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Part III

Environmental Protection Agency

40 CFR Part 112

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

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 112
[EPA-HQ-OPA-2005-0001; FRL-8007-2]
RIN 2050-AG23
**Oil Pollution Prevention; Spill
Prevention, Control, and
Countermeasure Plan Requirements—
Amendments**
AGENCY: Environmental Protection
Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is today proposing to amend the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements to reduce the regulatory burden for certain facilities by: Providing an option that would allow owners/operators of facilities that store less than 10,000 gallons of oil and meet other qualifying criteria to self-certify their SPCC Plans, in lieu of review and certification by a Professional Engineer; providing an alternative to the secondary containment requirement, without requiring a determination of impracticability, for facilities that have certain types of oil-filled equipment; defining and providing an exemption for motive power containers; and exempting airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers. In addition, the Agency also proposes to remove and reserve certain SPCC requirements for animal fats and vegetable oils and proposes a separate extension of the compliance dates for farms. In proposing these changes, EPA is significantly reducing the burden imposed on the regulated community in complying with the SPCC requirements, while maintaining protection of human health and the environment. Further, the Agency requests comments on the potential scope of future rulemaking. In a separate document in today's **Federal Register**, the Agency is proposing to extend the compliance dates for all facilities.

DATES: Comments must be received on or before February 10, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OPA-2005-0001 by one of the following methods:

- Federal Rulemaking Portal: www.regulations.gov. Follow the on-line instructions for submitting comments.
- Mail: The mailing address of the docket for this rulemaking is EPA

Docket Center (EPA/DC), Docket ID No. EPA-HQ-OPA-2005-0001, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- Hand Delivery: Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OPA-2005-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of the comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Comments and suggestions regarding the scope of any future rulemaking should be clearly differentiated from comments specific to today's proposal (e.g., label *Suggestions for Future Rulemaking and Comments on Current Proposal*).

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by a statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket, EPA/DC, EPA West, Room B102, 1303 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744, and the telephone

number to make an appointment to view the docket is 202-566-0276.

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

SUPPLEMENTARY INFORMATION: This proposed rule would amend the requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans in 40 CFR part 112. First, the proposal would provide an alternative option for the owner/operator of a facility that meets specific qualifying criteria (hereafter referred to as a "qualified facility") to self-certify that the facility's SPCC Plan complies with 40 CFR part 112, in lieu of the requirement for a Professional Engineer's (PE) review and certification. Second, the proposal would provide an alternative option for the owner/operator of a facility with oil-filled operational equipment that meets specific qualifying criterion (hereafter referred to as "qualified oil-filled operational equipment") to establish and document an inspection or monitoring program, prepare a contingency plan, and provide a written commitment of manpower, equipment and materials in lieu of secondary containment for qualified oil-filled operational equipment without being required to make an individual impracticability determination. Third, the proposal would define and provide an exemption for motive power containers. Fourth, the proposal would exempt airport mobile refuelers from specifically sized secondary containment requirements for bulk storage containers. Fifth, the proposal removes and reserves certain SPCC requirements for animal fats and vegetable oils. Finally, the proposal provides a separate extension of the compliance dates for farms and, in a separate notice in today's **Federal Register**, the Agency is proposing to extend the compliance dates for all facilities. The contents of this preamble are:

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I. General Information

To reduce regulatory burden for qualified facilities and to address several concerns involving oil-filled operational equipment, motive power containers, airport mobile refuelers, and provisions specific to animal fats and vegetable oils, EPA proposes to amend the SPCC Plan requirements in 40 CFR part 112. The Agency also proposes a separate extension of the compliance dates for farms. Specifically:

- EPA proposes an alternative option for the owner/operator of a qualified facility to self-certify his/her SPCC Plan, prepared in accordance with 40 CFR part 112, in lieu of review and certification by a Professional Engineer (PE). A qualified facility is a facility subject to the SPCC requirements that (1) has a maximum total facility oil storage capacity of 10,000 gallons or less; and (2) had no reportable oil discharge as described in § 112.1(b) during the ten years prior to self-certification or, since becoming subject to the SPCC requirements if the facility has been in operation for less than ten years. Under this proposed approach, facility owners/operators of qualified facilities choosing to self-certify their SPCC Plans may not deviate from any requirement of the SPCC rule under § 112.7(a)(2) (with two exceptions) and may not make impracticability determinations in their SPCC Plans as described under § 112.7(d). The two exceptions are that facility owners/operators of qualified facilities choosing to self-certify their SPCC Plans would have flexibility with respect to the security requirements and container integrity testing.

- EPA proposes a definition for oil-filled operational equipment and proposes that owners and operators of facilities where qualified oil-filled operational equipment is located have the alternative of preparing an oil spill contingency plan and a written commitment of manpower, equipment and materials, without having to determine that secondary containment is impracticable on an individual equipment basis (make an individual impracticability determination as required in § 112.7(d)); and establish and document an inspection or monitoring program for this equipment to detect equipment failure and/or a discharge in lieu of providing secondary containment for qualified oil-filled operational equipment. Today's proposal would eliminate the current requirement for an individual impracticability determination for oil-filled operational equipment at a facility that has had no discharges as described

in § 112.1(b) from any oil-filled operational equipment during the ten years prior to the Plan certification date or, since becoming subject to the SPCC requirements if the facility has been in operation for less than ten years.

