p)	§ 112.7(e)(7)(xviii)	Inspections of sub-marine piping	

In 1995, Congress enacted the Edible Oil Regulatory Reform Act (EORRA), 33 U.S.C. 2720. That statute mandates that most Federal agencies differentiate between and establish separate classes for various types of oils, specifically: animal fats and oils and greases, and fish and marine mammal oils; oils of vegetable origin; petroleum oils, and other non-petroleum oils and greases. In differentiating between these classes of oils, Federal agencies are directed to consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes. In response to EORRA, as noted above, we have divided the requirements of the rule by subparts for facilities storing or using the various classes of oils listed in that act.

Because at the present time EPA has not proposed differentiated SPCC requirements for public notice and comment, the requirements for facilities storing or using all classes of oil will remain the same. However, we have published an advance notice of proposed rulemaking seeking comments on how we might differentiate among the requirements for the facilities storing or using various classes of oil. 64 FR 17227, April 8, 1999. If after considering these comments, there is adequate justification for differentiation among the requirements for those facilities, we will propose rule changes.

B. Plain Language Format

We have rewritten the SPCC rule in a plain language format to make it clearer and easier to use. A plain language format includes maximum use of the active voice; short, clear sentences; and, in this rule, a summary table of the major regulatory changes. This format is part of the Agency's ongoing efforts in regulatory reinvention. While we have made substantive changes in some provisions, the plain language changes are only editorial. The plain language format used in today's rule may appear different from other rules, but it establishes binding, enforceable legal requirements.

In this preamble, as in the rule text, we often use the pronoun ''he'' as a generic term. ''He'' does not necessarily mean a man; it may be a woman, or in some cases, a business organization when referring to an owner or operator.

C. ''Should to Shall to Must'' Clarification

Background

EPA has always considered that § 112.3 of the SPCC rule requires that SPCC Plans be prepared in accordance with § 112.7, which in turn requires that Plans be prepared in accordance with good engineering practice. However, clarification of the current rule is necessary because of confusion on the part of some facility owners or operators who have interpreted the current rule's use of the words ''should'' and ''guidelines'' in § 112.7 as an indication that compliance with the applicable provisions of the rule is optional. The rule used the words ''should'' and ''guidelines'' to provide flexibility for facilities with unique circumstances. Those circumstances might be such that mandated regulatory provisions would not be in accord with good engineering practice. Therefore, the rule gave facilities the opportunity to provide alternative methods that achieve equivalent environmental protection, or to show that the provisions were inapplicable based on specific circumstances.

In 1991, we proposed to clarify that misunderstanding by generally substituting ''shall'' in place of ''should'' throughout the reorganized rule. In today's final rule, we have editorially changed ''shall'' to ''must'' in furtherance of the Agency's ''plain language'' objectives. The ''shall'' to ''must'' is not a substantive change, but merely an editorial change. Nor will the change add to the information collection burden. We have always included requirements prefaced by ''should'' in the information collection burden for the rule. We will continue to provide flexibility for an owner or operator who can explain his reasons for nonconformance with rule requirements, and can provide alternate measures from those specified in the rule, which achieve equivalent environmental protection. Section 112.7(a)(2) will provide such flexibility. In the exercise of our authority to inspect facilities and SPCC Plans, we reserve the right to find that such alternate methods do not provide equivalent environmental protection. In such cases, we would require the owner or operator of the facility to amend the SPCC Plan to provide equivalent environmental protection.

Comments. Guidance. Several commenters supported the proposed change. One asked that discretionary provisions might be better placed in a separate guidance document. Several commenters were concerned that there are no guidance documents outlining equivalency as provided in proposed § 112.7(a)(2) and that it may be impossible to prove equivalency to EPA.

PE certification. Other commenters suggested that if the Professional Engineer (PE) certified the Plan as adequate for the facility, then the mandated requirements were unnecessary, as he would have determined that all appropriate equipment and planning is in place.

Substantive change. Some commenters argued that the proposal was a substantive change, contrary to legislative intent, and that we failed to give opportunity for proper notice and comment, as required by the Administrative Procedure Act.

Small production facilities. One commenter suggested that the clarification should not apply to small production facilities, defined as those with less than 3000 barrels of storage capacity, because those facilities would suffer severe hardship as a result.

Response to comments. Guidance. EPA agrees with the comment that recommendations have no place in this rule because we do not wish to confuse the regulated public as to what is mandatory and what is discretionary. Instead, some recommendations are discussed in the preamble to this document, while others can be found in separate guidance documents or policy statements. When the rule or preamble is silent, or no published guidance or policy documents exist, we will generally use industry standards as guidance for rule compliance.

PE certification. While we generally agree that certification by a PE should show that all necessary equipment and planning are in place, we reserve the right to make a determination that additional measures may be necessary to comply with the rule. EPA made it clear in proposed § 112.3(d), which is finalized today, that a PE certification does not relieve the owner or operator of the duty to prepare and fully implement an SPCC Plan in accordance with the rule's requirements.

Substantive change. We disagree that the change is either substantive or contrary to legislative intent. Section 311(j)(1)(C) of the Act authorizes the President and, through delegation, EPA, to establish ''procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.'' That authority is ample to provide the basis for a mandatory SPCC rule, that is, a rule that establishes ''requirements * * * to prevent discharges.''

We also disagree that the proposed rule failed to provide proper notice and comment. The preamble to the 1991 proposed rule fully explained the rationale for the proposed change (56 FR 54620, October 22, 1991), and numerous commenters responded. Furthermore, we have always interpreted and enforced our rules as mandatory requirements.

EPA recognizes, however, that this clarification may result in certain owners or operators of regulated facilities recognizing for the first time that they have been and are subject to various provisions of part 112. Such owners and operators should, of course, take all necessary steps to come into compliance with this part as soon as possible. In exercising its prosecutorial discretion, the Agency always takes into account the good faith and efforts to comply of an owner or operator who has been in noncompliance with applicable laws and regulations when deciding whether or not to take an enforcement action.

Small production facilities. We disagree that the ''should'' to ''must'' change will generally pose a severe hardship for small production facilities. As noted above, EPA has always interpreted the ''shoulds'' as ''musts.'' Further, when a particular requirement is not feasible for a particular facility, under § 112.7(a)(2) that facility may explain the reasons for nonconformance with the requirement, and provide alternate measures that achieve equivalent environmental protection.

D. Professional Engineers (PEs)

Background. In the preamble to the 1991 proposal (56 FR 54618), EPA posed several questions to commenters regarding how PEs could help to implement the SPCC Plan. An owner or operator of a facility is required to secure the certification of a PE on an SPCC Plan, and on technical amendments to the Plan. By means of this certification, the PE attests that the Plan or the amendment has been prepared in accordance with good engineering practice.

1. State Registration

Background. We solicited comments on the advantages and disadvantages associated with the PE being registered in the State in which the facility is located. EPA noted that ''a requirement that a PE be licensed in the State in which the facility is located would allow the State licensing board to more easily address the actions of the PE under its jurisdiction, and that the PE may have greater familiarity with the State and local requirements related to the facility under review.'' 56 FR 54619.

Comments. Favorable comments. Several commenters supported a requirement that the PE be registered in the State in which the facility is located. The rationales often expressed were that: (1) Letting any PE certify any SPCC Plan effectively removed the PE from the supervision of the State board; and, (2) familiarity with the State and local requirements related to the facility as well as the State itself are essential for viable SPCC Plans. One commenter suggested that when an out-of-State PE prepares the Plan, the Plan should bear the seal of the PE who prepared the Plan along with the seal of a PE registered in the State in which the facility is located, assuring that the proposed Plan conforms to any additional State requirements.

Opposing comments. Opposing commenters argued that: (1) A State licensing board will address the actions of an engineer regardless of the engineer's location when he applies his seal; (2) suggestions that the potential liability of the engineer might be limited if the engineer holds an out-of-State license are specious; (3) SPCC Plan

preparation is a Federal activity, therefore, it is unnecessary to have State registration; and, (4) such a requirement would reduce the available pool of qualified PEs. One commenter volunteered that the proposal was ''superfluous'' because the practice of engineering in a State without being professionally registered in that State is unlawful in most States.

Response to comments. We agree with commenters that it is unnecessary that the PE be registered or licensed in the State in which the facility is located because any abuses will be corrected by the licensing jurisdiction. We also agree that such a requirement might unnecessarily reduce the availability of PEs and increase the cost of certification without any tangible benefits. The professional liability of a PE would likely be unaffected by the place of his registration. When State law precludes a PE from applying his seal if he is not licensed in that State, the question of State registration becomes moot. However, that is not the case in every State.

We also disagree that if a PE is not licensed in the State, he will be unfamiliar with State and local requirements for the facility. Any PE may become familiar with both Federal and State and local requirements for a facility. Therefore, to require that the PE be registered in the State in which the facility is located would impose unnecessary financial burdens on the facility and would challenge the integrity of the PE. Such a requirement would also reduce the pool of PEs available for facilities.

2. PEs Employed by the Facility

Background. EPA asked whether the rule should specify that the PE not be an employee of the facility or have any other direct financial interest in the facility. This request for comment had its origin in a U.S. General Accounting Office (GAO) report issued on February 22, 1989, ''Inland Oil Spills: Stronger Regulation and Enforcement Needed to Avoid Future Incidents'' (GAO/RCED–89–65).'' The GAO report recommended that EPA evaluate the advantages and disadvantages of requiring facilities to obtain certifications from independent engineers. EPA noted that ''not having the PE otherwise associated with the facility may avoid any potential conflicts of interest or appearance of conflicts of interest that could arise from allowing an employee of a regulated party to certify a SPCC Plan.'' 56 FR 54619. On the other hand, for both the issues of whether to require State registration and whether to allow PEs employed by the facility to certify SPCC Plans, EPA noted that some organizations objected to the proposals as ''challenging the integrity of professional engineers.'' 56 FR 54619. We also pointed out that some professional organizations believe that such requirements ''would impose substantial costs without enhancing the integrity of the certification process.'' 56 FR 54619.

Comments. Favorable comments. Several commenters supported a requirement that the PE not be an employee of the facility or not have a direct financial interest in it. The rationales most often asserted were: (1) A Plan would better satisfy regulatory objectives and better serve the public; (2) the Plan would be less subject to compromise by other factors; (3) Plan certification is less likely to be a coerced or superficial effort, and undue economic and moral pressures would be avoided; (4) more cooperative efforts among regulatory bodies, engineers, and the facility would be possible; (5) more economic and effective Plan development is assured; and, (6) more competent and more professional Plan development is guaranteed.

Opposing comments. Opposing commenters asserted that: (1) Such a proposal would limit the availability of PEs, leading to delays in Plan certification; (2) administrative action to correct abuses would be a better approach; and, (3) such an approach insults the ethical integrity of PE. One commenter suggested that ''to suppose a facility employee would break the law and jeopardize his license to practice his profession and do it more willingly than an ''independent'' engineer has no basis in fact'; (4) an in-house PE may be the person most familiar with the facility; (5) the proposal would place an undue and unnecessary financial burden on the owner or operator of a facility by forcing him to hire an outside engineer; and, (6) it is uncertain whether an independent PE can afford the insurance necessary to certify his work given that the liability incurred might run into the millions of dollars.

Compromise position. One commenter suggested that a compromise position might be that the PE who certifies the Plan would be required to disclose in the Plan certification his relationship to the facility owner, the facility improvements owner, and the facility landowner.

Response to comments. We agree that a proposal to restrict certification by a PE employed by a facility or having a financial interest in it would limit the availability of PEs, possibly leading to delays in Plan certification. Therefore, we will not adopt it. Nor do we favor the proposal to require the PE to disclose his relationship to the facility owner, the facility improvements owner, or the facility landowner. Such disclosure would add no environmental protection to the SPCC certification process. Administrative action to correct abuses would be a better approach. We believe that most PEs, whether independent or employees of a facility, being professionals, will uphold the integrity of their profession and only certify Plans that meet regulatory requirements. We also agree that an in-house PE may be the person most familiar with the facility. EPA believes that a restriction of in-house PE certification might place an undue and unnecessary financial burden on owners or operators of facilities by forcing them to hire an outside engineer.

3. Completion of Testing

Background. The Agency proposed that the PE must attest that required testing has been completed and the Plan meets the requirements of the regulation for the facility. This proposal was advanced to ''promote the Agency's intent in the original promulgation of § 112.3(d) that SPCC Plans be certified by a Registered Professional Engineer exercising independent judgment.'' 56 FR 54619. These new requirements were to be met when a new Plan is prepared after promulgation of the rule, or when an existing Plan is amended, under § 112.5.

Comments. Favorable comments. One commenter supported a requirement that the PE attest to the completion of testing and that the Plan meets regulatory requirements.

Opposing comments. Some opposing commenters believed that the PE should ''enumerate all the inspections and tests that have been completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations.'' Others believed that completion of required testing is the responsibility of the operator and not the PE. Another commenter believed such a requirement would be impossible, because ''required testing may take up to a year to complete.''

Response to comments. EPA agrees that the PE is not responsible for certifying that all required testing has been completed. Rather, such responsibility belongs to the owner or operator of the facility. Testing may be ongoing long after the Plan is certified. The PE is responsible for certifying that the Plan is adequate and meets all regulatory requirements, including enumeration of all tests that have been

completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations. Therefore, we are changing the proposed requirement to a requirement in which the PE attests that the procedures for required inspections and testing have been established, and the Plan is adequate for the facility. *See* the discussion of § 112.3(d), below.

4. Site Visits

Background. We stated that EPA ''believes the current regulatory language (*e.g.,* requiring the engineer to examine the facility) clearly requires the certifying Engineer to visit the facility prior to certifying the SPCC Plan.'' We added that the proposed change ''clarifies this requirement by specifying that the Professional Engineer must be physically present to examine the facility.'' 56 FR 54619.

Comments. Favorable comments. Many commenters favored the requirement that the PE make a site visit prior to certifying a Plan. Those commenters called such a visit ''absolutely necessary.'' Some argued that a generic plan prepared by an engineer who has never seen the facility is unacceptable.

Opposing comments. Opposing commenters asserted that such visits only involve additional costs and duplication of efforts without any tangible benefits. Many opposing commenters argued that customary engineering practice includes the use of engineering technicians, technologists, graduate engineers, and others to prepare preliminary reports, studies, and evaluations. After preparation of these documents, the PE would then perform a careful review of all pertinent material and then sign and seal the appropriate plans and drawings. Other commenters argued that such a requirement would be impractical, particularly at electrical substations, due to their large number.

Particular cases. One commenter urged that small facilities be exempted from the site visit requirement where ''a determination is made that sufficient documentation of site characteristics is available for plan certification.'' That commenter noted that in many instances sufficient information is available from topographic maps, aerial photographs, soil surveys, hydrologic studies, engineering and construction reports, and local operating personnel to eliminate the need for site visits prior to certification. Another commenter urged an exemption for temporary storage facilities because given their emergency nature, certification is impractical. One commenter asked for clarification that the certification of an existing Plan is sufficient until the Plan update is required. Another suggested that the rule should only require that the PE be familiar with the operation and design of the type of facility, and that he would have visited and examined one or more facilities of this type.

Response to comments. In general. EPA agrees that the rule should not necessarily require a site visit by a certifying PE, but we believe that a site visit should occur before the PE certifies the Plan. We have modified proposed § 112.3(d)(ii) to reflect this position. The PE's agent may perform the visit. We agree that customary engineering practice allows someone under the PE's employ such as an engineering technician, technologist, graduate engineer, or other qualified person to prepare preliminary reports, studies, and evaluations after visiting the site. Then the PE could legitimately certify the Plan. Nevertheless, in all cases the PE must ensure that his certification represents an exercise of good engineering judgment. If that requires a personal site visit, the PE must visit the facility himself before certifying the Plan.

Particular cases. EPA agrees that a PE site visit requirement might be impractical at electrical substations, due to their large number. However, the PE need not go. One of his agents may go, and he may review the agent's work. We disagree with commenters who believe that a site visit is unnecessary at small facilities and temporary storage facilities. Site visits are necessary for those facilities to ensure Plan adequacy and to prevent discharges.

EPA has interpreted the current rule language to contain a requirement that the PE examine the facility. Because of the uncertainty concerning the nature of this requirement, however, we will not require documentation of a site visit by a PE or his agent until after the effective date of this rule. We disagree that the rule should only require that the PE be familiar with the operation and design of the type of facility. We also disagree that merely because the PE has visited and examined one or more facilities of a particular type that no site visit is necessary. A facility may have individual characteristics that differ from those of its type in general, and a site visit by a PE or agent may be necessary to detect those characteristics and accommodate them in the Plan. Such individual characteristics include geographic conditions, possible flow paths, facility design and construction, type of containers, product stored, particular equipment, and the integrity of containment at the facility. Therefore, even if a PE has inspected many facilities of a particular type, that fact does not eliminate the need for a site visit at each facility. After the site visit, the PE will have to devise appropriate inspection and testing standards based on the facility's unique characteristics.

E. Electrical Facilities and Other Operational Users of Oil

Background. In 1991, we proposed that certain facilities having equipment containing oil that is used for operational purposes, such as electrical transformers, would not have to comply with secondary containment requirements and certain other provisions proposed in §§ 112.8(c) and 112.9(d) because such facilities are not bulk storage facilities. EPA asked for comment on this and also asked commenters to identify other possible operational uses of oil, other than electrical transformers, that may not currently use secondary containment as a common industry practice and that should not be subject to bulk storage provisions. 56 FR 54623.

Comments. Use of oil. Numerous commenters, especially in the electric utility industry, asserted that EPA has no jurisdiction to regulate the operational use of oil generally, or specifically in electrical transformers, substations, and other equipment. Some manufacturers of other products agreed. They argued that the legislative history of the Act showed no Congressional intent for such regulation. However, many commenters asked EPA specifically to clarify this jurisdictional issue.

Response to comments. Use of oil. We disagree that operational equipment is not subject to the SPCC rule. We have amended § 112.1(b) to clarify that using oil, for example operationally, may subject a facility to SPCC jurisdiction as long as the other applicability criteria apply, for example, oil storage capacity, or location. Such a facility might reasonably be expected to discharge oil as described in § 112.1(b). Therefore, the prevention of discharges from such facility falls within the scope of the statute.

However, we have distinguished the bulk storage of oil from the operational use of oil. We define ''bulk storage container'' in the final rule to mean any container used to store oil. The storage of oil may be prior to use, while being used, or prior to further distribution in commerce. For clarity, we have specifically excluded oil-filled electrical, operating, or manufacturing equipment from the definition.

Facilities that use oil operationally include electrical substations, facilities containing electrical transformers, and certain hydraulic or manufacturing equipment. The requirements for bulk storage containers may not always apply to these facilities since the primary purpose of this equipment is not the storage of oil in bulk. Facilities with equipment containing oil for ancillary purposes are not required to provide the secondary containment required for bulk storage facilities (§ 112.8(c)) and onshore production facilities (§ 112.9(c)), nor implement the other provisions of § 112.8(c) or § 112.9(c). Oil-filled equipment must meet other SPCC requirements, for example, the general requirements of this part, including § 112.7(c), to provide appropriate containment and/or diversionary structures to prevent discharged oil from reaching a navigable watercourse. The general requirement for secondary containment, which can be provided by various means including drainage systems, spill diversion ponds, etc., will provide for safety and also meet the needs of section 311(j)(1)(C) of the CWA. EPA will continue to evaluate whether the general secondary containment requirements found in § 112.7(c) should be modified for small electrical and other types of equipment which use oil for operating purposes. We intend to publish a notice asking for additional data and comment on this issue.

In addition, a facility may deviate from most SPCC requirements, if the owner or operator explains his reasons for nonconformance and provides equivalent environmental protection by some other means. *See* § 112.7(a)(2). *See also* § 112.7(d).

F. Discretionary Provisions

Background. In the preamble to the 1991 proposal (at 56 FR 54616), we asked for comments as to whether the provisions proposed as recommendations in rule text should be made requirements. We then noted that we were ''particularly interested in receiving comments and information on the advisability of establishing'' certain provisions as ''requirements for large facilities, but as recommendations for small facilities.'' These provisions were: (1) Proposed § 112.8(d)(4)—''that facilities have all buried piping tested for integrity and leaks annually or have buried piping monitored monthly in accordance with the provisions of 40 CFR part 280.'' We also recommended that records of testing or monitoring be kept for five years.; and, (2) proposed § 112.8(d)(5)—''that facilities post vehicle weight restrictions to prevent damage to underground piping.'' Individual proposals will be discussed under their relevant sections in this preamble. Large facilities were defined for this purpose as facilities with more than 42,000 gallons of SPCC-regulated storage capacity. Conversely, we asked whether such provisions should be discretionary for smaller facilities. The rationale expressed in the question was EPA believes that ''larger volumes of oil stored at a facility increase the chances of a spill occurring, and that spills from large-capacity facilities may be greater in magnitude than those from smaller facilities, thus posing a greater potential threat to the waters of the United States.''

EPA also requested comments on two other practices it proposed as recommendations, but did not include in rule text. Those practices were: (1) ''That owners and operators of facilities affix a signed and dated statement to the SPCC Plan indicating that the revision has taken place and whether or not amendment of the Plan is required;'' and, (2) ''That owners and operators of onshore facilities other than production facilities state the design capabilities of their drainage system in the SPCC Plan if the system is relied upon to control spills or leaks.'' Concerning the first practice, see also the discussion under § 112.5(b) of today's rule. The rationale for these recommendations was that ''these provisions may not for all facilities achieve the standard of provisions based on good engineering practice, which is the basic standard of the regulation. EPA, however believes that implementation of these provisions at most facilities would contribute to the facilities' overall effort to prevent oil discharge and to mitigate those spills that may occur.'' The Agency also asked whether some of these provisions should be mandatory.

Comments. Large or small facility regulation, in general. EPA received a number of comments on this issue, some directed towards regulation of larger and smaller facilities in general, and others toward specific provisions proposed. Some commenters believed that larger facilities could better bear the costs of regulation than smaller facilities, some of which were financially marginal and might go out of business as a result of environmental regulation.

Storage capacity level. Commenters suggested different storage capacity levels at which to differentiate large from small facilities. Those suggestions ranged from 10,000 to 100,000 gallons in storage capacity. Many, however, supported the 42,000-gallon level.

Other factors. One commenter suggested that other factors such as proximity to navigable waters or environmentally sensitive areas, as well as the use of good engineering practices should be considered in the regulation of facilities. The commenter argues that these factors might avoid overburdening a large facility with a low potential for impact on a navigable water or exempting a small facility with a high potential for impact on a navigable water.

Discretionary provisions. Favorable commenters. Numerous commenters favored discretionary provisions in the interest of maintaining flexibility in the program, noting that what may be appropriate for one facility may not be appropriate for another. Some commenters favored applying discretionary provisions to small facilities only, leaving the provisions as requirements for larger facilities.

Discretionary provisions. Opposing commenters. Some commenters argued that discretionary provisions are inappropriate in a rule as a matter of principle because they complicate mandatory rule documents and enforcement, and they confuse the regulated community. Yet others urged that such provisions were unnecessary in any case because they believe that no risks exist for which the discretionary provisions were proposed.

Response to comments. We will discuss specific comments under the discussion of specific sections. See section IV.G of today's preamble for a discussion of the ''Design Capabilities of Drainage Systems, other than Production Facilities.'' Our general discussion follows.

Large or small facility regulation, in general. We have decided not to regulate facilities differently based merely on storage capacity, provided that the capacity is above the regulatory threshold of over 1,320 gallons. This decision is based on environmental reasons. Small discharges of oil that reach the environment can cause significant harm. Sensitive environments, such as areas with diverse and/or protected flora and fauna, are vulnerable to small spills. EPA noted in a recent denial of a petition for rulemaking: ''Small spills of petroleum and vegetable oils and animal fats can cause significant environmental damage. Real-world examples of oil spills demonstrate that spills of petroleum oils and vegetable oils and animal fats do occur and produce deleterious environmental effects. In some cases, small spills of vegetable oils can produce more environmental harm than numerous large spills of petroleum

oils.'' 62 FR 54508, 54530, October 20, 1997. Describing the outcome of one small spill of 400 gallons of rapeseed oil into Vancouver Harbor, we noted that '' * * * 88 oiled birds of 14 species were recovered after the spill, and half of them were dead. Oiled birds usually are not recovered for 3 days after a spill, when they become weakened enough to be captured. Of the survivors, half died during treatment. The number of casualties from the rapeseed oil spills was probably higher than the number of birds recovered, because heavily oiled birds sink and dying or dead birds are captured quickly by raptors and scavengers.'' 62 FR 54525.

A small discharge may also cause harm to human health or life through threat of fire or explosion, or short-or long-term exposure to toxic components.

Other factors. Finally, EPA notes that the rule affords flexibility to an owner or operator of a facility to design a Plan based on his specific circumstances. It allows him to choose methods that best protect the environment. It permits deviations from most of the mandatory substantive requirements of the rule when the facility owner or operator can demonstrate a reason for nonconformance, and can provide equivalent environmental protection by other means. Consequently, both small and large facilities have the opportunity to reduce costs by alternative methods if they can maintain environmental protection. Because smaller facilities may require less complex plans than larger ones, their costs may be less.

Discretionary provisions. We agree that discretionary provisions have no place in this rule because we do not wish to confuse the regulated community and complicate enforcement by blurring what is mandatory and what is discretionary. We will provide guidance or policy statements on various issues, as necessary, that will incorporate some or all of these recommendations. In the absence of such guidance or policy statements, you should look to current industry standards for guidance on technical issues. See also our discussion of industry standards and good engineering practice under section IV.K of today's preamble and under § 112.3(d) in section V of today's preamble.

G. Design Capabilities of Drainage Systems, Other than Production Facilities

Background. In the 1991 preamble, we asked for comments on, but did not propose, a provision that owners or operators of onshore facilities other than production facilities describe the design capabilities of their drainage systems in the SPCC Plan if the system is relied upon to control spills or leaks. 56 FR 54616, October 22, 1991. See also section IV.F of today's preamble for a discussion of other ''Discretionary Provisions.''

Comments. Favorable comments. Commenters favoring such a requirement asserted that such a description would help identify all paths of escape for discharges at a facility, assess the spill retention capacity of the facility's containment system, and identify the risks to the public of a discharge. Those commenters generally believed that the Professional Engineer should develop the description for the Plan.

Opposing comments. Commenters opposing making the recommendation a requirement argued that it was unnecessary because the rules already require certain descriptions of design capabilities of drainage systems. They asserted that such a requirement would be redundant in that if a drainage system is relied upon to control spills or leaks, then it must have design capabilities to control such spills or leaks.

Response to comments. The question of description of the design capabilities of drainage systems for onshore facilities other than production facilities is adequately covered by rules pertaining to drainage. *See*, for example, §§ 112.7(a)(3) and (4), 112.7(b), 112.8(b), and 112.10(c). Therefore, we will not promulgate any additional requirements on this subject. These provisions generally require that a facility owner or operator design the facility drainage system to prevent discharges, or if prevention fails, to contain the discharge within the facility.

H. Compliance Costs

Background. We provided an extensive discussion of the costs and benefits of the proposed 1991 rule. 56 FR 54628–54629, October 22, 1991. We requested comments in the 1991 preamble concerning the new compliance costs associated with the proposed rule.

Comments. EPA received numerous comments on this issue. The overwhelming majority of commenters asserted that the proposed rule would impose costs that few could bear. Many argued that such costs were unnecessary or should be applied to large facilities only.

Response to comments. EPA considered cost factors in finalizing the requirements in this rule. We believe that facilities in compliance with the current rule will incur minimal additional cost due to the revisions in this rule. Many of the provisions we proposed in 1991 that commenters believed were too costly were not finalized in this rule. In addition, in today's rule, we have provided flexibility in several ways. Many of the provisions we proposed in 1991 that commenters believed were too costly were not finalized in this rule. In addition, in the deviation provision, § 112.7(a)(2), we permit you to substitute alternate measures that provide equivalent environmental protection if you can explain a reason for nonconformance with the prescribed requirement. We also rely on the use of industry standards in many provisions, rather than mandating any particular procedure, or any particular monitoring or inspection schedule. We assume that most facilities follow industry standards, and therefore will not incur additional costs for many provisions where they do. We recognize, however, that to the extent any facility does not follow current industry standards, it might incur additional costs. Furthermore, we are finalizing other provisions in this rule which will reduce burden in other ways and will exempt certain facilities from having to prepare an SPCC or FRP Plan. EPA has also prepared an assessment of the costs of rule compliance, which is discussed in part VI.F (Regulatory Flexibility Act) of this preamble, and we have included the specific comments related to costs and our responses in relevant sections of this preamble.

I. Contingency Planning and Notification

Background. We requested comments in the 1991 preamble on spill contingency planning needs (at 56 FR 54615) and on proposed facility notification requirements (at 56 FR 54614). You will find a detailed discussion of contingency requirements and facility notification requirements (§ 112.7(d) and proposed § 112.1(e)) in Section V of today's preamble. On those subjects, we briefly summarize the comments and our responses below.

Comments. Contingency planning. Many commenters supported the 1991 proposal. Opposing commenters suggested that such planning should be discretionary because not all facilities need such planning, or that facilities be allowed to use contingency plans prepared for other purposes. Others thought the proposal was premature as we had not at the time finalized response planning requirements in § 112.20. Some said that contingency planning was not practicable because

the costs are too high, but these commenters did not provide specific cost estimates.

Notification. A number of commenters favored the proposal, including some industry commenters. Most industry commenters opposed the proposal either in part or in its entirety. Commenters who opposed the proposal in its entirety asserted that it was unnecessary, largely because they believed the information sought might be better obtained from other sources, such as State sources or SARA Title III reports.

Response to comments. Contingency planning. Contingency planning is necessary whenever you determine that a secondary containment system for any part of the facility that might be the cause of a discharge as described in § 112.1(b) is not practicable. This requirement applies whether the facility is manned or unmanned, urban or rural, and for large and small facilities. Because we have not finalized either the 1991 or 1993 contingency plan proposals, there are no new costs. We note that we finalized response planning requirements in 1994. Contingency plans prepared for other purposes are acceptable for SPCC purposes if they satisfy all SPCC requirements.

Notification. Withdrawal of proposal. We have decided to withdraw the proposed facility notification requirement because we are still considering issues associated with establishing a paper versus electronic notification system, including issues related to providing electronic signatures on the notification. Should the Agency in the future decide to move forward with a facility notification requirement, we will repropose such requirement.

J. Reproposal

Background: In the 1997 proposal, we stated that we would finalize the 1991 and 1993 proposals without seeking additional comments on those proposals.

Comments: Some commenters suggested that we repropose the 1991 proposal ''so that the public can view the proposed changes in a comprehensive manner.'' Other commenters suggested that the time that has elapsed, the changes in operational procedures of the oil and gas industry which have improved the degree of environmental protection, and the new information EPA obtained from its tank survey, justified reproposal. Others cited changes in oil industry personnel as a reason to repropose the rule. Some commenters believed that the implementation of the Facility Response Plan (FRP) rule alone requires us to solicit additional comments concerning the SPCC proposals.

Response: Additional comments or reproposal. We believe it is unnecessary to repropose the 1991 and 1993 proposals because of mere passage of time. We received numerous comments on every side of most issues. In developing this final rule, we have considered changes that have taken place in the oil industry, industry standards, and regulations that may affect the SPCC rule. We have also considered changes in the various industries which comprise the universe of SPCC facilities which have occurred since our original proposals. We encourage the use of industry standards to implement the rule, without incorporating any particular standard into the rule, thereby averting possible obsolescence of those standards. We used the results of our 1995 SPCC facility survey to develop our 1997 proposed rule. These results are also part of the administrative record for this rulemaking. We considered all the comments we received in 1997, even if they dealt with issues proposed in 1991 or 1993. We have also considered and responded to all of the comments received in 1991 and 1993 in their respective Comment Response Documents or in the preamble to today's final rule.

Personnel changes. In developing this final rule, as noted above, we have considered changes that have taken place in the oil industry, industry standards, and regulations that may affect the SPCC rule. For the past 26 years, owners and operators of regulated facilities have been responsible for training their personnel in applicable regulations, such as 40 CFR part 112. Such responsibility is in effect now, and will continue under the revised rule. New companies and new personnel of those companies are on notice as to applicable rules and proposals. They have also had the opportunity to comment on the 1997 proposal. Furthermore, we have considered cost implications for all three proposals which we are finalizing today.

Response plan requirements. We have no plans to require SPCC facilities for which secondary containment is not practicable to develop response plans. However, we have withdrawn § 112.7(d) as proposed in 1993. Only a contingency plan following the provisions of 40 CFR part 109 and compliance with other provisions of § 112.7(d) is necessary when secondary containment is impracticable. Only onshore facilities that meet the criteria of substantial harm and/or significant and substantial harm facilities need to comply with the FRP requirements in 40 CFR 112.20–21.

K. Industry Standards

Throughout the rule we generally allow for the application of industry standards where the standards are both specific and objective, and their application may reduce the risk of discharges to and impacts to the environment. We recognize that as technology advances, specific standards change. By referencing industry standards throughout the preamble, we anticipate that the underlying requirements of the rule itself will change as new technology comes into use without the need for further amendments. We believe that industry standards today represent good engineering practice and generally are environmentally protective. However, as under the current rule, if an industry standard changes in a way that would increase the risk of a discharge as described in § 112.1(b), EPA will apply and enforce standards and practices that protect the environment, rather than the less protective industry standard.

Under the terms of this rule, when there is no specific and objective industry standard that applies to your facility (for example, whether there is no standard or a standard that uses the terms ''as appropriate,'' ''often,'' ''periodically,'' and so forth), you should instead follow any specific and objective manufacturer's instructions for the use and maintenance or installation of the equipment, appurtenance, or container. If there is neither a specific and objective industry standard nor a specific and objective manufacturer's instruction that applies, then it is the duty of the PE under § 112.3(d) to establish such specific and objective standards for the facility and, under § 112.3(d), he must document these standards in the Plan. If the PE requires the use of a specific standard for implementation of the Plan, the owner or operator must also reference that standard in the Plan.

Throughout this preamble, we list industry standards that may assist an owner or operator to comply with particular rules. The list of those standards is merely for your information. They may or may not apply to your facility, but we believe that their inclusion is helpful because they generally are applicable to the topic referenced. The decision in every case as to the applicability of any industry standard will be one for the PE.

For your convenience, we are including a list of organizations below

that may be helpful in the identification and explanation of industry standards.

Name	Address	Phone #	Web Site/E-mail
American National Standards Institute (ANSI).	11 West 42nd Street, New York, NY 10036.	212–642–4900 212–398–0023 fax.	*www.ansi.org* *ansionline@ansi.org*
American Petroleum Institute (API)	1220 L Street, NW Washington, DC 20005.	202–682–8000 202–682–8232 fax.	*www.api.org* *standards@api.org* *standards2@api.org*
American Society of Mechanical Engineers (ASME).	Three Park Avenue New York, NY 10016–5990.	800–843–2763 973–882–1717 fax.	*www.asme.org* *infocentral@asme.org*
American Society for Nondestructive Testing (ASNT).	PO Box 28518, 1711 Arlingate Lane Columbus, OH 43228–0518.	800–222–2768 614–274–6899 fax	*www.asnt.org*
American Society for Testing and Materials (ASTM).	100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.	610–832–9585 610–832–9555 fax.	*www.astm.org* *webmastr@astm.org.*
Building Officials and Code Administrators (BOCA) International.	4051 West Flossmoor Road Country Club Hills, IL 60478.	708–799–2300 .. 708–799–4981 fax.	*www.bocai.org* *webmaster@bocai.org.*
International Code Council (ICC)	5203 Leesburg Pike, Suite 708 Falls Church, VA 22041.	703–931–4533 703–379–1546 fax.	*www.intlcode.org* *staff@intlcode.org.*
International Conference of Building Officials (ICBO).	5360 Workman Mill Road Whittier, CA 90601–2298.	888–699–0541 888–329–4220 fax.	*www.icbo.org*
International Fire Code Institute (IFCI) ...	5360 Workman Mill Road Whittier, CA 90601–2298.	562–699–0124 562–699–8031 fax.	*www.ifci.org* *webmaster@icbo.org*
Manufacturers Standardization Society of The Valve and Fittings Industry Inc. (MSS).	127 Park Street, N.E. Vienna, VA 22180–4602.	703–281–6613 703–281–6671 fax.	*www.mss-hq.com* *info@mss-hg.com*
National Association of Corrosion Engineers (NACE).	1440 South Creek Drive Houston, TX 77084.	281–228–6200 281–228–6300 fax	*www.nace.org*
National Fire Protection Association (NFPA).	1 Batterymarch Park PO Box 9101 Quincy, MA 02269–9101.	617–770–3000 617–770–0700 fax.	*www.nfpa.org* *hazchem@nfpa.org*
Petroleum Equipment Institute (PEI)	P.O. Box 2380 Tulsa, OK 74101–2380	918–494–9696 918–491–9895 fax.	*www.pei.org* *pei@peinet.org.*
Southern Building Code Congress International (SBCCI).	900 Montclair Road Birmingham, AL 35213–1206.	205–591–1853 205–591–0775 fax.	*www.sbcci.org* *info@sbcci.org*
Southwest Research Institute (SwRI)	P.O. Box Drawer 28510 San Antonio, TX 78228–0510.	210–684–5111	*www.swri.org* *action67@swri.org*
Steel Tank Institute (STI)	570 Oakwood Road Lake Zurich, IL 60047.	847–438–8265 .. 847–438–8766 fax.	*www.steeltank.com* *ankiefer@steeltank.com*
Underwriters Laboratories (UL)	333 Pfingsten Road Northbrook, IL 60062–2096.	847–272–8800 847–272–8129 fax.	*www.ul.com* *northbrook@ul.com*
Western Fire Chiefs Association (WFCA)	300 N. Main St. #25 Fallbrook, CA 92028.	760–723–6911 760–723–6912 fax.	*www.wfca.com* *wfcadmin@wfca.com*

V. Section by Section Analysis (Includes: Background, Comments, and Response to Comments)

Subpart A—Applicability, definitions, and general requirements for all facilities

Background. In the reformatted rule, subpart A defines the applicability of part 112, provides definitions applicable to all subparts, and prescribes general requirements that are applicable to all facilities subject to part 112.

Section 112.1(a)(1)—General Applicability of the Rule

Background. We have redesignated § 112.1(a) as § 112.1(a)(1) due to the addition of a new paragraph (a)(2). In 1991, we proposed changes in § 112.1(a) to conform to the 1977 CWA amendments. Those amendments extended the geographic scope of EPA's authority under CWA section 311. Formerly the geographic scope of the rule extended only to navigable waters of the United States and adjoining shorelines. The final rule extends the geographic scope of EPA's authority beyond discharges to navigable waters and adjoining shorelines to include a discharge into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery

Conservation and Management Act). Hereinafter, a discharge as described above in quantities that may be harmful is also referred to as ''a discharge as described in § 112.1(b).''

Comments. Geographic scope of rule. One commenter wrote to support the geographic extension of the rule, noting that the extended definition ''will allow for more clarity in determining which facilities are subject to SPCC requirements.''

Natural resources. Another commenter was concerned that the extension of the rule to facilities with the potential to affect natural resources ''would bring under the scope of 40 CFR 112 a significant number of operating facilities which did not previously require SPCC plans.'' Still another commenter proposed limiting the scope of natural resource jurisdiction under the rule to resources under the Magnuson Fishery and Conservation Act to avoid ''another unnecessary workload on the judicial system over the years.''

Response to comments. Geographic scope of rule. EPA believes that the geographic extension of the rule to agree with statutory amendments is the proper course, and has finalized the rule as proposed.

Natural resources. Limiting the scope of natural resource jurisdiction under the rule to natural resources under the Magnuson Fishery Conservation and Management Act would be inconsistent with this statutory language. We also believe that few, if any new facilities, will be subject to the rule because of its extension to facilities with the potential to affect certain natural resources. We believe that most affected facilities are either already subject to the rule, or not subject to our jurisdiction due to a Memorandum of Understanding between EPA, the U.S. Department of Transportation (DOT), and the U.S. Department of the Interior (DOI), which assigns jurisdiction over most of those facilities to DOT or DOI. See 40 CFR part 112, Appendix B.

Editorial changes and clarifications. While revisions to the rule published today are not retroactive, any violation of the current rule which occurs before the effective date of today's rule is subject to enforcement and penalties.

Section 112.1(a)(2)—Number and Gender

Background. We added a new § 112.1(a)(2) to make clear that words in the singular include the plural, and words in the masculine include the feminine, and vice versa. This amendment is for clarification purposes only.

Section 112.1(b)—Facilities Covered by the Rule—Non-Transportation-Related Facilities

Background. We have redesignated this section to add four new paragraphs. This section describes generally the type of facilities which are subject to the SPCC rule.

In 1991, EPA proposed changes in § 112.1(b) to reflect changes in the geographic scope of EPA's authority under CWA section 311, as described in the discussion under § 112.1(a)(1). EPA also proposed to change the phrase ''harmful quantities'' to ''quantities that may be harmful, as described in part 110.'' Amendments to the CWA also reflected the broadening of quantities that may be harmful to include those not only harmful to the ''public health or welfare,'' but also to the environment.

Comments. Facilities. Several commenters argued that EPA jurisdiction, under statutory authority, does not extend to facilities, merely to requirements for oil spill prevention and containment equipment. The commenters' argument noted that the statute doesn't mention jurisdictional criteria relating to proximity to water or oil storage capacity, only EPA rules do. Therefore, the commenters argued, if EPA is successful in its assertion of facility regulation, then every pipe, valve, meter, and flange on the wellsite along with tubing and casing in the hole, stock tanks, drainage ditches, and roads are all subject to EPA jurisdiction and specifications. More importantly, they argued, every facility, in every industry, which at some time or other handles oil or hazardous substances could be subject to EPA rules concerning its spill prevention and containment procedures, methods, or equipment.

Use of oil. Numerous commenters, especially in the electric utility industry, asserted that EPA has no jurisdiction to regulate the operational use of oil generally, or specifically in electrical transformers, substations, and other equipment. Some manufacturers of other products agreed. They argued that the legislative history of the Act showed no Congressional intent for such regulation. However, many commenters asked EPA specifically to clarify this jurisdictional issue.

Distance to navigable waters. Two commenters proposed that we exempt from the rule facilities more than one mile from surface waters or those located outside the coastal zone.

Response to Comments: Facilities. We disagree that our authority does not extend to facilities. Section 311(j)(1)(C) of the statute authorizes and requires the President (and EPA, through delegation in Executive Order 12777, 56 FR 54757, October 22, 1991) to issue regulations consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, and consistent with maritime safety and with marine and navigation laws, which establish ''procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges.'' This language authorizes the President to issue oil spill prevention rules which pertain to onshore facilities and offshore facilities and not just ''equipment.''

In order to fulfill the statutory mandate, it is necessary to regulate the facilities from which discharges emanate. Moreover, although the term ''facility'' is not defined in the statute, both ''onshore facility'' and ''offshore facility'' are defined terms in CWA section 311. They have also been defined terms in the SPCC rule since its inception in 1974. In the 1991 proposal, EPA proposed a definition of ''facility'' to implement the CWA. That definition was based on a Memorandum of Understanding (MOU) between the Secretary of Transportation and the EPA Administrator dated November 24, 1971 (36 FR 24080). The MOU, which has been published as Appendix A to part 112 since December 11, 1973 (38 FR 34164, 34170), defines in detail what constitutes a facility. Thus, there has long been a common understanding of the term. That understanding has been reinforced by frequent use of the term in context within the SPCC rule since it became effective in 1974. To promote clarity and to maintain all definitions in one place, the proposed definition has been finalized in this rulemaking.

While section 311(j)(1)(C) of the Act may not explicitly mention jurisdictional criteria, section 311(b) of the Act does. Section 311(b) establishes as the policy of the United States that there shall be ''no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).'' Thus, the location or ''jurisdictional'' criteria contained in § 112.1(b) are appropriate for inclusion in the rule.

Use of oil. We disagree that operational equipment is not subject to the SPCC rule. We have amended § 112.1(b) to clarify that using oil, for example operationally, may subject a facility to SPCC jurisdiction as long as the other applicability criteria apply, for example, oil storage capacity, or location. Such a facility might reasonably be expected to discharge oil as described in § 112.1(b). Therefore, the prevention of discharges from such facility falls within the scope of the statute.

However, we have distinguished the bulk storage of oil from the operational use of oil. We define ''bulk storage container'' in the final rule to mean any container used to store oil. The storage of oil may be prior to use, while being used, or prior to further distribution in commerce. For clarity, we have specifically excluded oil-filled electrical, operating, or manufacturing equipment from the definition.

Facilities that use oil operationally include electrical substations, facilities containing electrical transformers, and certain hydraulic or manufacturing equipment. The requirements for bulk storage containers may not always apply to these facilities since the primary purpose of this equipment is not the storage of oil in bulk. Facilities with equipment containing oil for ancillary purposes are not required to provide the secondary containment required for bulk storage facilities (§ 112.8(c)) and onshore production facilities (§ 112.9(c)), nor implement the other provisions of § 112.8(c) or § 112.9(c). Oil-filled equipment must meet other SPCC requirements, for example, the general requirements of this part, including § 112.7(c), to provide appropriate containment and/or diversionary structures to prevent discharged oil from reaching a navigable watercourse. The general requirement for secondary containment, which can be provided by various means including drainage systems, spill diversion ponds, etc., will provide for safety and also the needs of section 311(j)(1)(C) of the CWA.

In addition, a facility may deviate from any inappropriate SPCC requirements, if the owner or operator explains his reasons for nonconformance and provides equivalent environmental protection by some other means. See § 112.7(a)(2). See also § 112.7(d).

Distance to navigable waters. We do not believe that any rule which exempts facilities beyond any particular distance meets the intent of the statute. The locational standard in the rule is whether there is a reasonable possibility of discharge in quantities that may be harmful from the facility. A facility that is more than one mile from navigable waters might well fit within that standard. For example, piping or drainage from that facility might lead directly to navigable water. If discharged oil may reach or does reach navigable waters, adjoining shorelines, or protected resources, the distance which the discharged oil travels is irrelevant.

Editorial changes and clarifications. In the proposed rule, this paragraph was designated as §§ 112.1(b) and 112.1(b)(1). We have combined the paragraphs and added two new paragraphs. The new paragraphs describe the types of containers subject to the rule, which in addition to the two paragraphs we already proposed, better describe those containers. We also changed plural references in the proposal to singular throughout the section.

Section 112.1(b)(1)—Aboveground Storage Containers

Background. We added this paragraph to clarify that aboveground storage containers are a subset of the containers subject to the rule. In 1991, we noted that containers used for standby storage, temporary storage, or containers that are not permanently closed, are subject to the rule. We also noted that bunkered tanks and partially buried tanks are subject to the rule. The inclusion of this paragraph and paragraph (b)(2), which refers to completely buried tanks, completes the universe of containers subject to the rule.

Section 112.1(b)(2)—Completely Buried Tanks

Background. We added this paragraph to clarify that completely buried tanks are a subset of the containers subject to the rule. See also the discussion under § 112.1(b)(1).

Section 112.1(b)(3)—Standby, Temporary, or Seasonal Storage Facilities

Background. We proposed in 1991 to clarify that tanks used for standby, temporary, or seasonal storage, or that are not otherwise permanently closed, are subject to the SPCC rule. The Agency noted that such tanks are not permanently closed and can reasonably be expected to experience a discharge as described in § 112.1(b). 56 FR 54617. The facilities described in § 112.1(b)(3) are a subset of the facilities described in § 112.1(b)(1) and (b)(2).

Comments. One commenter asserted that temporarily closed tanks should be exempted from the rules because they are required to be drained and, while awaiting temporary closure, are no threat to the environment through oil spills. Another commenter urged that temporary storage facilities should be exempted from the SPCC rule, and handled under the Facility Response Plan (FRP) rules, found at 40 CFR 112.20–21. A third commenter argued that frac tanks, used to store oil for the short periods of time while maintenance or workover operations are underway, should be exempted from the rule because their use is of short duration and does not necessarily increase the potential for discharge. Another commenter stated that it would be impractical to maintain an up-to-date SPCC Plan for temporary storage at remote parts of a large mining operation.

Response to comments. 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. As to the argument that it is impractical to maintain an up-to-date Plan for temporary facilities at remote parts of mining sites, we disagree. Plans for such storage are analogous to or may be Plans for mobile facilities, which may be general Plans, but still provide environmental protection against a discharge as described in § 112.1(b).

Editorial changes and clarifications. In the proposed rule, this paragraph was designated as § 112.1(b)(2). We have redesignated it as § 112.1(b)(3).

Section 112.1(b)(4)—Bunkered, Partially Buried, and Vaulted Tanks

Background. In 1991, we proposed to clarify that bunkered tanks, partially buried tanks, and tanks in subterranean vaults are considered aboveground tanks for purposes of the SPCC rule. The tanks or containers in these facilities are a subset of the facilities described in § 112.1(b)(1). The Agency explained that compared to completely buried tanks, discharges from these tanks are more likely to enter surface waters regulated under the CWA. 56 FR 54626.

Comments. Partially buried and bunkered tanks. A commenter suggested that partially buried and bunkered tanks should be considered underground storage tanks (USTs) and regulated under that program because ten percent

or more of the product is below grade either in the tank or in the pipeline. The commenter argued that tanks in compliance with the UST program, found at 40 CFR part 280, would not pose a significant threat to the environment. In fact, the commenter argued, they might be less likely to cause a spill than one in compliance with the SPCC rule. The commenter further argued that dual regulation would be unnecessarily burdensome without providing any additional environmental protection.

Vaulted tanks. Several commenters asserted that since vaulted tanks are already regulated by fire and safety authorities, they should not be regulated under the SPCC program. Others argued that vaulted tanks meeting the technical requirements of 40 CFR part 280, or which have engineering controls designed to contain product released from failure or overfill, should likewise be exempted from the SPCC rule. These commenters asserted that a discharge from such tanks would not reach water.

Response to comments. Partially buried and bunkered tanks. We disagree that partially buried tanks and bunkered tanks should be considered completely buried tanks, and therefore excluded from SPCC provisions. The rules differ in important aspects. Tanks which are partially underground pose a risk of a discharge as described in § 112.1(b), which could have an adverse impact on navigable water, adjoining shorelines, or affected resources. Some tanks that are not completely buried contain engineering controls designed to prevent discharges. However, such controls may fail due to human or mechanical error and cause severe environmental damage. Such tanks may suffer damage caused by differential corrosion of buried and non-buried surfaces greater than completely buried tanks, which could cause a discharge as described in § 112.1(b).

Such tanks are also not subject to secondary containment requirements under part 280 or a State program approved under 40 CFR part 281. There may also be accidents during loading or unloading operations, or overfills resulting in a discharge to navigable waters and adjoining shorelines. Furthermore, a failure of such a tank (caused by accident or vandalism) would be more likely to cause a discharge as described in § 112.1(b). We will, however, accept UST program forms, e.g., the Notification for Underground Storage Tanks, EPA Form 7530–1, or approved State program equivalents, insofar as such forms contains information relevant to the SPCC program. For example, the UST form (item 12) contains information regarding corrosion protection for steel tanks and steel piping which would be relevant for SPCC purposes. Other items on the form may also be relevant for SPCC purposes. We are, however, excluding from the rule completely buried storage tanks (including connected underground piping, underground ancillary equipment, and containment systems) that are currently subject to all of the technical requirements of 40 CFR part 280 or 281. *See* § 112.1(d)(4).

Vaulted tanks. Vaulted tanks are generally excluded from the scope of 40 CFR part 280. The definition of ''underground storage tank'' at 40 CFR 280.12(i) excludes from its scope a ''storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.'' These tanks might reasonably experience a discharge as described in § 112.1(b). Therefore, it is reasonable that they be within the scope of part 112. Merely because these tanks are the subject of local fire and safety regulations does not guarantee that there will be adequate environmental protection to prevent a discharge as described in § 112.1(b), because that is not the purpose of those regulations. Such codes may provide lesser protection than part 112. For example, NFPA 30:2–3.4.3(b) specifically indicates that a dike need only provide containment for the largest tank, while part 112 requires freeboard for precipitation.