- EPA proposes to exempt from the SPCC rule certain motive power containers. Motive power containers are onboard bulk storage containers used solely to power the movement of a motor vehicle (*i.e.*, fuel tanks), or ancillary onboard oil-filled operational equipment (*i.e.*, hydraulics and lubrication systems) used solely to facilitate its operation. This exemption would not apply to transfers of fuel or other oil into motive power containers at an otherwise regulated facility. This exemption would not apply to a bulk storage container mounted on a vehicle for any purpose other than powering the vehicle itself, for example, a tanker truck or mobile refueler. Additionally, this exemption would not apply to oil drilling or workover equipment, including rigs.

- EPA proposes to exempt airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers under § 112.8(c)(2) and (11) of the SPCC rule. Airport mobile refuelers are vehicles found at airports that have onboard bulk storage containers designed for, or used to, store and transport fuel for transfer into or from an aircraft or ground service equipment. The remaining provisions of § 112.8(c) and the general secondary containment requirements of § 112.7(c) would still apply to the onboard bulk storage containers on airport mobile refuelers and the transfers associated with this equipment.

- The Agency proposes to amend the requirements for animal fats and vegetable oils in Subpart C of Part 112 by removing § 112.13 (requirements for onshore oil production facilities), § 112.14 (requirements for onshore oil drilling and workover facilities), and § 112.15 (requirements for offshore oil drilling, production, or workover facilities) because these sections do not apply to facilities that handle, store, or transport animal fats and vegetable oils.

- EPA proposes to extend the compliance dates for farms, while the Agency considers whether the unique nature of this sector warrants differentiated requirements under the SPCC rule.

- Under the current regulations in § 112.3(a), (b) and (c), a facility that was in operation on or before August 16, 2002 must make any necessary amendments to its SPCC Plan by February 17, 2006, and fully implement

its SPCC Plan by August 18, 2006. A facility that came into operation after August 16, 2002 but before August 18, 2006, must prepare and fully implement an SPCC Plan on or before August 18, 2006. The owner or operator of an onshore or offshore mobile facility must maintain their Plan, but must amend

and implement it, if necessary to ensure compliance with this part, on or before August 18, 2006. In a separate notice in today's **Federal Register**, the Agency is proposing to extend the compliance dates for all facilities to October 31, 2007. Reviewers should refer to that notice for a complete discussion of the

proposed extension. Regarding modifications of the SPCC regulations, to the extent practicable, EPA will establish deadlines for compliance implementation that commence one year after promulgating the regulatory revisions.

II. ENTITIES POTENTIALLY AFFECTED BY THIS PROPOSED RULE

Industry category	NAICS code
Crop and Animal Production	111-112
Crude Petroleum and Natural Gas Extraction	211
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 (including animal fats and vegetable oil manufacturing)	31-33
Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Gasoline Service Stations	447
Fuel Oil Dealers	4543
Waste Management and Remediation	562
Other Commercial Facilities (including Retail Stores, Apartment Buildings, Wholesalers and Janitorial Services)	44-45, 51-55, 56172
Transportation (including Pipelines and Airports), Warehousing, and Marinas	482-486/488112-48819/4883/ 48849/492-493/71393
Elementary and Secondary Schools, Colleges	611
Federal, State, Local Government and Military Installations	92
Hospitals/Nursing and Residential Care Facilities	621-623

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

III. Statutory Authority and Delegation of Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1321(j)(1)(C), requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related onshore facilities to the EPA in Executive Order 11548 (35 FR 11677, July 22, 1970), which has been replaced by Executive Order 12777 (56 FR 54757, October 22, 1991). A Memorandum of Understanding (MOU) between the U.S. Department of Transportation (DOT) and EPA (36 FR 24080, November 24, 1971) established the definitions of transportation- and non-transportation-related facilities. An MOU among EPA, the U.S. Department of Interior (DOI),

and DOT, effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities from DOI to EPA.