Editorial changes and clarifications. In the proposed rule, this paragraph was designated as § 112.1(b)(3). We have redesignated it as § 112.1(b)(4). Section 112.1(b)(3) of the proposed rule uses the term ''aboveground storage containers,'' in place of ''aboveground storage tanks.'' *See 56* FR 54630. We continue to use ''containers'' in the final rule. We deleted the word ''subterranean,'' which modified vaulted tanks in the proposed rule, because vaulted tanks are considered aboveground tanks under this rule whether they are subterranean or not.

Section 112.1(c)—Federal Agencies—Applicability of Rule

Background. In 1991, we republished the already existing provisions of § 112.1(c), which provide that agencies, departments, and instrumentalities of the Federal government are subject to the rule to the same extent as any person, except for the provisions relating to civil penalties. The provision relating to civil penalties was rescinded on March 11, 1996, because it no longer accurately reflected the penalties provided for under section 311(b) of the Act, as amended by OPA. 61 FR 9646. Therefore, we have reserved § 112.6 for future use.

Comments. One commenter suggested that Federal agencies are subject to civil penalties which are imposed under the CWA—including fines.

Response to comments. EPA disagrees that Federal agencies are subject to penalties or fines under the CWA because the Federal government is not a ''person'' under sections 311(a)(7) or 502 of the CWA. Only ''persons'' (including owners or operators and persons in charge) are subject to such penalties. Therefore, although Federal agencies must comply with requirements of a CWA section 311 rule in accordance with CWA section 313, they are not subject to civil or criminal penalties or fines. *See U.S. Department of Energy* v. *Ohio,* 503 U.S. 607, 618 (1992) (because the CWA does not define ''person'' to include the United States, the civil penalty provisions are not applicable).

Section 112.1(d)—Exemptions From Applicability

Section 112.1(d)(1)—Exemptions Based on Jurisdiction

Section 112.1(d)(1)(i)—Exemptions Based on Location

Background. In 1991, we described the facilities, equipment, and operations that are exempt from the SPCC rule because they are not subject to the jurisdiction of EPA under section 311(j)(1)(C) of the Act. These facilities include those which, due to their location, could not be reasonably expected to have a discharge as described in § 112.1(b).

In making the determination of whether there is a reasonable possibility of a discharge as described in § 112.1(b), we proposed that you may consider only the geographical and locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, *etc.*). We proposed that you could not consider manmade structures such as dikes, equipment, or other structures which may serve to restrain, hinder, or otherwise contain a discharge as described in § 112.1(b), in making that same determination.

Comments. Geographic scope of rule. One commenter agreed that the extension of the geographic scope of the rule will allow for more clarity in determining which facilities are subject to SPCC requirements. The commenter added that the inclusion of natural

resources sets the stage for the implementation of Natural Resource Damage Assessments, as required by the Oil Pollution Act of 1990.

Manmade structures. Other commenters argued that EPA should modify its rules to provide that a facility with no reasonable possibility of discharge because of some combination of natural and manmade features, which are present for operational rather than pollution prevention purposes, should be excluded from the scope of the rule. Another commenter urged that the rule allow consideration of manmade structures where the structures are inherent in the design of the facility and serve functional and operational purposes distinct from the containment of oil spills.

Groundwater. Another commenter argued that Congress intended for EPA to develop SPCC requirements that prevent releases to groundwater, in addition to requirements that prevent releases to navigable water. At a minimum, that commenter argued, § 112.1(d)(1)(i) should contain language stating that clear hydrologic connections between groundwater underlying a facility and navigable waters require a facility to develop and implement an SPCC Plan. Yet another commenter, in opposing exemption of USTs from the SPCC program noted that groundwater eventually becomes surface water. The commenter added that, hydrologically, oil released into underground waters may migrate to surface water within minutes or months. The commenter argued that in the absence of emergency response provisions, some USTs could damage the nation's ground and surface water resources.

Response to comments. Geographic scope of rule. We also believe that few, if any, new facilities will be subject to the rule because of its extension to facilities with the potential to affect certain natural resources. We believe that most affected facilities are either already subject to the rule, or not subject to our jurisdiction due to a Memorandum of Understanding between EPA, the U.S. Department of Transportation (DOT), and the U.S. Department of the Interior (DOI), which assigns jurisdiction over most of those facilities to DOT or DOI. See 40 CFR part 112, Appendix B.

We have amended this provision to be consistent with the revised statutory language found in sections 311(b)(1) and (c)(1)(A) of the CWA. This rule focuses on preventing discharges to navigable waters, adjoining shorelines, the exclusive economic zone, and natural resources belonging to, appertaining to, or under the exclusive jurisdiction of the United States. Once a prohibited discharge of oil occurs and affects such natural resources, the NRDA provisions of OPA sections 1002(b)(2)(A) and 1006 apply. The National Oceanographic and Atmospheric Administration has promulgated a set of regulations which govern the process for conducting NRDAs under the OPA. 15 CFR part 990.

Manmade structures. 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. Secondary containment structures should be part of the prevention plan.

Groundwater. EPA agrees with the commenter that groundwater underlying a facility that is directly connected hydrologically to navigable waters could trigger the requirement to produce an SPCC Plan based on geographic or locational aspects of the facility. *See* the discussion below for tanks regulated under 40 CFR part 280 or under a State program approved under 40 CFR part 281.

EPA does not agree with the commenter that 40 CFR part 280 and a State program approved under 40 CFR part 281 (the rules governing most completely buried tanks) lack adequate emergency response provisions for regulated tanks and piping. 40 CFR part 280 and State programs approved under 40 CFR part 281 require corrective action, reporting, and recordkeeping requirements for any release from regulated tanks and piping. Also, 40 CFR parts 280 and 281 require various measures intended to prevent contamination that could result from releases from regulated tanks and piping. Although groundwater underlying a facility may eventually connect hydrologically to navigable waters, the requirements of 40 CFR part 280 and State programs approved under 40 CFR part 281 are intended to address the prevention of releases from underground storage tanks that might have an impact on groundwater and to require rapid response and corrective action at such sites if they compromise groundwater quality.

Editorial changes and clarifications. The proposed phrase in the first sentence which read, ''* * * could not reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part,'' becomes ''* * * could not reasonably be expected to have a discharge as described in § 112.1(b).'' The proposed phrase in the last sentence of the paragraph which read, ''* * * which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines. * * *'' becomes ''* * * which may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in § 112.1(b).''

Section 112.1(d)(1)(ii)—Exemptions Based on Function—DOT

Background. In 1991, we republished, without substantive change, the current exemption for equipment or operations of vessels or transportation-related onshore and offshore facilities that are subject to the authority and control of the U.S. Department of Transportation (DOT). While we received no comments on the proposal, we believe that this provision merits a few words to clarify the understanding of the regulated community. The Executive Order (EO) implementing the Act assigns regulatory jurisdiction to three Federal agencies based on the function of facilities. Section 2(b)(1) of EO 12777 (56 FR 54757, October 22, 1991) delegates to the Administrator of EPA authority in section 311(j)(1)(C) relating to the establishment of procedures, methods, and equipment, and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities. Section 2(b)(2) of the EO delegates similar authority to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports to the Secretary of Transportation. Section 2(b)(3) of the EO delegates similar authority for offshore facilities, including associated pipelines, other than deepwater ports, to the Secretary of the Interior. A Memorandum of Understanding (MOU) among EPA, DOT, and the U.S. Department of the Interior (DOI), found at Appendix B to part 112, redelegated from DOI to EPA the responsibility for non-transportation-related offshore facilities located landward of the coastline. Similarly the MOU redelegated from DOI to DOT the responsibility for transportation-related offshore facilities, including pipelines, landward of the coastline.

In 1993, we proposed a definition for the term ''complex,'' which is a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section

311(j) of the Clean Water Act. We published that definition on July 1, 1994. 59 FR 34097. A commenter on the definition of ''breakout tank'' (*see also* discussion below on ''breakout tank'') asked for guidance as to which agency, DOT or EPA, regulates such tanks. Because of confusion in the regulated community over which Federal agencies have jurisdiction in complexes, we discuss the issue below.

Complexes. ''Complex'' is defined at § 112.2 as a ''facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.'' The jurisdiction over a component of a complex is determined by the activity occurring at that component. An activity might at one time subject a facility to one agency's jurisdiction, and a different activity at the same facility using the same structure or equipment might subject the facility to the jurisdiction of another agency.

Equipment, operations, and facilities are subject to DOT jurisdiction when they are engaged in activities subject to DOT jurisdiction. If those facilities are also engaged in activities subject to EPA jurisdiction, such activities would subject the equipment, operation, or facility to EPA jurisdiction. An example of an activity subject to EPA jurisdiction would be the loading or unloading of oil into a tank truck or railcar. Under an MOU between EPA and DOT (See Appendix A of part 112), transportation-related activities regulated by DOT and non-transportation-related activities regulated by EPA are defined. The MOU provides that highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate, are considered transportation-related activities, subject to DOT jurisdiction.

Another example of activities that might be considered a complex and therefore subject to both sets of rules is that of a breakout tank which is used for both transportation and non-transportation purposes. It is the activity to which the tank is put that determines jurisdiction. If you are an owner or operator of a complex, while you may not choose which agency will regulate your facility, you may choose not to engage in activities which would subject your facility to the jurisdiction of a particular agency if you do not wish to comply with that agency's rules. Otherwise, if you engage in activities subjecting your facility to the jurisdiction of two agencies, your facility would be subject to the more stringent of rules if there were to be a conflict or an inconsistency in those rules. For example, a facility with breakout tanks used solely to relieve surges in a pipeline, and not having another non-transportation-related activity or component, would not be required to have an SPCC Plan.

Which activity would be subject to DOT jurisdiction and which activity which would be subject to EPA jurisdiction is defined by the MOU in Appendix A to part 112. The definitions in the MOU are keyed to the delegations of authority in EO 12777.

Because regulatory jurisdiction is predicated upon the owner's or operator's activities at the facility, an owner or operator might have questions concerning that jurisdiction at his facility. To clarify regulatory jurisdiction, in February 2000, EPA and DOT signed a policy memorandum that described how the two agencies would work together to bring their respective regulations into alignment and, ultimately, to eliminate overlapping jurisdiction over tanks when possible.

Recently, DOT informed EPA of a voluntary initiative to collect information from industry on breakout tanks, beginning in December 2001. In anticipation of receiving the new tank information, DOT is considering updating the National Pipeline Mapping System (NPMS) data standards to reflect the guidelines for tank data submissions. Operators' data submissions will include the location of each tank farm with breakout tanks, information about each tank, and information about the accuracy of the data. The data will be depicted as a geospatial location in a digital file or a point located on a USGS 1:24,000 topographic quad map.

In addition to upgrading the NPMS, DOT is training its inspectors in tank inspection. In the President's Fiscal Year 2002 budget request, DOT expressed its intent to make tanks a priority in its compliance program, particularly where the tanks are in sensitive areas. DOT and EPA have agreed to provide cross-training of their respective personnel. As the two agencies proceed with tank oversight plans, the goal is to ensure that every tank is regulated and no tank is subject to overlapping regulations from two agencies.

Editorial changes and clarifications. ''EPA Administrator'' becomes ''Administrator of EPA.'' Another revision corrects an incorrect citation to the 1971 MOU between EPA and DOT.

Section 112.1(d)(1)(iii)—Exemptions Based on Function—DOT and DOI

Background. We have added a new paragraph to the applicability section of the rule to note the jurisdictional changes resulting from an MOU between DOT, DOI, and EPA redelegating certain functions. The MOU was published on July 1, 1994 (at 59 FR 34102). The addition of this paragraph is not a substantive change in the rules, but merely an editorial revision to mark the jurisdiction of the respective agencies in this rule. It complements the other paragraphs in § 112.1(d)(1) that describe facilities which are not subject to EPA jurisdiction. Due to the MOU, the referenced facilities, equipment, and operations of DOT and DOI in § 112.1(d)(1)(iii), like the facilities, equipment, and operations described in § 112.1(d)(1)(i) and (ii), are not subject to EPA jurisdiction under section 311(j)(1)(C) of the Act. They are not subject to EPA jurisdiction either because of their location, in the case of DOI facilities, or because of their activities, which are strictly transportation-related, in the case of DOT facilities.

EO 12777 (56 FR 54757, October 22, 1991) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of EO 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) of the CWA defines the term ''offshore facility'' to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf was expanded by EO 12777 to include inland lakes, rivers, streams, and any other inland waters.

Under section 2(i) of EO 12777, DOI redelegated, and EPA and DOT accepted, the functions vested in DOI by sections 2(b)(3), 2(d)(3), and 2(e)(3) of the EO. DOI redelegated to EPA the responsibility for non-transportation-related offshore facilities located landward of the coastline. To DOT, DOI redelegated responsibility for transportation-related facilities, including pipelines, located landward of the coastline. DOT retained jurisdiction for deepwater ports and the associated seaward pipelines. DOI retained jurisdiction over facilities, including pipelines, located seaward of

the coastline, except for deepwater ports and associated seaward pipelines. For purposes of the MOU, the term ''coastline'' means ''the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.''

Section 112.1(d)(2)—Other Exemptions

Section 112.1(d)(2)(i)—Completely Buried Storage Tanks Currently Subject to all of the Technical Requirements of 40 CFR PART 280 or State Programs Approved under 40 CFR PART 281

Background. Part 280 and approved State programs. In 1991, we proposed to exempt from the underground storage capacity of facilities in the SPCC rule the storage capacity of buried underground storage tanks (USTs) currently subject to all of the technical requirements of 40 CFR part 280. We proposed this change as § 112.1(d)(2)(i) in 1991. We did not at the time include approved State programs in the proposal because in 1991 few if any States had such programs. In 40 CFR part 281 (published on September 23, 1988 at 53 FR 37212), EPA established regulations whereby a State could receive EPA approval for its State program to operate in lieu of the Federal program. In order to obtain EPA program approval under part 281, a State program must demonstrate that its requirements are no less stringent than the corresponding Federal regulations set forth in part 280, and that it provides adequate enforcement of these requirements. Thus, we have decided to exempt also the storage capacity of USTs subject to all of the technical requirements of State UST programs which EPA has approved. By January 2000, EPA had approved 27 State programs, plus programs in the District of Columbia and Puerto Rico. The rationale for exempting the storage capacity of these facilities from the SPCC regime is because 40 CFR part 280 and the approved State programs under 40 CFR part 281 provide comparable environmental protection for the purpose of preventing discharges as described in § 112.1(b).

Facilities with storage capacity not subject to part 280 or deferred from its provisions.

Storage capacity not subject to part 280. Some UST facilities have storage capacity that is not subject to part 280, for example: any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous wastes and other regulated substances; wastewater treatment tank systems that are part of a wastewater treatment facility regulated under section 307(b) or 402 of the Clean Water Act; equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks; and, UST systems whose capacity is 110 gallons or less. Also, part 280 does not provide for regulation of USTs storing animal fats and vegetable oils. All of these facilities remain potentially subject to the SPCC program.

Tanks deferred from compliance with part 280 rules. Other facilities with storage capacity subject to part 280 are deferred from current compliance with most of the technical requirements of that part, including: wastewater treatment tank systems; any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); any UST system that is part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 CFR part 50, Appendix A; airport hydrant fuel distribution systems; UST systems with field-constructed tanks; and, any UST system that stores fuel solely for use by an emergency power generator. All of these facilities remain potentially subject to the SPCC program.

Tanks excluded from part 280 UST definition. Excluded from the definition of ''underground storage tank'' or ''UST'' in part 280 are a: (1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; (2) tank used for storing heating oil for consumptive use on the premises where stored; (3) septic tank; (4) pipeline facility (including gathering lines) regulated under: (a) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*), (b) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or (c) which is an intrastate pipeline facility regulated under State law comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979; (5) surface impoundment, pit, pond, or lagoon; (6) storm-water or wastewater collection system; (7) flow-through process tank; (8) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or, (9) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. An UST system includes the tank itself, connected underground piping, underground ancillary equipment, and containment system. Therefore, any of these tank systems may be potentially subject to the SPCC program.

Definitions. EPA proposed to define an UST as any tank which is completely covered with earth. Part 280 includes a broader definition of underground storage tanks, and includes partially buried and bunkered tanks. Partially buried tanks and bunkered tanks are excluded from the definition of ''completely buried tank'' in part 112, and are considered aboveground storage tanks (ASTs) for purposes of the rule, as are tanks in vaults. These tanks are not included in today's exemption because compared to completely buried tanks, partially buried and bunkered tanks are more likely to cause a discharge as described in § 112.1(b).

Although most USTs will be exempt from the SPCC rule (see the above discussion on § 112.1(d)(4)), a facility might have non-exempt USTs for which it must prepare a facility SPCC Plan. If part of your facility is subject to the rule, you must mark the location and contents of all containers, including exempt and non-exempt USTs, on the facility diagram. 40 CFR 112.1(d)(4). The rationale for this requirement is to help response personnel to easily identify dangers from either fire or explosion, or physical impediments during spill response activities. In addition, facility diagrams may be referred to in the event of design modifications. 56 FR 54626.

Capacity calculations. To calculate the 42,000-gallon threshold which subjects a facility operating a completely buried tank to the SPCC rule, you may exclude the storage capacity of any completely buried tank currently subject to all of the technical requirements of 40 CFR part 280 or of an approved State program under 40 CFR part 281. Thus we expect you will count few completely buried tanks containing petroleum products in that calculation. You must count the capacity of completely buried tanks containing products which are not regulated under part 280 or an approved State program under part 281, or which are not currently subject to all of its technical requirements.

Permanently closed tanks. In 1991, EPA proposed that the underground storage capacity of a facility does not include the capacity of underground tanks that are ''permanently closed'' as defined in § 112.2. Under today's rule, you may exclude the capacity of tanks that are permanently closed, as defined in § 112.2, in completely buried tank capacity calculations.

Comments. Completely buried storage tanks. Favorable comments. Commenters overwhelmingly favored eliminating dual regulation of ASTs and USTs. Most agreed that the UST program provides protection comparable to the SPCC program. Several argued that all USTs as defined in part 280, which includes partially buried and bunkered tanks, should be exempted. Others argued that tanks deferred under the UST program should be exempted from the SPCC program. Another commenter suggested that piping connecting exempted USTs to regulated ASTs should be exempted from the SPCC rules. The commenter added that if such piping is subject to leak detection requirements for USTs under 40 CFR part 280, then it should remain exclusively under UST rules and be exempted from SPCC rules.

Opposing comments. Several commenters, however, opposed the proposed exemption of USTs from the SPCC program. Those commenters argued that the SPCC rules are not duplicative. They asserted that UST rules lack provisions concerning contingency planning; emergency response; periodic training of personnel to deal with emergencies; maintenance of records regarding inspections and tests; maintenance of records regarding discharges to navigable waters or adjoining shorelines; diking of fuel transfer areas; fuel transfer area operational procedures; illumination of fuel transfer areas; stormwater drainage system design; posting of vehicle weight restrictions in areas where there is underground piping and/or design of underground piping to withstand vehicular loadings; a requirement for an application of ''good engineering practice,'' in other words, no requirements that the design and construction of a UST system be overseen by a Professional Engineer; a requirement that management sign the Plan; and, ''other topics enumerated in 40 CFR 112.7.'' One commenter noted that since groundwater becomes surface water eventually, whether within minutes or months, the absence of emergency provisions in the UST program might cause environmental problems. Another commenter argued that the new regulatory scheme would be confusing because a facility might have some containers subject to SPCC and some that are not, as well as containers that may be subject to State regulation.

Response to comments. Completely buried storage tanks. As we noted above, in the discussion of § 112.1(d)(1)(i), the UST program provides comparable environmental protection to the SPCC program. While not all aspects of the programs are identical, the UST program ensures protection against discharges as described in § 112.1(b), and protection of the environment. Therefore, dual regulation is unnecessary. In response to commenters asserting that UST rules lack provisions concerning contingency planning; emergency response; certain recordkeeping requirements; and other alleged deficiencies, we disagree. The UST rules have numerous safeguards addressing the commenter's issues.

Partially buried tanks and bunkered tanks. We disagree that partially buried tanks and bunkered tanks should be considered completely buried tanks, and therefore excluded from SPCC provisions. Such tanks may suffer damage caused by differential corrosion of buried and non-buried surfaces greater than completely buried tanks, which could cause a discharge as described in § 112.1(b). Such tanks are also not subject to secondary containment requirements under part 280 or a State program approved under 40 CFR part 281. There may also be accidents during loading or unloading operations, or overfills resulting in a discharge to navigable waters and adjoining shorelines. Furthermore, a failure of such a tank (caused by accident or vandalism) would be more likely to cause a discharge as described in § 112.1(b).

Contingency planning. While it is true that UST rules do not require contingency planning, spills and overfills of USTs resulting in a discharge to the environment are much less likely as a result of those rules. An owner or operator of an underground storage tank subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 was required to install spill and overfill prevention equipment no later than December 22, 1998. 40 CFR 280.20 and 280.21. The use of this equipment will greatly reduce the likelihood of both small and large releases or discharges of petroleum to the environment through surface spills or overfilling underground storage tanks. In addition, the UST rules place a general responsibility on the owner or operator to ensure that discharges due to spilling and overfilling do not occur. See 40 CFR 280.30.

Emergency response and release reporting. The UST rules also have several requirements related to emergency response and release or discharge reporting. The UST rules generally require that releases of regulated substances be reported to the implementing agency within 24 hours. As part of the initial response requirements (found at 40 CFR 280.61), an owner or operator must take immediate action to prevent further release of the regulated substance and must identify and mitigate fire, explosion, and vapor hazards.

Reporting and recordkeeping. In addition to the reporting requirements mentioned above, there are numerous reporting and recordkeeping requirements in the rules governing underground storage tanks. Among these are: corrective action plans; documentation of corrosion protection equipment; documentation of UST system repairs; and, information concerning recent compliance with release detection requirements. Thus, the UST rules have significant reporting and recordkeeping requirements, including specific requirements related to spills and overfills.

Transportation rules. In addition to the EPA UST rules, the U.S. Department of Transportation has hazardous material regulations related to driver training, emergency preparation, and incident reporting and emergency response. Training regulations, for example, can be found at 49 CFR part 172, and loading and unloading regulations can be found at 49 CFR 177.834 and 49 CFR 177.837. These regulations apply, for example, to truck drivers delivering gasoline or diesel fuel to gas stations with underground storage tanks.

Section 112.1(f). Finally, as a safeguard, today's rule (*see* § 112.1(f) in today's preamble) provides the Regional Administrator with the authority to require any facility subject to EPA jurisdiction under section 311 of the CWA, regardless of threshold or other regulatory exemption, to prepare and implement an SPCC Plan when necessary to further the purposes of the Act.

Regulatory jurisdiction. To eliminate any possible confusion over regulatory jurisdiction, we explain in this preamble (see the above background discussion) which containers in a facility are subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 and which are subject to part 112.

Piping, ancillary equipment, and containment systems. EPA has modified the scope of the proposed exemption for completely buried tanks (which are excluded from the scope of the SPCC rule if they are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281) by clarifying that the exemption includes the connected underground piping, underground ancillary equipment, and containment

systems, in addition to the tank itself. This modification is consistent with the definition of underground storage tank system found at 40 CFR 280.12. In addition, this clarification is responsive to the comment which asked that the piping be included in the exemption.

Deferred tanks. We disagree that we should not regulate tanks which are deferred from compliance with any of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281. These are containers from which a discharge as described in § 112.1(b) may occur, and thus are properly subject to the SPCC rule. Furthermore, if they were not regulated by SPCC rules, they may, in some instances, not be regulated at all.

Effect on Facility Response Plan facilities. The exemption for completely buried tanks subject to all the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281 applies to the calculation of storage capacity both for SPCC purposes and for Facility Response Plan (FRP) purposes because the exemption applies to all of part 112. Therefore, a few FRP facilities with large capacity completely buried tanks subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 might no longer be required to have FRPs. Calculations for planning levels for worst case discharges will also be affected. However, the Regional Administrator retains authority to require the owner or operator of any non-transportation-related onshore facility to prepare and submit a FRP after considering the factors listed in § 112.20(f)(2). *See* § 112.20(b)(1).

Editorial changes and clarifications. ''Underground storage tanks'' becomes ''completely buried storage tanks.'' The phrase ''does not include'' becomes ''excludes.'' We have amended the rule to clarify that facilities must be subject to ''all of'' the technical requirements of 40 CFR part 280 or of a State program approved under 40 CFR part 281 to qualify for the SPCC exemption. If a facility is subject to some, but not all of the UST requirements, it may be subject to the SPCC rule. Facilities in this category include those which are excluded from UST requirements, or deferred from compliance with some or all of those requirements.

Section 112.1(d)(2)(ii)—AST Threshold, Minimum Container Size, Permanently Closed Tanks

Background. Regulatory thresholds. In the 1997 preamble, we asked for comment as to whether any change in the level of storage capacity which subjects a facility to this rule is justified. 62 FR 63813. We noted that we were considering eliminating the provision in the current rule that requires a facility having an aboveground container in excess of 660 gallons to prepare an SPCC Plan, as long as the total aboveground capacity of the facility remained at 1,320 gallons or less. The effect of such a change would be to raise the threshold for regulation to an aboveground storage capacity greater than 1,320 gallons.

In 1991, EPA also proposed that the aboveground storage capacity of a facility does not include the capacity of aboveground storage containers that are ''permanently closed'' as defined in § 112.2.

Comments. Minimum size container. Numerous commenters suggested a *de minimis* size for containers to be used for AST capacity calculations. Most of the suggestions came in the context of the discussion of the proposed definition of ''bulk storage tank.'' Suggestions for a minimum size ranged from over 55 gallons to 25,000 gallons. The bulk of the commenters favored either a greater than 55-gallon number, or a greater than 660-gallon figure.

Regulatory thresholds. Higher threshold. Commenters offered numerous threshold levels in both 1991 and 1997. Suggestions for the regulatory threshold in 1991 ranged from greater than 1,320 gallons to 120,000 gallons. Many commenters, particularly utilities, favored thresholds in the 10,000–42,000-gallon range. In 1997, when EPA suggested it might consider a greater than 1,320-gallon threshold, many commenters favored that suggestion. Others urged thresholds ranging up to 15,000 gallons.

Lower threshold. A few commenters suggested lowering the threshold. Commenters suggested threshold levels of 110 and 250 gallons. The general rationale for these suggestions was that oil spills causing even a sheen can be devastating. Therefore, these commenters reasoned that sheens from home heating oil tanks of 110 gallons, i.e., two 55-gallon drums, are every bit as important as sheens from crude oil tanks. An advocate for a lower threshold noted that manufacturers now sell, market, and produce fuel containers of 650 gallons designed to avoid compliance with the rule, whether the site is adjacent to navigable waterways or not. The commenter added that most manufacturers market or sell a ''listed'' tank of 250 gallons, and that under current rules, five of these tanks would not subject a facility to the SPCC rule, yet the risk would be nearly identical to one larger tank of 1,250 gallons depending upon the design of the tank.

Response to comments. Minimum container size. In response to comments, we are introducing a minimum container size. The 55 gallon container is the most widely used commercial bulk container, and these containers are easily counted. Containers below 55 gallons in capacity are typically end-use consumer containers. Fifty-five gallon containers are also the lowest size bulk container that can be handled by a human. Containers above that size typically require equipment for movement and handling. We considered a minimum container size of one barrel. However, a barrel or 42 gallons is a common volumetric measurement size for oil, but is not a common container size. Therefore, it would not be appropriate to institute a 42 gallon minimum container size.

You need only count containers of 55 gallons or greater in the calculation of the regulatory threshold. You need not count containers, like pints, quarts, and small pails, which have a storage capacity of less than 55 gallons. Some SPCC facilities might therefore drop out of the regulated universe of facilities. You should note, however, that EPA retains authority to require any facility subject to its jurisdiction under section 311(j) of the CWA to prepare and implement an SPCC Plan, or applicable part, to carry out the purposes of the Act.

While some commenters had suggested a higher threshold level, we believe that inclusion of containers of 55 gallons or greater within the calculation for the regulatory threshold is necessary to ensure environmental protection. If we finalized a higher minimum size, the result in some cases would be large amounts of aggregate capacity that would not be counted for SPCC purposes, and would therefore be unregulated, posing a threat to the environment. We believe that it is not necessary to apply SPCC or FRP rules requiring measures like secondary containment, inspections, or integrity testing, to containers smaller than 55 gallons storing oil because a discharge from these containers generally poses a smaller risk to the environment. Furthermore, compliance with the rules for these containers could be extremely burdensome for an owner or operator and could upset manufacturing operations, while providing little or no significant increase in protection of human health or the environment. Many of these smaller containers are constantly being emptied, replaced, and relocated so that serious corrosion will likely soon be detected and undetected leaks become highly unlikely. While we realize that small discharges may harm

the environment, depending on where and when the discharge occurs, we believe that this measure will allow facilities to concentrate on the prevention and containment of discharges of oil from those sources most likely to present a more significant risk to human health and the environment.

Effect on Facility Response Plan facilities. The exemption for containers of less than 55 gallons applies to the calculations of storage capacity both for SPCC purposes and for FRP purposes because the exemption applies to all of part 112. Therefore, a few FRP facilities might no longer be required to have FRPs. The calculations for planning levels for worst case discharges would also be affected.

Regulatory thresholds. We have decided to raise the current regulatory threshold, as discussed in the 1997 preamble, to an aggregate threshold of over 1,320 gallons. We believe that raising the regulatory threshold is justified because our Survey of Oil Storage Facilities (published in July 1996, and available on our Web site at *www.epa.gov/oilspill*) points to the conclusion that several facility characteristics can affect the chances of a discharge. First, the Survey showed that as the total storage capacity increases, so does the propensity to discharge, the severity of the discharge, and the costs of cleanup. Likewise, the Survey also pointed out that as the number of tanks increases, so does the propensity to discharge, the severity of the discharge, and the costs of cleanup. Finally, the Survey showed that as annual throughput increases, so does the propensity to discharge, the severity of the discharge, and, to a lesser extent, the costs of the cleanup.

The threshold change will have several benefits. The threshold increase will result in a substantial reduction in information collection associated with the rule overall. Some smaller facilities will no longer have to bear the costs of an SPCC Plan. EPA will be better able to focus its regulatory oversight on facilities that pose a greater likelihood of a discharge as described in § 112.1(b), and a greater potential for injury to the environment if a discharge as described in § 112.1(b) results.

We raise the regulatory threshold realizing that discharges as described in § 112.1(b) from small facilities may be harmful, depending on the surrounding environment. Among the factors remaining to mitigate any potential disasters are that small facilities no longer required to have SPCC Plans are still liable for cleanup costs and damages from discharges as described in § 112.1(b). We encourage those facilities exempted from today's rule to maintain SPCC Plans. Likewise, we encourage facilities becoming operable in the future with storage or use capacity below the regulatory threshold to develop Plans. We believe that SPCC Plans have utility and benefit for both the facility and the environment. But, we will no longer by regulation require Plans from exempted facilities.

While we believe that the Federal oil program is best focused on larger risks, State, local, or tribal governments may still decide that smaller facilities warrant regulation under their own authorities. In accord with this philosophy, we note that this Federal exemption may not relieve all exempted facilities from Plan requirements because some States, local, or tribal governments may still require such facilities to have Plans. While we are aware that some States, local, or tribal governments have laws or policies allowing them to set requirements no more stringent than Federal requirements, we encourage States, local, or tribal governments to maintain or lower regulatory thresholds to include facilities no longer covered by Federal rules where their own laws or policies allow. We believe that CWA section 311(o) authorizes States to establish their own oil spill prevention programs which can be more stringent than EPA's program.

Regulatory safeguard. When a particular facility that is below today's threshold becomes a hazard to the environment because of its practices, or when needed for other reasons to carry out the Clean Water Act, the Regional Administrator may, under a new rule provision, require that facility to prepare and implement an SPCC Plan. See § 112.1(f). This provision acts as a safeguard to an environmental threat from any exempted facility.

Editorial changes and clarifications. The reference to ''underground storage tanks'' was deleted because it is unnecessary. A reference to the exemption of certain ''completely buried'' storage tanks from the rules is contained in § 112.1(d)(4).

Section 112.1(d)(3)—Minerals Management Service Facilities

Background. In 1991, EPA proposed to exempt from the SPCC rule facilities subject to Minerals Management Service (MMS) Operating Orders, notices, and regulations. The rationale for the 1991 proposal was to avoid redundancy in regulation, based on EPA's analysis that MMS Operating Orders require adequate spill prevention, control, and countermeasures that are directed more specifically to the facilities subject to MMS requirements. Until October 22, 1991, the date of the 1991 proposed rule, responsibility for the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil from offshore facilities, including associated pipelines, other than deepwater ports subject to the Deepwater Ports Act, was delegated to EPA. Under EO 12777 (56 FR 54747, October 22, 1991), responsibility for the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil from offshore facilities, including associated pipelines, other than deepwater ports subject to the Deepwater Ports Act, was redelegated to the U.S. Department of the Interior (DOI). These facilities are generally offshore oil production or exploration facilities.

In 1994, in another Memorandum of Understanding (MOU) found in Appendix B of part 112, EPA, DOI, and DOT redelegated the responsibility to regulate non-transportation-related offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA.

Because of the redelegation of responsibility, some DOI facilities again became subject to the jurisdiction of EPA under section 311(j)(1)(C) of the Act. We added a reference to the MOU in the rule.

Comments. Most commenters favored the proposed exemption because they believed that MMS orders, notices, and regulations require oil spill prevention and contingency planning equivalent to the environmental protection envisioned by EPA's rules. Two commenters, both States, opposed the proposal. One was concerned with MMS' ''historic treatment of identified violations.'' The other suggested that the more stringent of EPA or MMS regulations apply.

Response to comments. We have retained our original proposal, except for the editorial revision, because we believe that MMS will provide equivalent environmental protection for the facilities under its jurisdiction. MMS regulations require adequate spill prevention, control, and countermeasures that are directed more specifically to the facilities subject to MMS requirements.

Editorial changes and clarifications. The term ''Operating Orders'' becomes ''regulations.''

Section 112.1(d)(4)—Completely Buried Storage Tanks

Background. This paragraph is a companion paragraph to § 112.1(d)(2)(i) for purposes of SPCC exemption. As in § 112.1(d)(2)(i), we have also exempted connected underground piping, underground ancillary equipment, and containment systems subject to all of the technical requirements of part 280 or a State program approved under 40 CFR part 281. We also added a clause noting that these exempted tanks must be marked on the facility diagram as provided in § 112.7(a)(3), if the facility is otherwise subject to this part. See the discussion above concerning § 112.1(d)(2)(i).

Editorial changes and clarifications. ''Underground storage tanks'' becomes ''completely buried storage tanks.'' We also reference 40 CFR part 281.

Section 112.1(d)(5)—Minimum Size Exemption

Background. This is a new section we added in response to comments pertaining to the regulatory threshold/minimum container size issue discussed above. This section clarifies that any aboveground or completely buried container with capacity of less than 55 gallons is not subject to the rule. It is a companion rule to § 112.1(d)(2)(ii) for purposes of SPCC exemption. See the discussion above concerning § 112.1(d)(2)(ii).

Section 112.1(d)(6)—Wastewater Treatment Facility Exemption

Background. In 1991, EPA proposed various changes to § 112.1(d) concerning exemptions to part 112, and received comments on its proposals. Among those comments was one suggesting an exemption for certain treatment systems.

Comments. One commenter suggested that the ''§ 112.1 exceptions should be expanded to include facility storage and treatment tanks associated with 'non-contact cooling water systems' and/or 'storm water retention and treatment systems.' Although these tanks are designed to remove spilled oil from manufacturing operations and parking lot runoff, the concentration of oil in the water at any given time would be insignificant. These tanks are typically very large, *i.e.,* in excess of 100,000 gallons, and are typically not contained by diked walls or impervious surfaces. GM believes the cost to contain these structures could be better spent on other SPCC regulatory requirements.''

Response to comments. We agree with the commenter that certain wastewater treatment facilities or parts thereof should be exempted from the rule, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. We have therefore amended the rule to reflect that agreement. No longer subject to the rule would be wastewater treatment facilities or parts thereof such as treatment systems at POTWs and industrial facilities treating oily wastewater.

Many of these wastewater treatment facilities or parts thereof are subject to NPDES or state-equivalent permitting requirements that involve operating and maintaining the facility to prevent discharges. 40 CFR 122.41(e). The NPDES or state-equivalent process ensures review and approval of the facility's: plans and specifications; operation/maintenance manuals and procedures; and, Stormwater Pollution Prevention Plans, which may include Best Management Practice Plans (BMP).

Many affected facilities are subject to a BMP prepared under an NPDES permit. Some of those plans provide protections equivalent to SPCC Plans. BMPs are additional conditions which may supplement effluent limitations in NPDES permits. Under section 402(a)(1) of the CWA, BMPs may be imposed when the Administrator determines that such conditions are necessary to carry out the provisions of the Act. *See* 40 CFR 122.44(k). CWA section 304(e) authorizes EPA to promulgate BMPs as effluent limitations guidelines. NPDES rules provide for BMPs when: authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances; numeric limitations are infeasible; or, the practices are reasonably necessary to achieve effluent limitations and standards to carry out the purposes of the CWA. In addition, each NPDES or state equivalent permit for a wastewater treatment system must contain operation and maintenance requirements to reduce the risk of discharges. 40 CFR 122.41(e).

Additionally, some wastewater is pretreated prior to discharge to a permitted wastewater treatment facility. The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through or interfere with the operation of POTWs. The General Pretreatment Regulations (GPR), which set for the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. The GPR prohibit a user from introducing a pollutant into a POTW which causes pass through or interference. 40 CFR 403.5(a)(1). More specifically, the GPR also prohibit the introduction into of POTW of ''petroleum, oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through. 40 CFR 403.5(b)(6). EPA believes that the GPR and the more specific categorical pretreatment standards, some of which allow indirect dischargers to adopt a BMP as an alternative way to meet pretreatment standards, will work to prevent the discharge of oil from wastewater treatment systems into navigable waters or adjoining shorelines by way of a POTW.

However, if a wastewater facility or part thereof is used for the purpose of storing oil, then there is no exemption, and its capacity must be counted as part of the storage capacity of the facility. Any oil storage capacity associated with or incidental to these wastewater treatment facilities or parts thereof continues to be subject to part 112. At permitted wastewater treatment facilities, storage capacity includes bulk storage containers, hydraulic equipment associated with the treatment process, containers used to store oil which feed an emergency generator associated with wastewater treatment, and slop tanks or other containers used to store oil resulting from treatment. Some flow through treatment such as oil/water separators have a storage capacity within the treatment unit itself. This storage capacity is subject to the rule. An example of a wastewater treatment unit that functions as storage is a treatment unit that accumulates oil and performs no further treatment, such as a bulk storage container used to separate oil and water mixtures, in which oil is stored in the container after removal of the water in the separation/treatment process.

We do not consider wastewater treatment facilities or parts thereof at an oil production, oil recovery, or oil recycling facility to be wastewater treatment for purposes of this paragraph. These facilities generally lack NPDES or state-equivalent permits and thus lack the protections that such permits provide. Production facilities are normally unmanned and therefore lack constant human oversight and inspection. Produced water generated by the production process normally contains saline water as a contaminant in the oil, which might aggravate environmental conditions in addition to the toxicity of the oil in the case of a discharge.

Additionally, the goal of an oil production, oil recovery, or oil recycling facility is to maximize the production or recovery of oil, while eliminating impurities in the oil, including water, whereas the goal of a wastewater

treatment facility is to purify water. Neither an oil production facility, nor an oil recovery or oil recycling facility treats water, instead they treat oil. For purposes of this exemption, produced water is not considered wastewater and treatment of produced water is not considered wastewater treatment. Therefore, a facility which stores, treats, or otherwise uses produced water remains subject to the rule. At oil drilling, oil production, oil recycling, or oil recovery facilities, treatment units subject to the rule include open oil pits or ponds associated with oil production operations, oil/water separators (gun barrels), and heater/treater units. Open oil pits or ponds function as another form of bulk storage container and are not used for wastewater treatment. Open oil pits or ponds also pose numerous environmental risks to birds and other wildlife.

Examples of wastewater treatment facilities or parts thereof used to meet a part 112 requirement include an oil/water separator used to meet any SPCC requirement. Oil/water separators used to meet SPCC requirements include oil/water separators used as general facility secondary containment (*i.e.,* § 112.7(c), secondary containment requirements for loading and unloading (*i.e.,* § 112.7(h)), and for facility drainage (*i.e.,* § 112.8(b) or § 112.9(b)).

Whether a wastewater 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 (except at an oil production, oil recovery, or oil recycling facility) used exclusively for wastewater treatment and not used to meet any part 112 requirement is exempt from part 112. Storage or use of oil at such a facility will continue to be subject to part 112.

Although we exempt wastewater treatment facilities or parts thereof from the rule under certain circumstances, a mixture of wastewater and oil still is ''oil'' under the statutory and regulatory definition of the term (33 U.S.C. 1321(a)(1) and 40 CFR 110.2 and 112.2). Thus, while we are excluding from the scope of the rule certain wastewater treatment facilities or parts thereof, a discharge of wastewater containing oil to navigable waters or adjoining shorelines in a ''harmful quantity'' (40 CFR part 110) is prohibited. Thus, to avoid such discharges, we would expect owners or operators to comply with the applicable permitting requirements, including best management practices and operation and maintenance provisions.

Proposed § 112.1(e)—Facility Notification

Background. In 1991, EPA proposed to require that any facility subject to its jurisdiction under the Clean Water Act which also meets the regulatory storage capacity threshold notify the Agency on a one-time basis of its existence. CWA section 311(m) provides EPA with the authority to require the owner or operator of a facility subject to section 311 to make reports and provide information to carry out the objectives of section 311. Any owner or operator who failed to notify or knowingly submitted false information in a notification would be subject to a civil penalty. This type of notice is separate from the notice required at 40 CFR 110.3 of discharges which may be harmful to the public health or welfare or the environment. We did not propose any changes to the notice requirements in § 110.3.

We proposed that facility notification include, among other items, information concerning the number, size, storage capacity, and locations of ASTs. The proposal would have exempted information regarding the number and size of completely buried tanks, as defined in § 112.2, from the notification requirement. The rationale for notification was that submission of this information would be needed to help us identify our universe of facilities and to help us administer the Oil Pollution Prevention Program by creating a data base of facility-specific information. We also asked for comments regarding the form on which notification would be submitted, and on various possible items of information that could be included besides the ones proposed. Lastly, we asked for comments on alternate forms of facility notification. 56 FR 54614–15.

Comments. Favorable comments. A number of commenters favored the proposal, including some industry commenters. These commenters stated that there was generally no current procedure whereby EPA can identify the universe of sites subject to the SPCC rule, and that an inventory of these facilities is necessary.

Opposing comments. Most industry commenters opposed the proposal either in part or in its entirety.

Sources of information. Commenters who opposed the proposal in its entirety asserted that it was unnecessary, largely because they believed the information sought might be better obtained from other sources, such as State sources or SARA Title III reports. Some States wanted copies of the notifications EPA would receive, and at least one suggested requiring updates. One commenter suggested that we gather the information through representative sampling at on-site surveys. Another commenter suggested that we use spill reports already submitted because it makes more sense to regulate those facilities whose practices have led to a spill.

Applicability. Other commenters criticized the fact that the proposal would have been applicable to facilities which were not subject to the SPCC rule. Their solution was to limit applicability to facilities currently regulated under part 112.

Terrorism. One commenter suggested that the aggregation of such strategic information in an easily accessed data base like a facility notification data base could provide an intelligence windfall to terrorists and other enemies of our nation.

Small facilities. Commenters for small facilities argued that facility notification would cause a deluge of notifications to be sent to EPA with little or no environmental benefit. Some of these commenters suggested exempting small facilities at various levels of storage capacity, for example, 42,000 gallons or 100,000 gallons.

Notification time line. In particular, commenters questioned various aspects of the proposal. Many questioned the necessity of providing the information within the proposed two months time frame. Some commenters suggested other time periods ranging from ''more than two months'' to 18 months. However, the bulk of the commenters favored a six month period for facility notification if notification were to be required. Others favored a ''phase-in'' of the requirements.

Who must notify. Some commenters asked who must notify, the owner or operator. They noted that these might be different persons. One commenter suggested that the operator of the facility, the owner of any improvements at the facility, and the owner of the land at the facility should be required to submit facility notification. The commenter argued that the United States government is the landowner most prejudiced by the absence of a requirement of landowner involvement in the preparation of an SPCC plan because an owner or operator can prepare a minimal SPCC Plan and not even inform the landowner of it.

Location issues. Others questioned the proposed requirement for the name, address, and zip code of the facility, arguing that provision of such information was not always possible,

especially in remote rural areas. Some noted that drilling rigs move from location to location as often as every few months. Commenters suggested alternatives such as use of longitude and latitude, or the Universal Transverse Mercator system, or a mailing address.

Storage capacity. A number of commenters had concerns about the requirement for the total number and size of ASTs, and the total AST capacity of the facility. Commenters noted that there was no space on the form for containers less than 250 gallons. Other commenters asked if additions to storage capacity would trigger a new notification. Some commenters believed that storage capacity could be measured by SARA Title III information.

Distance to navigable waters. The proposed requirement to detail the distance to the nearest navigable water elicited many comments. Some commenters noted that there was no definition of navigable waters on the form, making it difficult for some responders to answer the question. Others asserted that making the determination on distance to navigable waters was a difficult one due to litigation concerning the definition of the term. Yet other commenters thought that we should specify a minimum distance to navigable waters, on the theory that only facilities within a certain distance would have a reasonable possibility of discharge to such waters.

Classification of facilities. One commenter noted that exploration and production facilities rarely have Dun & Bradstreet numbers, and that the information received from Dun & Bradstreet might be irrelevant for our purposes. Regarding the reporting of Standard Industrial Classification codes (SIC) (now replaced by North American Industry Classification System (NAICS) codes), commenters asserted that EPA used inaccurate codes, that no codes were listed for edible oil facilities, and that the codes listed were misleading in that they did not cover all possible industries regulated.

Use of oil. Permanently closed containers. Facilities using primarily oil-filled equipment, not bulk storage containers, asked whether they too were covered by the notification proposal. Other commenters asked for clarification as to whether permanently closed tanks were covered by the proposal.

Possible additional items. There were numerous comments on various additional items for which EPA had requested comment, but which were not included in the proposal. Possible additional items included: latitude and longitude of the facility; location of environmentally sensitive areas and potable water supplies; presence of secondary containment; spill history; leak detection equipment and alarms; age of the tanks; potential for adverse weather; and, for field verification purposes, a requirement to have storage facilities placarded or similarly identified. Most commenters opposed the inclusion of additional items. Several supported these additions as well as the addition of other information, particularly information concerning tank materials, methods of construction (for example, field-or shop-erected) and substance stored.

Response to comments. Withdrawal of proposal. We have decided to withdraw the proposed facility notification requirement because we are still considering issues associated with establishing a paper versus electronic notification system, including issues related to providing electronic signatures on the notification. Should the Agency in the future decide to move forward with a facility notification requirement, we will repropose such requirement.

Section 112.1(e)—Proposed as § 112.1(f)—Compliance With Other Laws

Background. While today's rule is substantially similar to the current one, EPA suggested in the 1991 preamble that facility owners consider industry standards in preparing SPCC Plans. 56 FR 54617.

Comments. State rules. Several States wrote to ask EPA to be as consistent with current State rules as possible. One industry commenter complained that EPA rules were more stringent than some State rules. Other industry commenters opposed either State or Federal regulation, or both.

Industry standards. Several commenters wrote to urge that EPA incorporate industry standards into the rule, on the theory that if EPA wants to require these standards, they must be incorporated into the rule. Others wrote to urge the inclusion of specific standards, such as fire codes or steel tank codes.

Response to comments. State rules. Section 311(o)(2) of the CWA specifically provides that nothing in section 311 ''shall be construed as preempting any State or political subdivision thereof from imposing any requirements or liability with respect to the discharge of oil * * *.'' We are aware that Federal rules often set the standard for State rules, and at least set a floor for State rules. Under CWA section 311(o)(2), States are free to impose more stringent standards relating to prevention of oil discharges, or none at all. EPA encourages States to set up their own oil pollution prevention programs because we believe that oil pollution prevention efforts should be a joint Federal-State effort.

Industry standards. Under this rule, a facility is required to at least consider the use of all relevant measures, including the use of industry standards, as a way to implement those measures. The requirement comes in the language of revised § 112.3(d)(1)(iii) requiring the PE to attest that ''the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part.'' A facility should use industry standards whenever possible in preparing and implementing its SPCC Plan, and should discuss their use in Plans. While facility owners or operators should look to specific industry standards as a guide for preparing SPCC Plans, we do not believe that incorporating specific standards into this rule is appropriate. Such incorporation freezes standards into rules, which may swiftly become outdated or obsolete.

Editorial changes and clarifications. The new introductory language is, ''This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans.'' The new language covers all SPCC requirements, both general and specific. That language replaces ''This part provides for * * *.'' The phrase ''Plans prepared in accordance with §§ 112.7, 112.8, 112.9, 112.10, and 112.11'' was eliminated because new introductory language makes it unnecessary.

Section 112.1(f)—Proposed as § 112.1(g)—Plans for Exempted Facilities

Background. This is a new section, proposed in 1993, that allows the Regional Administrators (RAs) to require preparation of entire an SPCC Plan, or applicable part, by the owner or operator of an otherwise exempted facility, that is subject to the jurisdiction of EPA under section 311(j) of the CWA. The proposal stems from the 1988 Interagency SPCC Task Force and subsequent GAO report, ''Inland Oil Spills'' (GAO/RCED–89–65).

Comments. Authority. One commenter called the proposal ''arbitrary and capricious'' and feared political use of the authority. Some commenters questioned EPA authority for the proposal.

Standard to use authority. One commenter favored the proposal and suggested that we look at additional physical characteristics of the facility in order to make a determination to require the owner or operator to prepare an SPCC Plan. Other commenters asserted that the standards for requiring Plans need to be specified, or that ''good cause'' be the standard.

Response Plans. One commenter urged a ''vastly abbreviated'' version of this section in the event that the Regional Administrator requires a small Appalachian facility to prepare a facility response plan in addition to an SPCC Plan, because the ''extensive requirements outlined in the appendices and attachments have little applicability'' to a small Appalachian oil field storage facility. The commenter added that the availability of secondary containment at most Appalachian facilities mitigates many of the requirements of the complete response plan which is directed towards large oil storage tanks.

Appeals process. Other commenters called for an appeals process, and specification of time frames within which the RA must act.

Response to comments. Authority. EPA believes that it has adequate authority under section 311 of the CWA to require any facility within its jurisdiction to prepare a Plan that could because of its location, cause a discharge as described in § 112.1(b). This authority is broad enough to encompass the storage or use capacity of any exempted facility within EPA's jurisdiction, regardless of size.

Standard to use authority. RAs may invoke this section to carry out the purposes of the Act on a case-specific basis when it is needed to prevent a discharge as described in § 112.1(b), and thus protect the environment. While we expect to use this section sparingly, it is necessary to address gaps in other regulatory regimes that might best be remedied by requiring a facility to have an SPCC Plan. Factors the RAs may consider in making a determination that a facility needs an SPCC Plan include, but are not limited to, the physical characteristics of the facility, the presence of secondary containment, the discharge history of the facility, and the proximity of the facility to sensitive environmental areas such as wetlands, parks, or wildlife refuges. An example of the use of this section might be when a facility is exempted from SPCC rules because its storage capacity is below the regulatory threshold, but the facility has been the cause of repeated discharges as described in § 112.1(b). The RA might require an entire Plan, or might only require a partial Plan addressing secondary containment, for example, to prevent future discharges as described in § 112.1(b).

Partial Plans. We clarify that the RA may require partial Plans to cover situations where the preparation of only a partial Plan may be necessary, such as to supplement an existing document other than a Plan or to address a particular environmental threat. The decision to require a Plan (or partial Plan) could be based on the presence of environmental concerns not adequately addressed under UST or NPDES regulations, or due to other relevant environmental factors. The section may be invoked when the RA determines it is necessary to ''carry out the purposes of the Act.''

The decision to require a partial Plan is separate from a decision to require an amendment to a Plan. In one case, the assumption is that a Plan doesn't exist; in the other, that an existing Plan needs amendment.

Response Plans. Section 112.1(f) applies only to the total or partial preparation of an SPCC Plan. It does not authorize the Regional Administrator to require you to prepare a facility response plan. We have withdrawn a proposal (see 1993 proposed § 112.7(d)(1)) which would have required you to prepare a response plan when your SPCC facility lacked secondary containment. Therefore, most facilities will incur no response planning costs. Instead, if your facility lacks secondary containment, you must prepare a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d). As a result, requirements to prepare a facility response plan are contained solely in § 112.20, and not § 112.1(f).

Appeals process. We agree that an appeals process is appropriate for this section. Therefore we have added a new paragraph (f)(5) to include such a process, and have provided time frames for the process. The appeals process is modeled upon current § 112.4(f), which we reproposed in 1991 and have finalized today.

Editorial changes and clarifications. We deleted the proposed requirement to ''submit'' a Plan in paragraph (f)(2), because we only require submission of Plans in certain circumstances, such as when there has been a discharge(s) as described in § 112.1(b) over the threshold amount provided for in § 112.4(a), and the RA believes that submission of the Plan is necessary. We do not require Plan submission as a general rule.

Section 112.2—Definitions

Background. Definitions proposed in 1993 and 1999, and promulgated in the Facility Response Plan rule of 1994 and 2000 are reprinted in the rule for the convenience of the reader. No substantive changes were made to those definitions and they are not discussed further in this preamble, except where we made editorial changes in today's rule. The discussion for those editorial changes, and for proposed definitions that were not already finalized in the 1994 and 2000 FRP rule, follows.

Adverse Weather

Editorial changes and clarifications. We have made slight editorial changes to this definition, none of which are substantive. In the first sentence, the phrase ''will be considered'' becomes ''must be considered.'' In the second sentence, the phrase ''as appropriate'' is placed in parentheses.

Alteration

Background. In 1993, we proposed a definition of ''alteration'' in conjunction with the proposed rule for ensuring against brittle fracture. We proposed the definition of ''alteration'' to mean ''any work on a tank or related equipment involving cutting, burning, welding, or heating operations that changes the physical dimensions or configuration of a tank.''

Comments. One commenter suggested that we conform the proposed definition of ''alteration'' with the API 653 definition, specifically deleting the phase ''or related equipment.''

Response to comments. Related equipment. We agree with the commenter and will not include the term ''or related equipment'' in the definition to conform with API Standard 653, which does not include alterations of related equipment as a criterion for brittle fracture evaluation. In the preamble to the 1993 proposal, we gave examples of alteration that included the addition of manways and nozzles greater than 12-inch nominal pipe size and an increase or decrease in tank shell height. 58 FR 8843.

Industry Standards. An industry standard that may be helpful in understanding the definition of ''alteration'' is API Standard 653, ''Tank Inspection, Repair, Alteration, and Reconstruction.''

Editorial changes and clarifications. ''Tank'' becomes ''container.''

Breakout tank

Background. We proposed this definition and the definition of ''bulk storage tank'' in 1991 to clarify the distinction between facilities regulated

by DOT and EPA. Breakout tanks are used mainly to compensate for pressure surges or to control and maintain pressure through pipelines. They are also sometimes used for bulk storage. These tanks are frequently in-line, and may be regulated by EPA, DOT, or both. When a breakout tank is used for both storage and for pipeline control, it becomes in itself a ''complex,'' and is regulated as such. See the discussion on ''complexes'' in today's preamble at § 112.1(d)(1)(ii).

Comments. A number of commenters suggested that EPA adopt the DOT definition of breakout tank. Another commenter asked for guidance as to which agency, DOT or EPA, regulates such tanks.

Response to comments. On the suggestion of commenters, EPA has adopted a modified version of the DOT definition in 49 CFR 195.2. This revision promotes consistency in the DOT and EPA definitions to aid the regulators and regulated community. We modified the DOT definition by substituting the word ''oil'' for ''hazardous liquid,'' because our rules apply only to oil. We also use in the definition the term ''container'' rather than just ''tank'' to cover any type of container. This terminology is consistent with other terminology used in this rule.

A breakout tank that is used only to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline is subject only to DOT jurisdiction. When that same breakout tank is used for other purposes, such as a process tank or as a bulk storage container, it is no longer solely within the definition of breakout tank, and may be subject to EPA or other jurisdiction with the new use.

EPA and DOT also signed a joint memorandum dated February 4, 2000, clarifying regulatory jurisdiction on breakout tanks. That memorandum is available to the public upon request. It is also available on our Web site at *http://www.epa.gov/oilspill* under the ''What's New'' section.

Bulk Storage Container—Formerly Bulk Storage Tank

Background. Along with ''breakout tank,'' we proposed this definition in 1991 to help clarify the distinctions between facilities regulated by EPA and those regulated by DOT. The proposed definition was originally for ''bulk storage tank.'' As explained below, we changed the definition to ''bulk storage container.''

Comments. Many electric utility commenters urged that EPA explicitly exclude electrical equipment from the definition because such equipment is not bulk storage. Other commenters asked for a minimum size to which the definition should apply.

Response to comments. We agree that electrical equipment is not bulk storage. See the above discussion on the applicability of the rule to electrical and other operating equipment under § 112.1(b). See also the definition of ''bulk storage container'' in § 112.2. For a discussion of minimum size containers to which the rule applies, see the discussion under § 112.1(d)(2)(ii).

Editorial changes and clarifications. ''Tank'' becomes ''container'' because ''container'' is more accurate. Many containers storing oil are not tanks, but provide bulk storage. A bulk storage container may be either aboveground, partially buried, bunkered, or completely buried.

The definition of ''bulk storage container'' adopted in today's rule should not be confused with the definitions of ''container'' used in several fire codes. Sometimes those codes limit a container to one below a certain size. See for example, the BOCA National Fire Prevention Code, section F–2302.1 (1999) and NFPA 30 section 1–6 (1996). The definition adopted in today's rule is broader than the definitions in the codes in that it is not limited to a particular amount of storage capacity.

We also clarify in today's rule that oil-filled electrical, operating, or manufacturing equipment is not a bulk storage container.

Bunkered Tank

Background. We proposed this definition in 1991 to clarify that bunkered tanks are a subset of partially buried tanks, and as such, subject to part 112 as aboveground tanks.

Comments. One commenter wrote that the definition is ''undecipherable and should be rewritten.'' The commenter wrote that the definition should be, ''Bunkered tank means a partially buried tank, the portion of which lies above grade is covered with earth, sand, gravel, asphalt, or other material.''

Response to comments. EPA agrees that the commenter's proposed definition is clearer, and we have used it with slight editorial changes.

Editorial changes and clarifications. We added a sentence to the definition noting that bunkered tanks are a subset of aboveground storage containers for purposes of this part.

Completely Buried Tank—Proposed as ''Underground Storage Tank''

Background. In 1991, we proposed adding a definition for ''underground storage tank.'' It differed from the Underground Storage Tank (UST) program definition in 40 CFR part 280 because it excluded tanks which are partially buried or bunkered, as well as some other tanks or containers included within the part 280 definition, such as containers storing certain hazardous substances. Partially buried and bunkered tanks still have a potential to discharge oil into navigable waters, adjoining shorelines, or affecting natural resources. Therefore, we proposed to retain those tanks within our regulatory jurisdiction, while we proposed to exclude all completely buried tanks storing petroleum that are subject to all of the technical requirements of the UST program (40 CFR part 280 or a State program approved under 40 CFR part 281).

Comments. Consistency with the definition of underground tanks in 40 CFR part 280. One commenter supported the proposal. A number of commenters thought that the definitions of underground tanks in parts 112 and 280 should be consistent.

Vaulted tanks. Commenters divided on whether subterranean vaulted tanks should be considered ASTs or USTs. The commenter opposing the treatment of subterranean vaulted tanks as ASTs in the UST definition argued that discharges from those tanks pose no threat to the environment or public health.

Response to comments. Consistency with the definition of underground tanks in 40 CFR part 280. We disagree that the scope of the part 112 exclusion for underground tanks should be consistent with the scope of the definition of ''underground storage tank'' in part 280. The programs are designed for different purposes, therefore, the definitions used will necessarily differ. To eliminate confusion with the part 280 definition, we have changed the proposed part 112 definition of ''underground storage tank'' to ''completely buried tank'' in this final rule.

Part 280 includes within its UST definition tanks which have a volume up to ninety percent above the surface of the ground, which are considered aboveground tanks for part 112 purposes. Part 280 also regulates underground storage tanks containing hazardous substances, while the SPCC program regulates only facilities storing or using oil as defined in CWA section 311. The SPCC program regulates

facilities with relatively large completely buried storage capacity, while the bulk of facilities regulated under part 280 are small capacity facilities such as gasoline filling stations. The SPCC program also regulates other types of containers and facilities which part 280 excludes, such as: tanks used for storing heating oil for consumptive use on the premises where stored; certain pipeline complexes where oil is stored; and, oil-water separators.

Vaulted tanks. Aboveground vaulted tanks are clearly ASTs. While subterranean vaulted tanks may be completely below grade, they may not be completely covered with earth. Because of their design, they pose a threat of discharge into the environment, and are thus excluded from our definition of completely buried tank. Subterranean vaulted tanks are also excluded from the part 280 UST definition of underground tank if the storage tank is situated upon or above the surface of the floor in an underground are providing enough space for physical inspection of the exterior of the tank. Therefore, if subterranean tanks were excluded from our definition of completely buried tank, they would likely not be regulated at all, and thereby be likely to pose a greater threat to the environment.

Other completely buried tanks excluded from the part 280 UST definition. Tanks in underground rooms or above the floor surface, or in other underground areas such as basements, cellars, mine workings, drifts, shafts, or tunnels are also not considered USTs for purposes of the part 280 definition. The purpose of the part 112 definition is to clarify that these are tanks that are technically underground but that, in a practical sense, are no different from aboveground tanks. They are situated so that, to the same extent as tanks aboveground, physical inspection for leaks is possible. Also, some of these tanks are designed such that in case of a discharge, oil would escape to navigable waters or adjoining shorelines, a result which our program seeks to prevent.

Editorial changes and clarifications. The words ''completely below grade and * * *'' were added to the first sentence of the definition. The purpose of that revision was to distinguish completely buried tanks from partially buried and bunkered tanks, which break the grade of the land, but are not completely below grade. We further clarify that such tanks may be covered not only with earth, but with sand, gravel, asphalt, or other material. The clarification brings the definition into accord with the coverings noted in the definition of ''bunkered tank.'' In the second sentence, the word ''subterranean'' was deleted from ''subterranean vaults'' because all vaulted tanks, whether subterranean or aboveground, are counted as aboveground tanks for purposes of this rule.

Contiguous Zone

Background. The definition of ''contiguous zone'' was proposed in 1991 to conform with 1978 amendments to the CWA, and the 1990 amendments to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) dealing with the scope of discharges. EPA received no substantive comments. Thus, we have finalized the proposed definition.

The contiguous zone is the area that extends nine miles seaward from the outer limit of the territorial sea. A presidential proclamation of December 17, 1988 (No. 5928, 54 FR 777, January 9, 1989) extended the territorial seas of the United States to 12 nautical miles from the baselines of the United States as determined in accordance with international law. However, the proclamation provided that nothing therein ''extends or otherwise alters existing federal or state law or any jurisdiction, rights, legal interests, or obligations derived therefrom * * *.''

Contract or Other Approved Means

Editorial changes and clarifications. We corrected the title of the definition to read ''contract or other approved means,'' in place of ''contract or other approved.'' We also changed some plural references to singular ones.

Discharge

Background. The 1991 proposed changes to the definition of ''discharge'' reflected changes to the statutory definition in the 1978 amendments to the CWA. For clarity, the words ''of oil'' were added in the first sentence because the definition applies only to discharges of oil.

Comments. One commenter asked for a clarification of the term ''discharge.'' The commenter asked whether a drop of diesel fuel that fell onto the outside casing of a tank during refilling would be considered a ''discharge,'' even if the oil did not reach the ground. Other commenters recommended that the definition include at least an imminent danger that the spilled material would reach a navigable waterway. Another commenter asked EPA to exempt from the definition those discharges regulated under the CWA, such as National Pollutant Discharge Elimination System (NPDES) discharges. The rationale was that any potential environmental impacts of these discharges have been considered in the issuance of a facility's NPDES permit and there is no reason to subject such facilities to dual regulation.

Response to comments. A discharge includes, but is not limited to, any ''spilling, leaking, pumping, pouring, emitting, emptying, or dumping,'' of oil. A discharge as described in § 112.1(b) need not reach the level of an imminent danger to affected lands, waters, or resources to be a discharge. It includes any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of any amount of oil no matter where it occurs. It may not be a reportable discharge under 40 CFR part 110 if oil never escapes the secondary containment at the facility and is promptly cleaned up. If the discharge escapes secondary containment, it may become a discharge as described in § 112.1(b), and if that happens, the discharge must then be reported to the National Response Center.

Foreseeable or chronic point source discharges that are permitted under section 402 of the CWA, and that are either due to causes associated with the manufacturing or other commercial activities in which the discharger is engaged or due to the operation of the treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. Other oil discharges in reportable quantities are subject to the requirements of section 311 of the CWA. Such spills or discharges are governed by section 311 even where the discharger holds a valid and effective NPDES permit under CWA section 402. Therefore, a discharge of oil to a publicly owned treatment work (POTW) would not be a discharge under the § 112.2 definition if the discharge is in compliance with the provisions of the permit; or resulted from a circumstance identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402; or if it were a continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402, which is caused by events occurring within the scope of relevant operating or treatment systems. 33 U.S.C. 1321(a)(2); 40 CFR 117.12. Otherwise, the discharge is subject to the provisions of section 311 of the CWA as well as the unpermitted discharge prohibition of section 301(a) of the CWA. 33 U.S.C. 1311(a).

Editorial changes and clarifications. We have revised the citation for the River and Harbor Act of 1899 so that it refers only to the U.S. Code, and have

deleted the reference to the Statutes at Large.

Facility

Background. Because we regulate facilities in the SPCC rule, we proposed a definition of ''facility'' in 1991. It is based on the Memorandum of Understanding (MOU) between the Secretary of DOT and the EPA Administrator, dated November 24, 1971 (36 FR 24080). A discussion of the types of facilities covered is found in Appendix A to this rule.

Comments. Facility boundaries. One commenter asked for clarification as to whether the facility is the petroleum storage site or a single tank at the site.

Electrical or operational equipment. Utility commenters argued that electrical equipment is not a facility because no oil is being stored in the equipment.

Buried pipelines, gathering lines, flowlines, waste treatment equipment. One commenter urged that buried pipelines at mining sites should be excluded from the definition because such pipelines are often put in place without recording their location. The commenter added that typically the lines are emptied and abandoned as part of final reclamation. Other commenters urged the exclusion of gathering lines and flowlines from the definition because of the cost of providing secondary containment and contingency planning for such lines. Another commenter protested the inclusion of waste treatment as a possible activity covered under the definition, and therefore the rule.

Mobile or fixed facilities. One commenter urged that mobile equipment be excluded from the definition because the commenter believed that the SPCC Plan would otherwise have to be amended each time the mobile equipment is moved.

Response to Comments. Facility boundaries. A facility includes any building, structure, installation, equipment, pipe or pipeline in oil well drilling operations, oil production, oil refining, oil storage, and waste treatment, or in which oil is used at a site, whether it is mobile or fixed. It may also include power rights of way connected to the facility. The extent of the facility will vary according to the circumstances of the site. It may be as small as a single container or as large as all of the structures and buildings on a site. Some specific factors to use in determining the extent of a facility may be the ownership or operation of those buildings, structures, equipment, installations, pipes or pipelines, or the types of activities being carried on at the facility.

Electrical or operational equipment. We disagree with commenters who maintained that electrical equipment ''using'' oil as opposed to ''storing'' it should not fall within the definition of ''facility'' in part 112. Section 311(j)(1)(C) of the CWA, which authorizes EPA to promulgate the SPCC rule, does not distinguish between the storage and the usage of oil. The section simply authorizes EPA, as delegated by the President, to establish ''requirements to prevent discharges of oil * * * from onshore and offshore facilities, and to contain such discharges * * *.'' 33 U.S.C. 1321(j)(1)(C). Nor do the definitions of ''onshore facility'' or ''offshore facility'' in sections 311(a)(10) of the CWA distinguish between the use or storage of oil. Although the definition of ''facility'' in section 1001(9) of the OPA is limited by the ''purpose'' of the facility, no such limitation appears in CWA section 311. Moreover, EPA believes that although much of the electrical equipment may arguably ''use'' oil, in effect the oil is ''stored'' in the equipment because it remains in the equipment for such long time frames. We added language to the definition to clarify that such types of equipment are facilities subject to the SPCC rule whether they are storing or using oil. Therefore, we revised the definition to include the words ''or in which oil is used.'' However, we note that a facility which contains only electrical equipment is not a bulk storage facility.

Buried pipelines, gathering lines, flowlines, waste treatment equipment. Buried pipelines that carry oil at mining sites are part of a facility unless they are permanently closed as defined in § 112.2. Such pipelines may otherwise be the source of a discharge as described in § 112.1(b). Likewise, the same rationale applies to gathering lines and flowlines, and waste treatment equipment. Note that any facility or part thereof used exclusively for wastewater treatment and not to satisfy any part 112 requirement is exempted from the rule. The production, recovery, or recycling of oil is not considered wastewater treatment for purposes of the rule. *See* § 112.1(d)(6).

While such gathering lines, flowlines, and waste treatment equipment are subject to secondary containment requirements, the appropriate method of secondary containment is an engineering question. Double-walled piping may be an option, but is not required by these rules. The owner or operator and Professional Engineer certifying the Plan should consider whether pursuant to good engineering practice, double-walled piping is the appropriate method of secondary containment according to good engineering practice. In determining whether to install double-walled piping versus an alternative method of secondary containment, you could consider such factors as the additional effectiveness of double-walled piping in preventing discharges, the technical aspects of cathodically protecting any buried double-walled piping system, the cost of installing double-walled pipe, and the potential fire and safety hazards of double-walled pipes. Earthen or natural structures may be acceptable if they contain and prevent discharges as described in § 112.1(b), including containment that prevents discharge of oil through groundwater that might cause a discharge as described in § 112.1(b). What is practical for one facility, however, might not work for another.

Mobile or fixed facilities. Either mobile or fixed equipment might be the source of a discharge as described in § 112.1(b), and therefore both are included within the definition of ''facility.'' Section 112.3(c) of this rule already provides that it is not necessary to amend your Plan each time a mobile facility moves to a new site.

Editorial changes and clarifications. In the first sentence we added the words ''oil gathering, oil processing, oil transfer, oil distribution'' to the list of activities listed. The added activities track the activities listed in § 112.1(b). We also clarify that a vessel or a public vessel is not a facility or part of a facility. We deleted the word ''may'' in the second sentence of the definition regarding site-specific factors of facility boundaries, because it is redundant with the inclusion of the words, ''including, but not limited to.''

Fish and Wildlife and Sensitive Environments

Editorial changes and clarifications. We made four editorial changes. We deleted the word ''either'' in the first sentence because it is unnecessary. ''Endangered/threatened species'' becomes ''endangered or threatened species.'' We also deleted the colon in the last sentence because it is unnecessary. ''Discharges of oil'' becomes ''discharges.''

Maximum Extent Practicable

Editorial changes and clarifications. In the first sentence the phrase ''the limitations used to determine'' becomes ''within the limitations used to determine.'' In the beginning of second sentence, ''It considers * * *.'' becomes ''It includes* * *.''

Navigable Waters

Background. We proposed a revision of the definition of ''navigable waters'' in 1991. The rationale was to have the part 112 definition track the definition of ''navigable waters'' in 40 CFR part 110, which deals with the discharge of oil.

Comments. Clarification of the meaning of navigable waters, maps. A number of commenters asked for a clarification of the definition of navigable waters because of the difficulty of determining which waters fall within the definition. Some asked for EPA maps to aid in this determination.

Navigability, legal authority. Other commenters believed that the definition related to navigability. Some thought the definition was legally unsupportable because it is so broad. One commenter suggested that the term be limited to unobstructed streams that free flow at least fourteen consecutive days per year.

Wetlands. Another commenter believed that the definition should not apply to wetlands because SPCC protections are not needed when wetlands are regulated under a permit program.

Response to comments. Clarification of the meaning of navigable waters, maps. In this definition, we clarify what we mean by navigable waters by describing the characteristics of navigable waters and by listing examples of navigable waters. We also note in the definition that certain waste treatment systems are not navigable waters.

We are unable to provide a map to identify all navigable waters because not all such waters have been identified on a map. However, the rule provides guidelines as to where such waters may be found.

Navigability, legal authority. Navigable waters are not only waters on which a craft may be sailed. Navigable waters include all waters with a past, present, or possible future use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide. Navigable waters also include intrastate waters which could affect interstate or foreign commerce. The case law supports a broad definition of navigable waters, such as the one published today, and that definition does not necessarily depend on navigability in fact.

Wetlands. We disagree that SPCC regulation of wetlands is redundant. The definition includes wetlands, as defined in § 112.2 and discussed below, because wetlands are waters of the United States. Different programs serve different purposes, and merely because an activity or function is regulated for one purpose (for example, NPDES) does not mean that regulation for another purpose is redundant. The purpose of a permit discharge system is waste treatment and management. The purpose of the SPCC rule is oil pollution prevention.

Offshore Facility

Background. EPA proposed in 1991 to revise the definition of ''offshore facility'' to conform with the CWA and NCP definitions.

Comments. EPA or DOI jurisdiction. One commenter noted that if the definition of offshore facility is taken in context with the definition of navigable waters, then many facilities traditionally subject to EPA jurisdiction would become subject to DOI authority.

CWA definition. Another commenter suggested that the EPA definition should instead be that contained in CWA section 311(a)(11).

Response to comments. EPA or DOI jurisdiction. The 1994 Memorandum of Understanding between DOI, DOT, and EPA addresses the jurisdictional issue to which the commenter refers, transferring to EPA those non-transportation-related offshore facilities landward of the coastline.

CWA definition. EPA agrees with the commenter urging that the EPA definition track the statutory definition. The part 112 definition, except for minor editorial changes, is identical to the CWA definition. There is no difference between the substance of the part 112 definition and the CWA definition.

Editorial changes and clarifications. Permanently moored vessels and other former transportation equipment. We also note that barges which store oil, and have been determined by the Coast Guard to be permanently moored, are no longer vessels, but storage containers that are part of an offshore facility. Likewise, a container, whether onshore or offshore, which was formerly used for transportation, such as a truck or railroad car, which now is used to store oil, is no longer used for a transportation purpose, and is a bulk storage container.

Oil

Background. In 1991, EPA reprinted the definition of oil without suggesting any changes. In response to Edible Oil Regulatory Reform Act (EORRA) of 1995 (33 U.S.C. 2720) requirements, we have reworded the definition to include the categories of oil included in EORRA. Those categories are: (1) Petroleum oils, (2) animal fats and vegetable oils; and, (3) other non-petroleum oils and greases. Animal fats include fats, oils, and greases of animal origin (for example, lard and tallow), fish (for example, cod liver oil), or marine mammal origin (for example, whale oil). Vegetable oils include oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels. Examples of vegetable oils include: corn oil, rapeseed oil, coconut oil, palm oil, soy bean oil, sunflower seed oil, cottonseed oil, and peanut oil. Other non-petroleum oils and greases include coal tar, creosote, silicon fluids, pine oil, turpentine, and tall oils. Petroleum oils include crude and refined petroleum products, asphalt, gasoline, fuel oils, mineral oils, naphtha, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

EORRA requires that Federal agencies establish separate classes for at least these three types of oils. It further requires agencies to differentiate between those classes of oil in relation to their environmental effects, and their physical, chemical, biological, and other characteristics. EPA has provided new subparts within part 112 to facilitate differentiation between the categories of oil listed in EORRA. In an advance notice of proposed rulemaking, published on April 8, 1999 (64 FR 17227), we requested ideas on how to differentiate among the SPCC requirements for facilities storing or using the various categories of oil. These ideas for further differentiation will be considered in a future rulemaking.

Today's amendments to the definition and the creation of subparts have no effect on information collection, because we already include all types of oil in our information collection burden calculations. Similarly, the definition imposes no new requirements, because all oils have always been subject to the substantive requirements of the rule.

Comments. What is oil. Several commenters favored the proposed 1991 definition, which is identical to the current definition. Some asked for clarification as to its scope, particularly in reference to animal and vegetable oils, synthetic oils, mineral oils, and petroleum derivatives.

Specific substances. Others asked about specific substances like aromatic hydrocarbons and asphaltic cement. One commenter asked if bilge water is oil.

Authority. Some commenters suggested that EPA's authority did not extend beyond petroleum-based oils.

Exclusions. Some commenters sought exclusions from the definition, generally based on contentions that certain oils (such as vegetable oils) are not harmful

to the environment if discharged. One commenter suggested a definition based on the liquidity of oil, founded on a rationale that solid or gaseous oils do not pose a threat to waters of the United States when discharged at a fixed facility. Another commenter urged that we exempt refined petroleum products from the definition because releases from many of these products are regulated by other statutes, such as the Solid Waste Disposal Act. One State commenter noted that animal and vegetable oils are not subject to regulation under that State's statutes regulating oil.

Oil mixed with wastes or hazardous substances. Others asked for clarification as to whether mixed substances, used oil, and waste oils were oil.

Part 280 definition. One commenter noted the difference in definitions between the part 112 definition and the definition in 40 CFR part 280.

Response to comments. What is oil. EPA interprets the definition of oil to include all types of oil, in whatever form, solid or liquid. That includes synthetic oils, mineral oils, vegetable oils, animal fats, petroleum derivatives, etc.

Specific substances. As to certain specific substances, asphaltic cement is oil because it is a petroleum-based product and exhibits oil-like characteristics. A discharge of asphaltic cement may violate applicable water quality standards, or cause a film or sheen or discoloration of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. Aromatic hydrocarbons may or may not be oil, depending on their physical characteristics and environmental effects. Some aromatic hydrocarbons are hazardous substances. Bilge water that contains sufficient oil such that its discharge would violate the standards set out in 40 CFR 110.3 is considered oil. The percentage of oil concentration in the water is not determinative for the purpose of the definition or the discharge standards.

Authority. We disagree that our authority only extends to petroleum-based oils. Our interpretation is consistent with Congressional intent as expressed in section 311(a)(1) of the CWA, which extends to all types of oils in any form. EPA's definition tracks that statutory definition. Our revised definition also reflects EORRA requirements for differentiation. EORRA did not expand or contract the universe of substances that are oils, it only required differentiation, when necessary, between the requirements for facilities storing or using different types of oil.

Exclusions. While States may choose to regulate all oils or some oils, the CWA definition is designed to prevent the discharge of all oils.

A definition based on liquidity would exclude solid oils, such as certain animal fats, a result that would be inconsistent with Congressional intent. Concerning gaseous oils, see our discussion on *Highly volatile liquids* below.

While releases or discharges of some refined petroleum products may be regulated under the Solid Waste Disposal Act as waste products, that program is dedicated more to waste management, and does not regulate storage of non-waste oil.

All oils, including animal fats and vegetable oils, can harm the environment in many ways. Oil can coat the feathers of birds, the fur of mammals and cause drowning and hypothermia and increased vulnerability to starvation and predators from lack of mobility.

Oils can act on the epithelial tissue of fish, accumulate on gills, and prevent respiration. The oil coating of surface waters can interfere with natural processes, oxygen diffusion/reaeration and photosynthesis. Organisms and algae coated with oil may settle to the bottom with suspended solids along with other oily substances that can destroy benthic organisms and interfere with spawning areas.

Oils can increase biological or chemical oxygen demand and deplete the water of oxygen sufficiently to kill fish and other aquatic organisms.

Oils can cause starvation of fish and wildlife by coating food and depleting the food supply. Animals that ingest large amounts of oil through contaminated food or preening themselves may die as a result of the ingested oil. Animals can also starve because of increased energy demands needed to maintain body temperature when they are coated with oil.

Oils can exert a direct toxic action on fish, wildlife, or their food supply. Oils can taint the flavor of fish for human consumption and cause intestinal lesions in fish from laxative properties. Tainted flavor of fish used for human consumption and the causation of rancid odors are public health or welfare concerns within the scope of our rules. Tainted flavor of fish used for human consumption may indicate a disease in the fish which could render them inedible and thus have a substantial impact on the fishermen who harvest them and communities who may rely on them for a food supply.

Oils can foul shorelines and beaches. Oil discharges can create rancid odors. Rancid odors may cause both health impacts and environmental impacts. For example, the 1991 Wisconsin Butter Fire and Spill resulted in a discharge of melted butter and lard. After the cleanup was largely completed, the Wisconsin Department of Natural Resources declared as hazardous substances the thousands of gallons of melted butter that ran offsite and the mountain of damaged and charred meat products spoiling in the hot sun and creating objectionable odors. The Wisconsin DNR stated that these products posed an imminent threat to human health and the environment. 62 FR 54526.

Highly volatile liquids. We do not consider highly volatile liquids that volatilize on contact with air or water, such as liquid natural gas, or liquid petroleum gas, to be oil. Such substances do not violate applicable water quality standards, do not cause a reportable film or sheen or discoloration upon the surface of water or adjoining shorelines, do not cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, and are not removable. Therefore, there would be no reportable discharge as described in 40 CFR 110.3.

Oil mixed with wastes or hazardous substances. Oil means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

Part 280 definition. The definition of petroleum in 40 CFR part 280 is a subset of the part 112 definition of ''oil.'' The part 112 definition of oil is broader than the part 280 definition of petroleum because part 112 regulates all types of oils, whereas part 280 regulates only petroleum.

Oil drilling, production, or workover facilities (offshore)

Background. See the definition of ''production facility,'' into which this definition has been merged.

Oil Production Facilities (Onshore)

Background. See the definition of ''production facility,'' into which this definition has been merged.

Onshore Facility

Background. As proposed, we deleted as unnecessary surplus the reference to the facility not being transportation-

related. There were no substantive comments.

Partially Buried Tank

Background. In 1991, EPA proposed the definition of ''partially buried tank'' to clarify the distinction between partially buried tanks and underground storage tanks. We have renamed underground tanks in this rule as ''completely buried tanks,'' i.e., those tanks completely covered with earth. Partially buried tanks are subject to the SPCC rule the same as aboveground containers.

Comments. One commenter wrote that the definition as proposed was ''undecipherable'' and should be rewritten. That commenter suggested another definition for clarity. Two other commenters suggested that we adopt the part 280 UST definition for partially buried tank, which includes any tank system such as tank and piping which has a volume of 10 percent or more beneath the surface of the ground.

Response to comments. We agree that the definition could be clearer and have clarified it. We decline to adopt the part 280 UST definition (at 40 CFR 280.12) and to classify partially buried tanks as completely buried tanks, because they are not. The UST definition might also exclude some tanks or containers which would be covered by the SPCC definition. The UST definition includes tanks whose volume (including the volume of underground pipes connected thereto) are 10 percent or more beneath the surface of the ground. The SPCC definition of ''partially buried tank'' contains no volume percentage and applies to any tank that is partially inserted or constructed in the ground, but not entirely below grade, and not completely covered with earth.

Editorial changes and clarifications. We clarify that partially buried tanks may be covered not only with earth, but with sand, gravel, asphalt, or other material. The clarification brings the definition into accord with the coverings noted in the definition of ''bunkered tank.'' We added a sentence to the definition noting that partially buried tanks are considered aboveground storage containers for purposes of this part.

Permanently Closed

Background. EPA proposed a definition of ''permanently closed'' in 1991 to clarify the scope of facilities and tanks or containers excluded from coverage under the SPCC rule. Permanently closed containers are those containers which are no longer capable of storing or using oil. Permanently closed facilities are those facilities which are no longer capable of storing or using oil.

In permanently closed containers and facilities, physical changes have been made so that storage capacity or use is rendered impossible. Therefore, the definition describes those changes which must have occurred before a container or facility is ''permanently closed.''

Comments. In general. Several commenters favored the proposed definition. Others opposed it as unnecessary, believing that ''if a tank is not used for the storage of oil, it simply is not subject to the provisions of the SPCC regulations.'' Finally, several commenters suggested that the definition specifically exclude temporarily closed tanks.

Waste disposal. Several commenters urged that the part of the proposal that dealt with waste disposal be deleted because waste disposal is already covered under other programs and should not be a concern of spill prevention unless flowable oil is part of the waste.

Non-oil products. One commenter asked for clarification that a container which is no longer used for oil but is used for some non-oil product be considered permanently closed.

Connecting lines. Another commenter asked for clarification as to the meaning of connecting lines. The commenter assumed that connecting lines means the sections of pipe that run between the tank and the nearest block valve.

Explosive vapors. Numerous commenters urged that EPA delete any rules dealing with explosive vapors on the theory that such vapors are regulated by the Occupational Health and Safety Administration (OSHA) program and other programs. Many of these same commenters suggested that placing a sign on a tank indicating that it has been freed of gas is not a good safety practice because gas might subsequently build up within the tank with catastrophic results.

Retroactivity. Several commenters suggested that the requirements for a tank to be permanently closed should not be applied retroactively to tanks previously removed from service. The rationale was that the cost would be prohibitive, although commenters did not provide specific cost estimates, and that it might cause confusion as to which tanks would have to be included in facility capacity calculations. These commenters also asserted that such tanks have been abandoned and empty, sometimes for many years, and pose no threat of discharge.

Response to comments. In general. A definition is necessary to clarify when a container is permanently closed and no longer used for the storage of oil. Containers that are only closed temporarily may be returned to storage purposes and thus may present a threat of discharge. Therefore, they will continue to be subject to the rule.

Waste disposal. Reference to waste disposal in accordance with Federal and State rules in proposed § 112.2(o)(1) was deleted as unnecessary surplus. EPA agrees that other programs adequately handle waste disposal.

Non-oil products. Containers that store products other than oil and never store oil, are not subject to the SPCC rule whether they are ''permanently closed'' as defined or not. If the containers sometimes store oil and sometimes store non-oil products, they are subject to the rule.

Connecting lines. We agree with the commenter's assumed definition of connecting lines. Connecting lines that have been emptied of oil, and have been disconnected and blanked off, are considered permanently closed.

Explosive vapors. We deleted proposed § 112.2(o)(2) on the suggestion of commenters that references to explosive vapors are an OSHA matter and inappropriate for EPA rules. We modified proposed § 112.2(o)(3) to eliminate the reference to signs warning that ''vapors above the LEL are not present,'' because the operator cannot guarantee that warning remains correct. To help prevent a buildup of explosive vapors, we have revised the definition to provide that ventilation valves need not be closed. We agree with commenters that a sign might be misleading and dangerous.

Retroactivity. We believe that containers that have been permanently closed according to the standards prescribed in the rule qualify for the designation of ''permanently closed,'' whether they have been closed before or after the effective date of the rule. Containers that cannot meet the standards prescribed in the rule will not qualify as permanently closed. We disagree that the cost of such closure is prohibitive. We have simplified the proposal and deleted the proposed requirement to render the tank free of explosive vapor. Therefore, costs are lower. To clarify when a container has been closed, we have amended the rule to require that the sign noting closure show the date of such closure. The date of such closure must be noted whether it occurred before or after the effective date of this provision. Some States and localities require a permit for tank closure. A document noting a State closure inspection may serve as

evidence of container closure if it is dated.

Industry standards. Industry standards that may be useful to effect the permanent closure of containers or facilities include: (1) National Fire Protection Association (NFPA) 30, ''Flammable and Combustible Liquids Code''; (2) Building Officials and Code Administrators International (BOCA), ''National Fire Prevention Code''; (3) American Petroleum Institute (API) Standard 2015, ''Safe Entry and Cleaning of Petroleum Storage Tanks''; and, (4) API Recommended Practice 1604, ''Removal and Disposal of Used Underground Petroleum Storage Tanks.''

Editorial changes and clarifications. ''Tank'' becomes ''container.'' We revised the introduction to the definition to remove the phrase ''that has been closed'' because the definition would have been circular with that language. Instead the introduction references the events which must have occurred in order for a container to meet the definition.

Person

Background. The definition of ''person'' proposed in 1991 was substantively unchanged from the current rule.

Comments. We received one comment which urged that we should make clear that the United States is bound by every provision of these rules.

Response to comments. See the discussion above (at § 112.1(c)) for the applicability of the rule to Federal agencies and facilities.

Production Facility

Background. The definition of ''production facility'' replaces two definitions in the proposed rule, i.e., Oil drilling, production, or workover facilities (offshore), proposed § 112.2(j), and Oil production facilities (onshore), proposed § 112.2(k). We replaced the two proposed definitions with the revised definition for editorial brevity as the proposed definitions contained many identical elements. This editorial effort effects no substantive changes in the requirements for the particular types of production facilities. Each facility must follow the requirements applicable to that facility, which is generally based on its operations, for example, a workover facility.

Comments. Flowlines and gathering lines. Several commenters suggested that flowlines and gathering lines should be deleted from the definition because they believed that the installation of structures and equipment to prevent discharged oil from reaching navigable waters is not practicable for flowlines and gathering lines.

Wells and separators. Other commenters also argued for the exemption of wells and separators.

DOT definition. Another commenter urged consistency between the proposed EPA definition and the DOT definition found at 49 CFR 195.2.

Single oil or gas field, single operator. One commenter asserted that the inclusion of the phrases ''in a single oil or gas field'' and ''operated by a single operator'' in the definition is confounding. The commenter urged that the producing segment of the industry needs to be able to combine facilities into one SPCC Plan with an identification of the wells to which that Plan applies. The commenter questioned whether the inclusion of the word ''single'' would preclude an operator's ability to do so.

Natural gas. Another commenter asked for clarification that natural gas processing facilities are not subject to rules for oil facilities.

Response to comments. Flowlines and gathering lines. Wells and separators. EPA disagrees that flowlines and gathering lines, as well as wells and separators, should be excluded from the definition. These structures or equipment are integral parts of production facilities and should therefore be included in the definition. We also disagree with the argument that because the installation of structures and equipment to prevent discharges around gathering lines and flowlines may not be practicable, EPA will be flooded with contingency plans. First of all, secondary containment may be practicable. In § 112.7(c), we list sorbent materials, drainage systems, and other equipment as possible forms of secondary containment systems. We realize that in many cases, secondary containment may not be practicable. If secondary containment is not practicable, you must provide in your SPCC Plan a contingency plan following the provisions of part 109, and otherwise comply with § 112.7(d). We have deleted the proposed 1993 provision that would have required you to provide contingency plans as a matter of course to the Regional Administrator. Therefore, you will rarely have to submit a contingency plan to EPA. The contingency plan you do provide in your SPCC Plan when secondary containment is not practicable for flowlines and gathering lines should rely on strong maintenance, corrosion protection, testing, recordkeeping, and inspection procedures to prevent and quickly detect discharges from such lines. It should also provide for the quick availability of response equipment.

DOT definition. We changed the proposed definition to be more consistent with the DOT definition, found at 49 CFR 195.2, in response to a commenter who urged consistency in EPA and DOT definitions. We added the uses of the piping and equipment detailed in DOT rule to our proposal, for example, ''production, extraction, recovery, lifting, stabilization, separation, or treating'' of oil. The terms ''separation equipment,'' used in the proposed definition of ''oil production facilities (onshore)'', and ''workover equipment,'' used in the proposed definition of ''oil drilling, production, or workover facilities (offshore)'', were combined into a generic ''equipment.'' However, we also modified the proposed definition to reflect EPA jurisdiction. We added the word ''structure,'' which was not in the DOT definition, to cover necessary parts of a production facility. We also added examples of types of piping, structures, and equipment. These examples are not an exclusive list of the possible piping, structures, or equipment covered under the definition. The new definition encompasses all those facilities that would have been covered under both former proposed definitions. As we proposed in 1991, and as in the current rule, we have retained geographic and ownership limitations.

Single oil or gas field, single operator. ''A single geographical oil or gas field'' may consist of one or more natural formations containing oil. The determination of its boundaries is area-specific. Such formation may underlie one or many facilities, regardless of whether any natural or man-made physical geographical barriers on the surface intervene such as a mountain range, river, or road. We disagree that the term ''a single operator'' is confusing. An ''owner'' or ''operator'' is defined in § 112.2 as any ''person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained such facility immediately prior to abandonment.'' A ''person'' is not restricted to a single natural person. ''Person'' is a defined term in the rule (at § 112.2) which includes an individual, firm, corporation, association, or partnership.

Nothing in the definition would preclude an owner or operator from combining elements of a production facility into one SPCC Plan with an identification of the wells to which that Plan applies.

Natural gas. Because natural gas is not oil, natural gas facilities that do not store or use oil are not covered by this rule. However, you should note, that drip or condensate from natural gas production is an oil. The storage of such drip or condensate must be included in the calculation of oil stored or used at the facility.

Editorial changes and clarifications. One commenter suggested that the definitions proposed were ambiguous because of the use of the words ''may include.'' We have eliminated the potential ambiguity caused by the words ''may include'' by revising the definition with the words ''Production facility means.''

Regional Administrator

Background. In 1991, we proposed a definition of ''Regional Administrator'' that was substantively unchanged from the current rule. In the final rule, we have deleted language concerning the ''designee'' of the EPA Regional Administrator because the language is unnecessary. Since the Regional Administrator has authority to delegate most functions, the term ''designee'' is almost always implied. When he does not have authority to delegate a function, the term ''designee'' is likewise unnecessary. We received no substantive comments.

Repair

Background. In 1993, we proposed a definition of ''repair'' in conjunction with the proposed rule for brittle fracture evaluation.

Comments. Ordinary maintenance. Two commenters asked for clarification of the term ''repair,'' so that it would exclude ordinary day-to-day maintenance activities which are conducted to maintain the functional integrity of the tank. Another asked that the infinitive ''to maintain'' be deleted from the definition of repair so that evaluation for brittle fracture would not be required after ordinary, day-to-day maintenance.

Related equipment. Another commenter suggested that we conform the proposed definition of ''repair'' with the API 653 definition, specifically deleting the phase ''or related equipment.''

Response to comments. Ordinary maintenance. Some repairs in the nature of ordinary maintenance that do not weaken the integrity of the container might not necessitate brittle fracture evaluation. ''Repair'' means any work necessary to maintain or restore a container or related equipment to a condition suitable for safe operation. Typical examples of a repair that would trigger a brittle fracture evaluation include the removal and replacement of material (such as roof, shell, or bottom material, including weld metal) to maintain tank integrity; the re-leveling or jacking of a tank shell, bottom, or roof; the addition of reinforcing plates to existing shell penetrations; and the repair of flaws, such as tears or gouges, by grinding or gouging followed by welding. The definition of ''repair'' also includes reconstruction. Reconstruction means the work necessary to reassemble a container that has been dismantled and relocated to a new site. We have amended the definition to reflect that ordinary, day-to-day maintenance that does not weaken the integrity of the container will not trigger the brittle fracture evaluation requirement.

Related equipment. We agree with the commenter and will not include the term ''or related equipment'' in the definition to conform with API Standard 653, which does not include repairs of related equipment as a criterion for a brittle fracture evaluation.

Industry standards. Industry standards that may be helpful in understanding the definition of repair (and reconstruction) include API Standard 653, ''Tank Inspection, Repair, Alteration, and Reconstruction.''

Editorial changes and clarifications. ''Tank'' becomes ''container.''

Spill Event

Background. In 1991, we proposed to modify the definition of ''spill event'' to correspond to the changes described in the applicability section of this rule (i.e., § 112.1(b)) relating to the expanded scope of CWA jurisdiction.

Comments. One commenter opposed the definition without explaining why. Several commenters argued that the definition should apply only to discharges to navigable waters.

Response to comments. We have withdrawn the proposed definition of ''spill event,'' and have also deleted the term from the rule. We take this action because the term is not mentioned in the CWA and is unnecessary. The term is unnecessary because the word ''discharge'' is adequate. ''Discharge'' is the term used in the CWA. A discharge as described in § 112.1(b) is the same as a spill event. As to the comment on EPA jurisdiction, we disagree that our jurisdiction should apply only to discharges to navigable waters because the CWA establishes our jurisdiction beyond navigable waters (see the discussion under § 112.1(b)), and we have the responsibility to protect the environment within the scope of our statutory jurisdiction.

Spill Prevention, Control, and Countermeasure Plan, SPCC Plan or Plan

Background. In 1997, we reproposed the definition of ''SPCC Plan'' and withdrew the 1991 proposal. The 1997 proposal would broaden the acceptable formats of SPCC Plans, eliminating the requirement that the Plan meet the format or sequence formerly specified in the rule.

Comments. Editorial changes and clarifications. One commenter suggested that the last two sentences in the proposed definition should be deleted because they contain substantive requirements, and relocated to § 112.7. Another commenter thought that the SPCC definition should be revised to say that the Plan documents spill prevention measures and not compliance with the rule, because compliance is determined by comparing the contents of the Plan with the rules.

Response Plan. A few commenters opposed the definition on the theory that it constitutes a type of response plan. Those commenters argued that the thrust of the definition should be on spill containment, not paperwork.

Acceptable formats. Many commenters favored the proposal. Several suggested various formats that might qualify such as Integrated Contingency Plans, State Plans, Electrical Equipment Area Response Plans, Stormwater Pollution Prevention Plans, and others. One commenter thought that EPA should specify acceptable formats. Several commenters suggested that various formats such as Integrated Contingency Plans and State Plans are presumptively acceptable.

Response to comments. Response Plan. We disagree that the proposed definition constitutes a ''response plan.'' The definition results in no substantive changes in response planning requirements.

Acceptable formats. We agree that any equivalent prevention plan acceptable to the Regional Administrator qualifies as an SPCC Plan as long as it meets all Federal requirements (including certification by a Professional Engineer), and is cross-referenced from the requirement in part 112 to the page of the equivalent plan. We do not agree that we should specify acceptable formats. We will give examples of those acceptable formats, but those examples are not meant to be exhaustive.

Examples of an ''equivalent prevention plan'' might be, for instance, an Integrated Contingency Plan (ICP), a State plan, a Best Management Practice Plan (which is a component of the Stormwater Pollution Prevention Plan),

or other plan that meets all the requirements of part 112 and is supplemented by a cross-reference section identifying the location of elements in part 112 to the equivalent requirement in the other plan. We repeat EPA's commitment to the ICP format, and encourage owners or operators to use it. If the equivalent prevention plan has no requirement that a Professional Engineer certify it, it will be necessary to secure proper certification from the Professional Engineer to comply with the SPCC rule.

An equivalent Plan might be a Plan following the SPCC sequence in effect before this final rule became effective. If you choose to use the sequence of the rule currently in effect, you may do so, but you must cross-reference the requirements in the revised rule to the sequence used in your Plan. We have provided a table in section IV.A of today's preamble to help you cross-reference the requirements more easily. If the only change you make is the addition of cross-referencing, you need not have a Professional Engineer certify that change.

Another example of an equivalent plan might include a multi-facility plan for operating equipment. This type of plan is intended for electrical utility transmission systems, electrical cable systems, and similar facilities which might aggregate equipment located in diverse areas into one plan. Examples of operating equipment containing oil include electrical equipment such as substations, transformers, capacitors, buried cable equipment, and oil circuit breakers.

A general, multi-facility plan for operational equipment used in various manufacturing processes containing over the threshold amount of oil might also be acceptable as an SPCC Plan. Examples of operating equipment used in manufacturing that contains oil include small lube oil systems, fat traps, hydraulic power presses, hydraulic pumps, injection molding machines, auto boosters, certain metalworking machinery and associated fluid transfer systems, and oil based heaters. Whenever you add or remove operating equipment in your Plan that materially affects the potential for a discharge as described in § 112.1(b), you must amend your Plan. 40 CFR 112.5(a).

Multi-facility plans would include all elements required for individual plans. Site-specific information would be required for all equipment included in each plan. However, the site-specific information might be maintained in a separate location, such as a central office, or an electronic data base, as long as such information was immediately accessible to responders and inspectors. If you keep the information in an electronic data base, you must also keep a paper or other backup that is immediately accessible for emergency response purposes, or for EPA inspectors, in case the computer is not functioning. Where you place that site-specific information would be a question of allowable formatting, as is the question of what is an ''equivalent'' plan; an issue subject to RA discretion.

Still another example of an equivalent plan might be a Best Management Practice Plan (BMP) plan prepared under an NPDES permit, if the plan provides protections equivalent to SPCC Plans. Not all BMP plans will qualify, as some BMP plans might not provide equivalent protection. NPDES permits without BMP plans would not qualify.

BMP plans are additional conditions which may supplement effluent limitations in NPDES permits. Under section 402(a)(1) of the CWA, BMP plans may be imposed when the Administrator determines that such conditions are necessary to carry out the provisions of the Act. *See* 40 CFR 122.44(k). CWA section 304(e) authorizes EPA to promulgate BMP plans as effluent limitations guidelines. NPDES rules provide for BMP plans when: authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances; numeric limitations are infeasible; or, the practices are reasonably necessary to achieve effluent limitations and standards to carry out the purposes of the CWA.

Any format that contains all the required elements of an SPCC Plan and provides equivalent environmental protection would be presumptively acceptable. The final decision on what is an ''equivalent'' plan, however, would be at the discretion of the Regional Administrator. ''Equivalence'' would not mean that an alternate format would be the mirror image of an SPCC Plan, but it would have to contain all the required elements of an SPCC Plan. Required elements include, but are not limited to, provisions for a written plan, secondary containment or a contingency plan following 40 CFR part 109, equivalent inspections and tests, security, personnel training, and certification of the plan by a Professional Engineer. Acceptance of an equivalent plan does not, however, imply any type of approval or submission process. As before, SPCC Plans are generally not submitted to the Regional Administrator. The Regional Administrator could accept an equivalent prevention plan if it: (1) meets all regulatory requirements in the SPCC rule; and (2) is supplemented by a cross-reference section identifying requirements listed in part 112 to the equivalent requirements in the other prevention plan. Partial use of other equivalent prevention plans is also acceptable, if the plan is supplemented by elements that meet the remainder of the EPA requirements contained in part 112.

Written Plans. We agree that a ''written'' Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage, that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed. Whatever medium you use, however, must be readily accessible to response personnel in an emergency. If it is produced in a medium that is not readily accessible in an emergency, it must be also available in a medium that is. For example, a Plan might be electronically produced, but computers fail and may not be operable in an emergency. For an electronic Plan or Plan produced in some other medium, therefore, a backup copy must be readily available on paper. At least one version of the Plan should be written in English so that it will be readily understood by an EPA inspector.

Editorial changes and clarifications. The word ''guidelines'' was replaced with ''requirements,'' as proposed in 1991. EPA agrees with the relocation of the last two sentences of the definition. Therefore, we have transferred those sentences to the introduction of § 112.7, in order to maintain the principle that definitions should not contain substantive requirements. We have also changed the last sentence which was proposed as ''* * * provide adequate countermeasures to an oil spill'' to read ''* * * provide adequate countermeasures to a discharge.'' We agree that the Plan does not document compliance, but merely spill prevention measures and have deleted the sentence noting that the Plan documents compliance with the rules. Compliance is determined by comparing the contents of the Plan with the regulations.

Storage capacity

Background. In 1991, we proposed a definition of ''storage capacity'' to clarify that it includes the total capacity of a container capable of storing oil or oil mixtures. We explained that because the percentage of oil in a mixture is determined by the operator and can be changed at will, the total capacity of a container is considered in determining applicability under this part, regardless of whether the container is filled with

oil or a mixture of oil and another substance, as long as a discharge from such container could violate the harmful quantity standards in 40 CFR part 110.

Comments. In general. One commenter strongly favored the proposal.

Standard of measurement. One commenter asserted that volume was the proper measure of storage capacity, not total capacity. Another commenter suggested a ''working capacity'' standard. Other commenters argued that the definition should apply only to containers meeting the definition of a bulk storage tank, and that only the oil storage capacity of the container be considered. Similarly, a commenter asserted that the ''design capacity'' of a container is what should count as storage capacity because electrical equipment or other interior components might reduce the volume of oil capable of being stored.

Exclusions—small containers; waste treatment facilities, secondary containment containers. Small containers. Most commenters were opposed to the proposed definition because they either wanted an exclusion for small containers or because they wanted an exclusion for containers containing de minimis amounts of oil. These commenters argued that small containers would not present a significant threat of discharge.

Waste treatment facilities. The rationale of commenters supporting an exemption for waste treatment containers was that some containers had non-usable space at the top of the container; also some containers contain only trace amounts of oil. Therefore, for example, storage tanks used to store or treat wastewaters are likely to have to be considered when determining storage capacity since many wastewaters have incidental oil content prior to treatment. They also argued that the definition would subject publicly owned treatment works (POTWs) to the rule because tanks used to control stormwater surges might contain small amounts of oil from runoff from parking lots and city streets.

Secondary containment containers. Some commenters argued that the definition would apply to tanks used to provide secondary containment when determining the storage capacity of a facility.

Response to comments. Standard of measurement. In most instances the shell capacity of a container will define its storage capacity. The shell capacity (or nominal or gross capacity) is the amount of oil that a container is designed to hold. If a certain portion of a container is incapable of storing oil because of its integral design, for example electrical equipment or other interior component might take up space, then the shell capacity of the container is reduced to the volume the container might hold. When the integral design of a container has been altered by actions such as drilling a hole in the side of the container so that it cannot hold oil above that point, shell capacity remains the measure of storage capacity because such alteration can be altered again at will to restore the former storage capacity. When the alteration is an action such as the installation of a double bottom or new floor to the container, the integral design of the container has changed, and may result in a reduction in shell capacity. We disagree that operating volume should be the measurement, because the operating volume of a tank can be changed at will to below its shell capacity.

The keys to the definition are the availability of the container for drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil, and whether it is available for one of those uses or whether it is permanently closed. Containers available for one of the above described uses count towards storage capacity, those not used for these activities do not. Types of containers counted as storage capacity would include some flow-through separators, tanks used for ''emergency'' storage, transformers, and other oil-filled equipment.

Exclusions—small containers; waste treatment facilities. Small containers. This definition is applicable to both large and small storage and use capacity. Owners or operators of small facilities above the regulatory threshold are subject to the rule, and need to know how to calculate their storage or use capacity.

However, in the applicability section of the rule, we have excluded containers of less than 55 gallons from the scope of the SPCC rule, addressing the comments of those commenters who argued for a minimum container size. See § 112.1(d)(5). A container above that size that is available for use or storage containing even small volumes of oil must be counted in storage capacity.

Waste treatment facilities. We agree with the commenter that a facility or part thereof (except at an oil production, oil recovery, or oil recycling facility) used exclusively for wastewater treatment system and not to meet any part 112 requirement should not be considered storage capacity because wastewater treatment is neither use nor storage of oil. Therefore, we have exempted such facilities or parts thereof from the rule. However, note that certain parts of such facilities may continue to be subject to the rule. *See* the discussion under § 112.1(d)(6).

Secondary containment containers. Containers which are used for secondary containment and not storage or use, are not counted as storage capacity.

Editorial changes and clarifications. We use the word ''container'' instead of ''tank or container,'' because a tank is a type of container. We have clarified the definition to provide that the storage capacity of a container is the volume of oil that the container could hold, and have therefore substituted the words ''shell capacity'' of the container for ''total capacity.'' This is merely a clarification, and not a substantive change. We also deleted the words ''for purposes of determining applicability of this part,'' because the words were unnecessary. We also deleted the last phrase of the proposed definition, ''whether the tank or container is filled with oil or a mixture of oil and other substances,'' because the contents of the container do not affect the definition of its shell capacity.

Transportation-related and non-transportation-related

Background. In 1991, we reproposed the current definition of ''transportation-related and non-transportation-related.'' We received no comments on the proposal. Therefore, we have promulgated the definition as proposed.

United States

Background. In 1991, we proposed to revise the definition of ''United States'' to conform to the definition enacted in the 1978 amendments to the CWA. We received no comments on this proposal. Therefore, we have promulgated the definition as proposed.

Vessel

Background. In 1991, we reproposed the current definition of vessel. We received no comments on this proposal. Therefore, we have promulgated the definition as proposed. We note that a barge or other watercraft that has been determined by the Coast Guard to be permanently moored to the shore, and used for storage, is no longer being used as a vessel, and does not fit within the definition of vessel. Rather, it becomes a bulk storage container counted as storage capacity. The same concept is found in the rules for mobile facilities at § 112.3(c), which provides that SPCC Plans apply to mobile facilities only

''while the facility is in a fixed (non-transportation) operating mode.''

Wetlands

Background. In 1991, we proposed a definition of ''wetlands'' to define the term as used in the definition of ''navigable waters.'' The definition of wetlands conforms to the definition in 40 CFR part 110 relating to the discharge of oil.

Comments. Several commenters opposed the definition because they believe that it includes a series of examples which may or may not be correct. They also alleged that the definition fails to implement the 1987 U.S. Army Corps of Engineers Wetlands Manual or the documents implementing that Manual. Another commenter asked for EPA clarification of what is a wetland, given the ''vague and arguable notion of a wetland.''

Response to comments. The examples listed in the definition are intended to help the reader with guidelines to identify wetlands. While the examples generally represent types of wetlands, they are not intended to be a categorical listing of such wetlands. There may be examples listed that under some circumstances do not constitute wetlands. We believe that the 1987 Wetlands Manual is a useful source material for wetlands guidance. It would be impossible to specify in a rule every type of situation where wetlands occur. The examples listed in the definition are not exclusive, but provide help in clarifying what may be a wetland.

Section 112.3 Introduction

Background. We have added an introduction to § 112.3 as an editorial device to simplify the language in the paragraphs of this section.

Section 112.3(a)—Time Line for Preparation and Implementation of Plans for Existing Facilities

Background. In 1991, we proposed to require owners or operators of onshore and offshore facilities in operation 60 days after the effective date of this final rule to ''maintain a prepared and fully implemented facility SPCC Plan. . . . '' We proposed giving these owners or operators 60 days from the date the final rule was published to revise their existing Plans and implement the revisions. The proposed rule also reflected the expanded geographic scope of the rule provided by CWA amendments.

Comments. Time period to prepare and implement a Plan. A number of commenters favored the proposal. Many more favored a ''phase-in'' period, or a longer period within which to comply. Commenters suggested compliance periods ranging from 60 days to 7 years. Many commenters clustered around the suggestion that a 6 month phase-in period be allowed. Many others suggested compliance by the next three-year review, as required by § 112.5(b) at that time.

Extensions. Several commenters asked that extensions of time to prepare and implement Plans be automatic if Plans must be in effect prior to the commencement of operations. Another suggested that extension requests be considered ''routine.''

Acquired facilities. One commenter asked how we would treat acquired facilities, whether as new or continuing operation facilities.

Start of operations. One commenter asked when operations start, stating that is not always a clearly defined time. The commenter suggested that instead of requiring a prepared and implemented Plan, we should allow that a response team be in place.

Small facilities. One commenter asserted that the time line for Plan preparation and implementation was unreasonable for small facilities, and asked that facilities with under 10,000-gallon capacity be allowed to operate while developing and implementing a Plan.

Response to comments. Time period to prepare and implement a Plan. We have been persuaded by commenters that a longer phase-in period than 60 days is required for facilities currently in operation or about to become operational within one year after the effective date of this rule.

Facilities currently in operation. For a facility in operation on the effective date of this rule, we changed the dates in the proposed rule for preparation and implementation of plans from 60 days to a maximum of one year to accord with the time frames in the current rule. The owner or operator of a facility in operation on the effective date of this rule will have 6 months to amend his Plan and must fully implement any amendment as soon as possible, but within one year of the effective date of the rule at the latest. The owner or operator of a facility which has had a discharge as described in § 112.1(b), or reasonably could be expected to have one, already has an obligation to prepare and implement a Plan.

For example, an owner or operator whose facility became operational four years before the effective date of this rule is the owner or operator of a facility currently in operation on the effective date of this rule. He is therefore subject to current § 112.3(b), and should have prepared his Plan no later than three and one half years before the effective date of this rule, and fully implemented it no later than three years before the effective date of this rule. Assuming that he still has not prepared a Plan on the effective date of the rule, he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current § 112.3(b) until he does so, and the penalties would accrue from the time the original deadlines passed before the effective date of this rule. The owner or operator of a facility which became operational four years before the effective date of the rule, and who prepared and fully implemented his Plan in compliance with current § 112.3(b), must amend his Plan within 6 months of the effective date of this rule to meet the requirements of the revised rule, and fully implement the amended Plan as soon as possible, but no later than one year after the effective date of the rule.

An owner or operator whose facility became operational 7 months before the effective date of the rule is an owner or operator of a facility currently in operation and is therefore subject to current § 112.3(b). He should have prepared his Plan one month before the effective date of this rule. If he did, he will have 6 months from the effective date of this rule to amend that Plan to meet the requirements of the revised rule, and must fully implement the amended Plan as soon as possible, but within one year of the effective date of this rule. If he has not prepared a Plan by the effective date of the current rule as required, then he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current § 112.3(b) until he does so.

An owner or operator whose facility became operational 4 months before the effective date of this rule is also an owner or operator of a facility currently in operation on the effective date of this rule and therefore subject to the current rule. However, in this case, the 6-month deadline to prepare a Plan under the current § 112.3(b) has not yet passed. Therefore, the owner or operator is subject to the Plan preparation and implementation deadlines in § 112.3(a) of the revised rule. He now has 6 months from the effective date of this rule to prepare a Plan that meets the requirements of this rule. If he had already prepared a Plan under current § 112.3(b), he has 6 months from the effective date of this rule to amend that Plan. In either case, he must fully implement the Plan (or amended Plan)

as soon as possible after the 6-month Plan preparation deadline of this rule, but no later than one year after the effective date of this rule.

The owner or operator of a facility in operation on the effective date of this rule who is required to have prepared or implemented an SPCC Plan, but has not, remains subject to penalties for violation of current SPCC regulations. Such owner or operator is consequently subject to civil penalties for a violation of current § 112.3 if the time has expired for preparation or implementation of his Plan.

Facilities becoming operational within one year after the effective date of the rule August 13, 2003. If you begin operations after the effective date of the rule through one year after the effective date of this rule August 16, 2002, you will have until one year from the effective date of this rule to prepare and implement your Plan. In other words, if the rule becomes effective on January 1, and you begin operations on January 2, you must prepare and implement your Plan by January 1 of the following year. If you begin operations on June 30, you still have until January 1 of the following year to prepare and implement your plan. If you begin operations on December 31, you still have until January 1 (the next day) of the following year to prepare and implement your Plan. The rationale for the time frame in the rule is that you will have had notice of the Plan preparation and implementation requirements from the publication date of the rule, a period of 30 days plus one year. In addition, you would already have had notice of the general requirement for preparation of an SPCC Plan from the current part 112 regulations. Therefore, the owner or operator of a facility planning to become operational within one year after the effective date of this rule should start working on his Plan in time to have it fully implemented within the year.

New facilities. The owner or operator of a facility that becomes operational more than one year after the effective date of this rule must prepare and implement a Plan before beginning operations.

A year phase-in period is in line with legitimate business and investment expectations. It allows a reasonable period of time for facilities to undertake necessary constructions, purchases of equipment, or to effect changes of procedures. And again, the general requirement for preparation of a Plan already exists in part 112, so new facilities should already have been aware of the need for a Plan.

Extensions. While we have extended the time period for compliance, we understand that some facilities may still need extensions of time to comply. Extensions may be necessary to secure necessary manpower or equipment, or to construct necessary structures. If you are an owner or operator and an extension is necessary, you may seek one under § 112.3(f). If no Plan amendments are necessary after you review today's rule, you must maintain your current Plan and cross-reference its elements to the redesignated requirements.

Acquired facilities. For SPCC purposes, we consider acquired facilities as facilities that are already operating rather than new facilities because these facilities must already have SPCC Plans if they exceed applicable thresholds.

Start of operations. Start of operations is when you begin to store or use oil at a facility. Often this may be a testing or calibration period prior to start up of normal operations. With the extended time line we have provided, no response team is required, but such a team may be a good engineering practice. At a minimum, you must prepare and implement a Plan as required by this rule.

Small facilities. With the extended time line we have provided, all facilities, large or small, have adequate notice and time in which to prepare and implement a Plan.

Editorial changes and clarifications. We deleted the first sentence of the proposed rule from the final rule because it is unnecessary. It is unnecessary because the obligation to have prepared a Plan is incurred under current section § 112.3(b) for the owner or operator of a facility in operation before the effective date of this rule. For the owner or operator of a facility that becomes operational on or after the effective date of this rule, revised § 112.3 provides the time period within which he must prepare and implement a Plan. The deleted sentence read, ''Owners or operators of onshore facilities that become operational after September 16, 2002, and could be reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part, shall prepare a facility SPCC Plan in accordance with § 112.7, and in accordance with any of the following sections that apply to the facility: §§ 112.8, 112.9, 112.10, and 112.11.''

Section 112.3(b)—Time Line for Preparation and Implementation of Plans for New Facilities

Background. In 1991, we proposed that new facilities contemplating the start of operations be required to prepare and fully implement Plans before beginning operations. Our rationale was that our experience showed that many types of failures occur during or shortly following facility startup and virtually all prevention, containment, and countermeasure practices are a part of the facility design or construction.

Comments. Many commenters suggested various phase-in periods, as discussed above.

Response to comments. We believe that our original rationale is still correct. Experience with the implementation of this regulation shows that many types of failures occur during or shortly following startup and that virtually all prevention, containment, and countermeasure practices are part of the facility design or construction. Therefore, it can be beneficial to the environment and carries out the intent of the statute if a facility Plan is prepared and implemented before startup. However, to provide sufficient notice to new facilities that a Plan must be prepared and implemented before beginning operations, we have delayed implementation of this section until one year after the effective date this rule. If you begin operations within one year of the effective date of this rule, you must comply with the requirements in § 112.3(a). However, if you begin operations more than one year after the effective date of this rule, your facility would be ''new'' and you would have to prepare and implement an SPCC Plan before you begin operations. If you need an extension to comply, you may seek one under § 112.3(f).

Editorial changes and clarifications. The phrase ''* * * could reasonably be expected to discharge oil, as described in § 112.1(b) of this part* * *'' becomes ''could reasonably be expected to have a discharge as described in § 112.1(b).''

Section 112.3(c)—Time Line for Preparation and Implementation of Plans for Mobile Facilities

Background. In 1991, we proposed that owners or operators of onshore and offshore mobile facilities be required to have a prepared and implemented Plan before beginning operations. Since existing mobile facilities are a subset of existing facilities, we generally assume that these facilities already have a Plan in place, as the rule now requires. 40 CFR 112.3(c). Both new and existing mobile facilities would therefore have to comply with the rule requiring a fully prepared and implemented Plan before beginning operations.

Comments. In general. One commenter believed that requiring Plans

for mobile facilities is unworkable because their physical surroundings are subject to change. Another commenter supported our proposal to allow general Plans for mobile facilities.

Multi-well drilling programs. One commenter asked if Plan updates would be required in a field where a multi-well drilling program is underway. The commenter suggested that updates should be required only after the drilling program is complete.

Response to comments. In general. We agree that the physical surroundings of mobile facilities are subject to change. However, we disagree that changing physical surroundings should exempt mobile facilities from the rule. Mobile facilities may have ''general'' Plans and need not prepare a new Plan each time the facility is moved to a new site. When a mobile facility is moved, it must be located and installed using the spill prevention practices outlined in the Plan for the facility.

Mobile facilities currently in operation are assumed to have implemented Plans already, because they are currently legally required to do so. Both new and existing mobile facilities must have Plans prepared and fully implemented before operations may begin. If after your review of today's rule, you decide that no amendment to your Plan is necessary, except for cross-referencing, you may continue to operate under your existing Plan, but you must promptly cross-reference the provisions in the Plan to the new format. Extension requests under § 112.3(f) are also available for mobile facilities under the proper conditions.

Multi-well drilling programs. It is not necessary to amend the Plan every time you drill a well in a field containing multiple wells. A general Plan will suffice.

Editorial changes and clarifications. We deleted the phrase ''using good engineering practice,'' in the third sentence of the paragraph because good engineering practice is required of all Plans. See the introduction to § 112.7. Therefore, the phrase was unnecessary.

Section 112.3(d)—Certification by Professional Engineers

Background. The current rule only requires that the Professional Engineer (PE), having examined the facility and being familiar with the provisions of part 112, attest by means of his certification that the Plan has been prepared in accordance with good engineering practices. In 1991, we proposed to add specificity to the meaning of the certification requirements for a PE. We proposed that the PE attest that he is familiar with the requirements of part 112, that he has visited the facility, that the Plan has been prepared in accordance with good engineering practice and the requirements of part 112, that required testing has been completed, and that the Plan is adequate for the facility.

Comments. Certification requirement. Most commenters supported a certification requirement for PEs. Some opposed it on grounds that if all the components of the Plan were specified by rule, then certification is unnecessary. One U.S. territory, U.S. Samoa, noted that it doesn't register PEs, arguably making compliance with the rule difficult for owners or operators of facilities in Samoa.

Other commenters thought a PE certification requirement was unnecessarily burdensome and costly for small facilities, but did not provide cost estimates. One commenter asserted that PE certification should not be required for small facilities, due mainly to the prohibitive cost. The commenter also maintained that most small facilities have tanks that are required by State or local law to have the Underwriters Laboratory Seal of Approval and to have submitted a detailed plan for review and approval to the fire marshal prior to installation.

Certification by other environmental professionals. Several commenters suggested that certification could be effected by another environmental professional, rather than a PE, or by another environmental professional with PE oversight.

Good engineering practice. One commenter noted that EPA specified in the 1991 preamble that the application of good engineering practice will require that appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility. 56 FR 54617–18. The commenter added, however, that we do not define ''good engineering practice'' for this program, and urged EPA to specify in more detail as to its understanding of the term.

Testing. Some commenters wrote that it would be better for the PE to enumerate all the inspections and tests that have been completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations. A few commenters objected to the proposed requirement that the PE attest that required testing has been completed, suggesting instead that the operator is responsible for completion of testing. Another commenter suggested that the PE be allowed to attest to the presence of those written procedures which require testing.

Non-technical changes. Most supported the idea that non-technical changes to a Plan (for example, the emergency contact list, phone numbers, or names) need not have PE certification.

Time limit for PE certification. One commenter suggested a time limit of three years or less on PE certification, suggesting that the PE should be required to reinspect the premises periodically, preferably annually, to ascertain that the Plan continues to be implemented.

PE costs. Some commenters argued that requiring an independent or outside PE for Plan certification would be extremely expensive for facilities located in remote areas. These commenters were principally concerned that we did not fully account for the cost to a facility owner or operator for a PE to visit each facility before certifying a Plan. Requiring the use of an independent or outside PE could be burdensome to facility owners or operators.

Response to Comments. Certification requirement. PE certification of all facilities, both large and small, is necessary because a discharge as described in § 112.1(b) from any size facility may be harmful, and PE review and certification of a Plan may help prevent that discharge. We disagree that PE certification is prohibitively costly for small facilities. A Plan certified by a PE may well save the owner or operator money due to improved facility operations and decreased likelihood of discharge, thus averting potentially costly cleanups. Because a Plan for a smaller facility is likely to be less complicated than a Plan for a larger facility, PE certification costs should likewise be lower for a smaller facility. In our Information Collection Request, estimated total costs for a new facility to prepare and begin implementation of a Plan, including PE certification costs, are $2,201 for a small facility, $2,164 for a medium facility, and $2,540 for a large facility. This cost is incurred only in the year that the facility first becomes subject to the rule. This one-time cost incurred by a small facility is less than 1.5 percent of the average annual revenue for small facilities in all industry categories. The cost for the PE certification alone would represent even less than that. As shown in Chapter 5 of the Economic Analysis for this rulemaking, the average annual revenue for the smallest regulated facilities (under the current rule) ranges from $150,000 to $6,833,000, depending on the industry category. For example,

farms with annual revenue between $100,000 and $249,999 have an average annual revenue per farm of $161,430, and $2,201 (the one-time cost to prepare and implement a Plan) represents only 1.36 percent of that annual revenue. Of course, under the revised rule many of these small facilities will not be regulated by the SPCC program at all.

A PE's certification of a Plan means that the PE is certifying that the facility's equipment, design, construction, and maintenance procedures used to implement the Plan are in accordance with good engineering practices. And this is important because good engineering practices are likely to prevent discharges. PE certification, to be effective for SPCC purposes, must be completed in accordance with the law of the State in which the PE is working. For example, some States require a PE to apply his seal to effectuate a certification. Others do not.

We also disagree that small facilities need not have PE certification for SPCC Plans when the tanks are certified by the Underwriters Laboratory. A Plan consists of more than a certified tank. It contains provisions for secondary containment, integrity testing, and other measures to prevent discharges. Those provisions require PE certification to ensure that they meet the requirements of the rule and that the Plan is effective to prevent discharges.

Finally, by modifying the applicability provision in § 112.1(d)(2), we are today exempting many small facilities from the requirement to prepare and implement a Plan at all, thus saving all prospective PE costs.

In response to the commenter from Samoa, who noted that territory does not register PEs, the rule would allow an SPCC facility there to hire a PE licensed in some other State or U.S. territory.

Certification by other environmental professionals. Certification by a PE, rather than by another environmental professional is necessary to ensure the application of good engineering judgment. A PE must obtain a Bachelor of Engineering degree from an accredited engineering program, pass two comprehensive national examinations, and demonstrate an acceptable level (usually four additional years) of engineering experience. A licensed engineer is also required to practice engineering solely within his areas of competence and to protect the public health, safety, and welfare. All licensed PEs, no matter who their employer, are required by State laws and codes of ethics to discharge their engineering responsibilities accurately and honestly. Furthermore, State governments have and do exercise the authority to discipline licensed PEs who fail to comply with State laws and requirements. Other environmental professionals may not have similar expertise nor be held to similar standards as the licensed PE.

It is not always necessary for a PE to visit the facility. Therefore, we have revised § 112.3(d) to a allow site visit by either the PE or his agent. Often it will be sufficient if the PE reviews the work of other engineering professionals who have visited the facility. Someone would have to visit the facility, but not necessarily the PE. Nevertheless, in all cases the PE must ensure that his certification represents an exercise of good engineering judgment. If that requires a personal site visit, the PE must visit the facility himself before certifying the Plan.

Good engineering practice. As we noted in the 1991 preamble (at 56 FR 54617–18), good engineering practice ''will require that appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility.'' We agree with the commenter that the rule needs more specificity in this regard. Therefore, we have amended § 112.3(d)(1)(iii) to specifically include consideration of applicable industry standards as an element of the PE's attestation that the Plan has been prepared in accordance with good engineering practice. We reiterate today, as we did in 1991, that consideration of applicable industry standards is an essential element of good engineering practice. Industry standards include industry regulations, standards, codes, specifications, recommendations, recommended practices, publications, bulletins, and other materials. (See § 112.7(a)(1) and (j).) The owner or operator must specifically document any industry standard used in a Plan to comply with this section. The documentation should include the name of the industry standard, and the year or edition of that standard. However, as discussed above, we have chosen not to incorporate specific industry standards into the rule.

Testing. The proposed rule would have required the PE to certify that required testing was completed. We have been persuaded by comments that the requirement should be that procedures for inspections and tests have been established, not necessarily completed, because the PE is not normally present at time of completion. Nor do we believe it is necessary to impose a requirement that the PE oversee all testing because the PE only shares responsibility with the owner or operator for establishing procedures, not for their implementation, which is the sole responsibility of the owner or operator. However, the PE may include in the Plan a schedule for testing, with specific time frames for the completion of that testing. See also the discussion in today's preamble (at section IV.D.3) on ''Completion of Testing.''

Non-technical changes. PE certification is not required for items that do not require engineering judgment, such as telephone numbers; names on lists; some, but not all, product changes (see the response to comments of § 112.5(a)); ownership changes; or, any other changes not requiring engineering judgment.

Time limit for PE certification. We disagree that there should be a time limit on PE certification because the rule ensures that the PE reviews the Plan at appropriate times. Thus, current PE certifications remain valid. But new certifications after the effective date of this rule must include the required attestations. If you are an owner or operator you must review your Plan at least every five years (under revisions made in today's rule), and amend it if new technology is warranted. Also, you must amend your Plan to conform with any applicable rule requirements, or at any time you make any change in facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). All material amendments require PE certification. Therefore, because a Plan will likely require one or more amendments requiring PE review and certification, a time limit on PE certifications is unnecessary. *See* § 112.5(c).

Other PE issues. As to other PE issues, as noted above (see section IV.D.2 of this preamble), the PE need not be independent of the facility. Nor is there a requirement that he not have a financial interest in it. We believe the professional integrity of a PE and the professional oversight of boards licensing PEs are sufficient to prevent any abuses.

It is not necessary that the PE be licensed in the same State as the facility because the SPCC program is national in scope and therefore State expertise is unnecessary. While States may prescribe more stringent requirements than EPA, a PE may familiarize himself with any particular requirements a State may impose and address them in the Plan. *See* § 112.7(j). Furthermore, violations of PE ethics may be handled by the licensing board of the PE's state no matter where the work is done.

EPA maintains that a site visit is necessary, but the visit may be by either the PE or his agent, so long as a visit by

an agent is consistent with good engineering practice. A visit by the PE's agent can generally be sufficient given that the PE will oversee and be responsible for his agent's work.

PE costs. We note that we did not propose a requirement for an independent PE, but requested comments on it. In the final rule, we require either the PE or the PE's agent to visit and examine the facility before the PE certifies the Plan. An agent might include an engineering technician, technologist, graduate engineer, or other qualified person to prepare preliminary reports, studies, and evaluations after visiting the site. The PE, after reviewing the agent's work, could then legitimately certify the Plan. Also, in the final rule, we allow the PE to be an employee of the facility as well as registered in a different State than the facility is located, in order to approve a Plan. The rationale is that SPCC work is national in scope and therefore State expertise is unnecessary.

Editorial changes and clarifications. ''Registered Professional Engineer'' becomes ''licensed Professional Engineer.'' The first sentence of the paragraph was proposed as, ''No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer.'' We revised it to read, ''A licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part.'' This revision is due to the fact that PEs are licensed by States.

Section 112.3(e)—Location and Availability of Plan

Background. In 1991, we proposed that the Plan be available at the facility if the facility is normally manned at least four hours a day, in lieu of the current requirement that the Plan be available if the facility is manned eight hours a day. If the facility is not attended at least four hours a day, the Plan would have to be available at the nearest field office.

The rationale for the change is that some facilities interpreted the eight hour requirement not to apply to a facility that is only operating seven and one-half hours per day, with a half an hour deducted for lunch. The availability of a Plan can be extremely useful in preventing and mitigating discharges, therefore it must be available most of the time at attended facilities.

Comments. Editorial changes and clarifications. Several commenters questioned the meaning of ''normal working hours,'' asking whose hours that meant, those of EPA or those of the facility. Several commenters questioned the meaning of ''nearest field office.''

Plan availability. Several commenters favored the proposal. One commenter suggested that we amend the rule to provide that the Plan be available ''without advance notice,'' so that it would be fully implemented at all times, not just when an inspection is impending. One commenter thought that the Plan should always be located at the facility, whether manned or not, perhaps protected by a laminated cover, and at ''appropriate control centers.''

State and local agencies. Another commenter suggested that the Plan be filed with the local fire department and LEPC (Local Emergency Planning Committee) to facilitate public review. One State suggested there be a Federal requirement that the Plan also be filed with the State.

Response to comments. Nearest field office, normal working hours. The term ''nearest field office'' in paragraph (e)(1) means the office with operational responsibility for the facility, or the emergency response center for the facility, because those locations ensure accessibility for personnel who need to respond in case of a discharge. The term ''normal working hours'' in paragraph (e)(2) refers to the working hours of the facility or the field office, not EPA.

Plan availability. Today we have finalized the 1991 proposal that the Plan must be available at the facility if it is normally attended at least four hours per day, or at the nearest field office if it is not so attended. A Plan must always be available without advance notice, because an inspection might not be scheduled. You are not required to locate a Plan at an unattended facility because of the difficulty that might ensue when emergency personnel try to find the Plan. However, you may keep a Plan at an unattended facility. If you do not locate the Plan at the facility, you must locate it at the nearest field office.

State and local agencies. You are not required to file or locate a Plan with a State Emergency Response Commission or Local Emergency Planning Committee or other State or local agency because the distribution would unjustifiably increase the information collection burden of the rule, and not all committees or agencies may want copies of SPCC Plans. Should a State wish to require filing of a Federal SPCC Plan with a State or local committee or agency, it may do so. No Federal requirement is necessary.

Editorial changes and clarifications. In paragraph (e)(2), we deleted the term ''or authorized representative'' after ''Regional Administrator,'' because the Regional Administrator may delegate his duties. Therefore, the term is unnecessary.

Section 112.3(f)—Extension of Time

Background. In 1991, we proposed to allow only new facilities to apply for extensions of time to comply with the requirements of part 112. The current rule allows any facility to apply for an extension, including existing fixed and mobile facilities. The rationale for limiting extension requests to new facilities was that existing fixed and mobile facilities have had since 1974 to comply with the rule.

Comments. Automatic extensions. Several commenters suggested that we automatically grant extension requests if we are to require a Plan to be in effect prior to commencement of operations.

Existing Plan requirements. Another commenter criticized the proposed requirement to submit the existing Plan with each extension request, because EPA's review of the Plan cannot practically be an element of the extension granting process. Another commenter suggested that the language in paragraph (f)(3) would be better if it said that the existing Plan's provisions remain in effect until they are superseded by changes proposed by the facility, because these words better reflect the intention of the rule.

Amendments. Several commenters urged EPA to allow extensions for preparation and implementation of Plan amendments.

Response to comments. Automatic extensions. Automatic extension requests are not justifiable because we have extended the time within which most facilities have to prepare and implement Plans. *See* § 112.3(a), (b), and (c). Also, under the revised rule, you may request an extension for the preparation and implementation of any Plan, or amendment to any Plan. *See* § 112.3(f).

Existing Plan requirements. We have broadened the scope of extension requests to any facility that can justify the request, because for every type of facility there may be cases in which an extension can be justified. Existing fixed and mobile facilities may experience delays in construction or equipment delivery or may lack qualified personnel, and these circumstances may be beyond the control of, and without the fault of, the owner or operator. We also agree with the commenter that the submission of the entire Plan as a matter of course is unnecessary to evaluate each extension request. Therefore, we have amended the rule to provide that the Regional Administrator may request your Plan if he deems it appropriate. But we do not believe that he will

always do so. It may be necessary under some circumstances. The Regional Administrator also retains discretion to request the Plan after on-site review, or after certain discharges. *See* § 112.4(a)(9) and (d). We disagree with the commenter's proposed rewrite of the owner or operator's obligations while the request is pending because the better policy is to require compliance with the rest of the rule that is not affected by the extension request, rather than saying that the existing Plan continues in effect.

Amendments. We have also added a provision for an extension of time to prepare and implement an amendment to the Plan, as well as an entire Plan. We believe that there may be cases in which an extension can be justified for a Plan amendment because the same extenuating circumstances may apply.

Editorial changes and clarifications. In paragraph (f)(3), ''letter of request'' becomes ''written extension request.'' In the last sentence of that paragraph, ''with respect to'' becomes ''related to.''

Section 112.4(a)—Reporting Certain Discharges to EPA

Background. In 1991, we proposed to require more information than is currently required in the rule for reporting certain discharges. If your facility discharged more than 1,000 gallons in a discharge as described in § 112.1(b), or discharged oil in quantities that may be harmful in more than two discharges as described in § 112.1(b) within any consecutive twelve month period, you would have been required to submit certain information to the Regional Administrator.

In 1993, we proposed a modification to § 112.4(d)(1) which would allow the Regional Administrator to require the submission of the listed information in § 112.4(a)(1) at any time, whether or not there had been a discharge as described in § 112.1(b).

In 1997, we proposed a reduction of the amount of information currently required by § 112.4(a). We proposed to eliminate the following information, unless the Regional Administrator specifically requested it: (1) The date and year of initial facility operation; (2) maximum storage or handling capacity of the facility and normal daily throughput; and, (3) a complete copy of the SPCC Plan with any amendments.

Comments. In general. Most commenters favored the 1997 proposal. Several commenters opposed the proposal.

Information submission at any time. One commenter argued that the 1993 proposal allowing EPA to require submission of the information required in § 112.4(a)(1) and to require Plan amendments at any time is vague and does not provide adequate notice to the regulated community.

Submission of entire Plan. One commenter thought that meaningful review of the information submitted was impossible without the entire Plan. Two commenters believed that EPA would always request the information it proposed to eliminate.

Discharge threshold. Other commenters proposed a higher threshold for having to report a discharge than is currently required by § 112.4(a). Those thresholds ranged from 25–55 gallons. One commenter suggested that we relax the reporting requirement for very minor releases of petroleum products. Another suggested that if the discharge causes a sheen that dissipates within 24 hours, there should be no obligation to report.

Maps, flow diagrams, and charts. Several commenters suggested that we eliminate the requirement to submit maps, flow diagrams, and charts because those documents ''add nothing useful to the inquiry.''

Off-site category. Another commenter suggested that we create an ''off-site'' category of spill reports for discharges reported by a facility that are in a water body adjacent to the reporter's facility, or for discharges that originate off-site, but migrate to the facility.

Calculation of time for discharge reports required by § 112.4(a). Several commenters suggested that we calculate the time for the submission of discharge reports required by § 112.4(a) on a ''block'' basis, rather than a ''rolling'' basis.

Response to Comments

Information submission at any time. We agree with the commenter that the 1993 proposal to give the Regional Administrator authority to require submission of the requested information in this section at any time is vague, and have therefore withdrawn that part of the proposal. We will only require such information after the discharges specified in this section.

Submission of entire Plan. CWA section 311(m) provides EPA with the authority to require an owner or operator of a facility subject to section 311 to make reports and provide information to carry out the objectives of section 311; and CWA section 308(a) provides us with authority to require the owner or operator of any ''point source'' to make such reports as the Administrator may reasonably require. Therefore, we disagree that submission of the entire Plan is always necessary when reporting discharges under § 112.4(a). We believe the information now required to be submitted is adequate to assess the cause of discharge and the ability of the facility to prevent future discharges. If the RA believes that the entire Plan has utility, he can request it. However, we disagree that RAs will always require submission of the Plan, or other information not required, as a matter of course. RAs may use their administrative discretion not to require the submission of Plan information or other additional information.

Discharge threshold. 42 gallons. We agree that a higher threshold of reporting discharges is justifiable because we believe that only larger discharges should trigger an EPA obligation to review a facility's prevention efforts. We also agree that a higher threshold should trigger a facility's obligation to submit information and possibly have to take further prevention measures. Therefore, we have changed the threshold for reporting after two discharges as described in § 112.1(b). Under the revised rule, if you are the owner or operator of a facility subject to this part, you must only submit the required information when in any twelve month period there have been two discharges as described in § 112.1(b), in each of which more than 42 U.S. gallons, or one barrel, has been discharged. We adopted the 42 gallon threshold on a commenter's suggestion. We believe that a 42 gallon threshold is the appropriate one to trigger a facility's information and possibly to have to take further prevention measures. When multiple discharges occur at a facility subject to the SPCC program, such as a generating station, they often involve the discharge of very small amounts of oil, and these discharges tend to come randomly from a lube pipe, an oil level sight glass crack, or some other apparatus, and do not normally indicate a recurring problem with the container. Having two or more of these small discharges does not indicate that the facility's SPCC Plan requires revision. The other reporting threshold of 1,000 gallons in any a single discharge as described in § 112.1(b) remains the same.

We disagree that a sheen caused by a discharge as described in § 112.1(b) over the threshold amount that disappears within 24 hours should not require submission of information. The discharge itself may indicate a serious problem at the facility which needs to be corrected. The discharge report may give us the information necessary to require specific correction measures.

''Sheen'' rule. The duty imposed by the CWA to report to the National Response Center all discharges that may be harmful, further described by 40 CFR 110.3, is unchanged. Those discharges include discharges that violate applicable water quality standards; or, cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Maps, flow diagrams, and charts. In response to comments which questioned the usefulness of such information, we have modified the provision regarding maps, flow diagrams, topographical maps (now required by paragraph (a)(6) of the current rule) to clarify that only the information necessary to adequately describe the facility and discharge, such as maps, flow diagrams, or topographical maps is necessary—not necessarily all of the information listed in the paragraph. To effect this change, we added the words ''as necessary'' after ''topographical maps.'' ''As necessary'' means as determined by the owner or operator, subject to the obligations of this rule, unless the RA requests more information. There might be circumstances in which the owner or operator would submit only a brief description of the facility or a map, for example, because flow diagrams and topographical maps were unnecessary to describe the discharge, and would not help the RA to determine whether any amendment to the Plan was necessary to prevent future discharges as described in § 112.1(b).

Off-site category. There is no necessity for an ''off-site'' category of discharges as described in § 112.1(b) because only a discharge as described in § 112.1(b) that originates in a facility subject to this part counts for purposes of § 112.4(a).

Calculation of time for discharge reports required by § 112.4(a). We believe a ''rolling'' basis is the appropriate method to calculate a discharge as described in § 112.1(b) for purposes of the rule because discharges as described in § 112.1(b) that are closer in time are more likely to be related in cause. Discharges that are more proximate in time may indicate a problem that needs to be remedied. A ''rolling basis'' means that each discharge as described in § 112.1(b) triggers the start of a new twelve month period. For example, if discharge #1 occurred on January 1, and if discharge #2 occurred on June 2, discharge #2 would trigger the regulatory submission and would start a new twelve month period. If discharge #3 occurred on the following February 3, it would again trigger a submission, because discharge #3 would be within 12 months of discharge #2. While the ''rolling basis'' would trigger more regulatory submissions than the ''block basis,'' we believe that it would enhance environmental protection because it would call potential problems to the attention of the Regional Administrator sooner, and allow them to be remedied sooner by a Plan amendment where necessary.

''Block'' basis. The other approach would be to use a ''block'' period. Under this type of calculation, each third discharge as described in § 112.1(b) would not trigger a submission if it occurred within 12 months of discharge #2, but it would start the beginning of a new 12 month period. For example, if discharge #1 occurred on January 1, and discharge #2 on June 2, discharge #2 would trigger a submission. Discharge #3 on the following February 3 would not trigger a submission, but would start a new 12 month period. The principal justification for block reporting is also that discharges more closely related in time are more likely to be related. Our concern with this method is that if the February 3 discharge (i.e., discharge #3) is within twelve months of discharge #2, this situation could indicate that there is a problem that has not been remedied, so the February 3 discharge should trigger a reporting submission.

Maximum storage or handling capacity. In 1997, we proposed deletion of current paragraph (5) (renumbered as paragraph (4) in today's final rule), concerning the maximum storage or handling capacity of the facility and normal daily throughput. We have reconsidered this proposal and decided to withdraw it because the referenced information is necessary information. We have therefore retained the language in the rule. Storage capacity and normal daily throughput are important indicators of the impact of a potential discharge as described in § 112.1(b).

Additional information. If the Regional Administrator requires other information, for example, concerning the spill pathway, or any response measures taken, this request is authorized under renumbered § 112.4(a)(9), current § 112.4(a)(11).

Adjoining shorelines, natural resources, affected natural resources. Discharges into navigable waters are not the only discharges reportable for purposes of this section. We note that any discharge as described in § 112.1(b) is also within the scope of this section's reportable discharges.

Editorial changes and clarifications. If a particular information request is inapplicable, you may omit it, but must explain why it is inapplicable. Several plural nouns like ''names'' and ''causes'' become singular. Wherever the phrase ''and/or'' appears, we have revised the phrase to read ''and.'' In 1997's proposed § 112.4(a)(6), redesignated as § 112.4(a)(7), ''spill'' becomes ''discharge as described in § 112.1(b).'' In 1997's proposed § 112.4(a)(8), redesignated as § 112.4(a)(9), ''spill event'' becomes ''discharge.''

Section 112.4(b)—Applicability of § 112.4

Background. Under current § 112.4(b), the § 112.4 requirements for spill reporting do not apply until the expiration of the time permitted for the preparation and implementation of a Plan pursuant to § 112.3(a), (b), (c), and (f). In 1991, we proposed that § 112.4 would not apply until the expiration of the time permitted for the preparation and implementation of a Plan under § 112.3(f) only. Section 112.3(f) is the time period in which you are permitted to prepare and implement a Plan under an extension request.

We proposed to delete the references to § 112.3(a), (b) and (c) because the current time periods allowed in these paragraphs for the preparation and implementation of the Plan (before commencement of operation for new facilities or mobile facilities, or after the effective date of the rule for other existing facilities) were proposed for deletion. Because future facilities would generally have a Plan prepared and implemented before beginning operations, there was no longer a need to temporarily relieve facilities of spill reporting obligations under § 112.4(a), unless the Regional Administrator granted an extension under § 112.3(f) to prepare and implement a Plan. We received no comments on this proposal.

In today's rule, however, we have revised § 112.3 to extend the time lines for certain facilities to prepare and implement Plans. To accord with this change, we are maintaining the approach under current § 112.4(b) to provide that the § 112.4 spill reporting requirements will not apply until the expiration of the time permitted for the initial preparation and implementation of a Plan under § 112.3(a), (b), (c), and (f). Today, we have also revised § 112.3(a) to provide an extended time line for preparing a Plan amendment and § 112.3(f) to provide for an extension request for an amendment to a Plan. Therefore, we have also revised § 112.4(b) to provide that the obligation to submit information as required by

§ 112.4(a) does not arise until the expiration of the time permitted for the initial preparation and implementation of the Plan under § 112.3, but not for any amendments to the Plan. We did not previously propose to relieve facilities of § 112.4 reporting requirements during Plan amendments or extensions for Plan amendments. An amendment may or may not be directly related to the cause of the discharge as described in § 112.1(b), and therefore may have little relevance to the duty to submit discharge reports to EPA.

Section 112.4(c)—Supplying Discharge Information to the States

Background. In 1991, we proposed that you must provide the same discharge information that you submit to the Regional Administrator under § 112.4(a) to the State agency in charge of oil pollution control activities. The current rules require that you provide that information to the State agency in charge of water pollution control activities.

Comments. Legal authority. One commenter suggested that we have no legal authority for the proposal. Another commenter asserted that EPA could only implement State agency recommendations if those recommendations fell within the scope of the SPCC rule.

In general. Several commenters suggested the proposal was redundant and unnecessary, because only EPA regulates the SPCC program, not the States.

State agency review. One commenter, a State, favored the proposal and noted that more than one State agency has statutory jurisdiction over oil pollution control in that State. That State and another suggested that all relevant State agencies receive the information. One commenter suggested that EPA should identify the appropriate State agency to which notice is due. One commenter thought the proposed change was misleading. Another commenter, a State, suggested that EPA provide the States money to review the submitted discharge information.

Response to comments. Legal authority. We have ample legal authority to finalize this rule. A similar rule has been in effect since 1974. Section 311(j)(1) of the CWA authorizes the Federal government (and EPA through delegation) to establish ''procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil. * * *'' Section 112.4(c) of this rule is a procedure to help prevent discharges that fall within the scope of that statutory provision. It enables States to learn of discharges reported to EPA and to make recommendations as to further procedures, methods, equipment, and other requirements that might prevent such discharges at the reporting facility.

We can only implement State agency suggestions that are within the scope of our authority under section 311 of the CWA.

In general. The commenter is correct that the SPCC program is a Federal program, but we believe that in working with the States, we can improve the Federal program through coordination with State oil pollution prevention programs. Therefore, we believe that the information provided to States is neither redundant nor unnecessary. Nor is the section misleading; it clearly states the obligation of the owner or operator.

State agency review. We modified the 1991 proposal on the commenters' suggestion to include notice to any appropriate State agency in charge of oil pollution control activities, since there may be more than one such agency in some States and all may have need for the information. We do not list such agencies in the rule, as a commenter suggested, because the names and jurisdiction of the State agencies are subject to change. It is the reporter's obligation to learn which State agencies receive the discharge reports. Most States publish documents on an ongoing basis, similar to the **Federal Register**, which publicize relevant regulatory information.

We do not provide State agencies funds to review these discharge reports due to budgetary constraints. While we assume that many States review these reports carefully, we cannot require them to do so. Thus, this action is not an unfunded mandate from the Federal government to the States. But if States do review the reports, they do so at their own expense.

Editorial changes and clarifications. In the last sentence of the paragraph, ''discharges of oil'' becomes ''discharges.''

Section 112.4(d)—Amendment of Plans Required by the Regional Administrator

Background. In 1991, we proposed that after review of materials under 112.4(a), the Regional Administrator (RA) might require amendment of the SPCC Plan. We also proposed that the RA might require Plan amendment after reviewing contingency plan materials submitted for approval. See proposed § 112.7(d), 1991.

In 1993, we proposed that the RA would also have authority to require Plan amendment after on-site review of the Plan. In addition, we proposed a clause empowering the RA to approve the Plan or require amendment.

We also proposed in 1993 allowing the RA to require submission of the information listed in § 112.4(a) at any time. The rationale to get this information was to prevent discharges from happening, in addition to seeking to correct the conditions that may have caused the discharge. See the background and response to comments under § 112.4(a) for a discussion of this proposal.

Comments. Regional Administrator approval of Plans. Several commenters criticized the idea of RA approval of the Plan on the theory that it is an unwarranted intrusion into the manner in which operators do business. Another urged an appeal process if EPA approval of Plans is required.

Plan information and amendments. One commenter argued that allowing EPA to require submission of the information required in § 112.4(a) at any time and to require Plan amendments at any time is vague and does not provide adequate notice to the regulated community. Several commenters were concerned that EPA would inconsistently require overly stringent measures in some Plans or might require amendments unrelated to discharge potential or which were financially unreasonable. Two commenters urged a time limit on EPA decision making following submission of required information. Another commenter was concerned that no provision required PE certification of amendments required by EPA.

Response to comments. Regional Administrator approval of Plans. We have deleted the provision that would have allowed RA approval of Plans. We have decided not to create a new class of SPCC Plans which require EPA approval, either Plans submitted following certain discharges as required by § 112.4(a) or Plans with contingency plans, because we do not believe such approval is necessary in order to ensure effective Plans.

Plan information and amendments. We agree that allowing EPA to require submission of the information required in § 112.4(a) at any time, and thereafter to require Plan amendments, is vague, and therefore we have withdrawn that part of the proposal. Furthermore, it is unnecessary because sections 308 and 311(m) of the CWA already provides us with adequate authority to request necessary Plan information.

While the RA will not have authority under this section to approve Plans, he has authority to require Plan amendment. We will strive to be as timely as possible in reviewing the

information when submitted, and making decisions on any required amendments. A time limit on the RA's decision making authority would be unnecessary because a facility may continue to operate under its existing Plan while the RA's decision is pending. While we will consider cost in our decision making, amendments may be required on a case-specific basis to help prevent discharges. Any technical amendment required would require PE certification. *See* § 112.5(c) .

Editorial changes and clarifications. We have deleted reference to the RA's approval of the submitted Plan in proposed paragraph (d)(2), because the RA will not have authority to approve a Plan. He does, however, have authority to require Plan amendment under today's revision of § 112.4(d).

Section 112.4(e)—Notification and Implementation of Required Amendments

Background. In 1991, we reproposed the current notification provision concerning required Plan amendments, and the time lines for implementation of those amendments.

Comments. Who receives notice. One commenter wanted EPA to notify railroads directly, instead of their registered agents, because of the time lag that might occur between the time the agent received notice and the owner or operator of the facility received notice. Another commenter urged that we also provide notice to the facility operator, the facility improvement owner, and the facility landowner. His rationale for such expanded notice was that a major problem may be addressed by the operator or EPA, without the knowledge and/or consent of the facility improvements owner and the facility landowner.

Appeals procedure. One commenter suggested that we include a reference to the appeal procedure for amendments in this section.

Response to comments. Who receives notice. In reply to the railroad commenter, the rule requires notice only to the owner or operator of the facility, and the registered agent, if any and if known. Notice from EPA to the facility improvements owner and landowner is unnecessary because these matters can and should be handled between the facility owner or operator and the owner or operator of the improvements or the landowner.

Appeals procedure. We have not included a reference to the appeals procedures for required amendments in this section because the appeals procedures follow immediately in the next paragraph, making such reference redundant.

Editorial changes and clarifications. We have changed the proposed requirement to mail a copy of the notice to the registered agent of a corporation to a requirement that such notice be effected only if the registered agent is known to EPA. The notification requirement for registered agents now tracks the notification requirement for registered agents in § 112.1(f). Because we have withdrawn the proposed requirement that a corporation submit that agent's name or address in the submission of information required by § 112.4(a), such agent may not be known to EPA. In the last sentence of the final rule, ''amendment of the Plan'' becomes ''amended Plan.''

Section 112.4(f)—Appeals of Required Amendments

Background. In 1991, we reproposed the current appeals procedures for required Plan amendments. We received no substantive comments. Therefore, we have promulgated the procedures as proposed.

Editorial changes and clarifications. We deleted language concerning the ''designee'' of the EPA Administrator because it is unnecessary. Current delegations allow the Administrator to delegate this function.

Section 112.5(a)—Plan Amendment by an Owner or Operator

Background. In 1991, we proposed to require that an owner or operator amend the Plan before making any change in facility design, construction, operation, or maintenance materially affecting the facility's potential for the discharge of oil into the waters of the United States unless the RA granted an extension. We also listed some examples of facility changes which would require Plan amendment, noting that these examples were not an exclusive list.

Comments. When amendment is necessary. Several commenters favored the proposal. Others provided differing standards for amending Plans. A number of commenters suggested that no amendments should be necessary when a facility change results in a decrease in the volume stored or a decrease in the potential for an oil spill. Another suggested a standard that amendments should be made ''when there are indicia of problems.'' A commenter suggested a standard that no amendments would be required except for those changes which would cause the spill potential to exceed the Plan's capabilities because day-to-day changes do not affect the worst case spill and the Plan should not have to be amended on a day-to-day basis. One commenter suggested that small facilities with less than 5,000 gallon-capacity should be exempted from the need to amend their Plans for the listed acts. Another commenter asserted that instead of being required to amend their Plans before changes are made, operators should be encouraged to incorporate new procedures into their SPCC Plans to prevent and contain potential discharges which might result from performing needed repairs and replacements. The rationale for the suggestion was that operators will then not ''save up'' potential amendments due to the burden of preparing an amendment.

Material changes. Many commenters offered opinions on the examples of material changes listed in the rule for which amendments would be required. Some suggested that the rule should read that these are only examples of changes that may trigger amendment. Several commenters suggested that decommissioning a tank should not trigger an amendment because ''as a tank is removed, so is the requirement for an SPCC Plan.'' Another commenter noted that changing a product in a tank or cleaning a tank should not be considered commissioning or decommissioning a tank. One commenter suggested that an amendment to the Plan should be required when there is a change of product stored within the tank.

Documenting no change or certain activities. Another commenter suggested that a log book might be used instead of a Plan amendment to document ''routine activities'' and measures taken to maintain the spill prevention and response integrity of the facility. Several commenters suggested that an identical replacement of tanks or other equipment should not be considered a material change and therefore amendment should not be required. A utility commenter asked that facilities be allowed to accumulate minor modifications for a period of 6 months, then update the Plan.

EPA approval. Another commenter suggested that we clarify that EPA approval of an amendment made under this section is not required.

Time line for amendment implementation. Numerous commenters opposed the proposed requirement that a Plan be amended before any material changes are made. Commenters suggested various alternative amendment time lines ranging from 90 days to six months following such changes, with a cluster of commenters around the six months alternative. Others suggested that the Plan be