IV. Background

On July 17, 2002, EPA published a final rule amending the Oil Pollution Prevention regulation (40 CFR part 112) promulgated under the authority of section 311(j) of the CWA. This revised rule included requirements for SPCC Plans and for Facility Response Plans (FRPs). It also included new subparts outlining the requirements for various classes of oil; revised the applicability of the regulation; amended the requirements for completing SPCC Plans; and made other modifications (69 FR 47042). The revised rule became effective on August 16, 2002. After publication of this rule, several members of the regulated community filed legal challenges to certain aspects of the rule. Most of the issues raised in the litigation have been settled, following which EPA published clarifications in the **Federal Register** to several aspects of the revised rule (69 FR 29728, May 25, 2004).¹

EPA has extended the dates for revising and implementing revised

SPCC Plans in 40 CFR 112.3(a) and (b) several times, and has extended the compliance date for 40 CFR 112.3(c) (see 69 FR 48794 (August 11, 2004) for further discussion on the extensions). This action was taken by EPA in order to provide the regulated community with sufficient time to comply with the 2002 revised rule and to allow the regulated community time to understand the 2004 clarifications and be able to incorporate them in their updated SPCC Plans. The current deadline for the preparation and certification of revised SPCC Plans for facilities maintaining their current SPCC Plan is February 17, 2006. Plans must be implemented by August 18, 2006. Facilities that became subject to the SPCC rule after August 16, 2002 are currently required to develop and implement their Plans by August 18, 2006.

On September 20, 2004, EPA published two Notices of Data Availability (NODAs). The first NODA made available and solicited comments on submissions to EPA suggesting more focused requirements for facilities subject to the SPCC rule that handle oil below a certain threshold amount, referred to as "certain facilities" (69 FR 56182). Streamlined approaches for facilities with oil capacities below a certain threshold were discussed in the NODA documents. The second NODA made available and solicited comments

¹ *American Petroleum Institute v. Leavitt*, No. 1:02CV02247 PLF and consolidated cases (D.D.C. filed Nov. 14, 2002). The remaining issue to be decided concerns the definition of "navigable waters" in § 112.1.

on whether alternate regulatory requirements would be appropriate for facilities with oil-filled and process equipment (69 FR 56184). EPA has reviewed the public comments and data submitted in response to the NODAs in developing today's proposal.

In addition, the Agency considered regulatory relief for airport mobile refuelers in response to concerns raised by the aviation sector. Airport mobile refuelers are vehicles that are used on an airport facility to refuel aircraft and ground service equipment (such as belt loaders, tractors, luggage transport vehicles, deicing equipment, and lifts) used at airports. The onboard bulk storage containers on airport mobile refuelers that are used to transport and transfer fuel into or from aircraft and ground service equipment are considered mobile or portable bulk storage containers under the SPCC rule because they are used to store oil prior to further distribution and use. As such, they are subject to all applicable SPCC rule provisions, including the sized secondary containment provisions of § 112.8(c)(2) and (11). These provisions require the secondary containment, such as a dike or catchment basin, to be sufficient to contain the capacity of the largest single compartment or container and include sufficient freeboard to contain precipitation.

Regulated community members in the aviation sector have expressed concern that requiring such sized secondary containment for airport mobile refuelers is not practicable for safety and security reasons. (Included in the Docket for today's proposal are the letters that have been submitted to EPA regarding this matter.) Specifically, it has been argued that to require these refuelers to park in specially designed secondary containment areas located within an airport's aircraft operations area could create a safety and security hazard because it would require grouping of the vehicles or place impediments in the operations area. Additionally, requiring mobile refuelers to return to containment areas located within the airport's tank farm between refueling operations may increase the risk of accidents (and therefore accidental oil discharge), as the vehicles would travel with increased frequency through the busy aircraft operations area. EPA acknowledges these concerns and seeks to provide relief for airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers, while protecting the environment from refueler spills, particularly those associated with transfers. Consequently, these refuelers remain subject to the

other bulk storage container requirements under § 112.8(c) and the general secondary containment requirements under § 112.7(c) which also applies to the transfers of oil associated with airport mobile refuelers.

In contrast to a mobile or portable bulk storage container such as a mobile refueler, a "motive power container" is an integral part of a motor vehicle (including aircraft), providing fuel for propulsion or providing some other operational function, such as lubrication of moving parts or for operation of onboard hydraulic equipment. Motive power containers on vehicles used solely at non-transportation related facilities fall under EPA jurisdiction and are subject to the SPCC regulation. Examples of motive power vehicles include, but are not limited to: buses; recreational vehicles; some sport utility vehicles; construction vehicles; aircraft; farm equipment; and earthmoving equipment (e.g., such as at a drilling or workover facility). Examples of facilities or locations that may be covered by the SPCC requirements solely because of the presence of motive power containers include, but are not limited to, heavy equipment dealers, commercial truck dealers, and parking lots.

While the concept of "motive power" is not directly addressed in the SPCC regulation, such vehicle fuel containers may fall under the definition of "bulk storage container" in § 112.2, while the onboard lubrication system may be considered oil-filled operational equipment. Therefore, motive power containers which store oil used for the propulsion of a vehicle are subject to all the requirements under § 112.8(c) if they have a capacity of 55 gallons or more. These requirements include specifically sized secondary containment for bulk storage containers, integrity testing (visual plus non-destructive testing), and a requirement to engineer containers to avoid discharges (such as an overfill alarm). Additionally, any oil-filled operational equipment with a capacity of 55 gallons or more mounted on a vehicle are subject to the general secondary containment requirements listed in § 112.7(c).

EPA recognizes that, in most cases, the requirements of § 112.8(c), including specifically sized secondary containment and the general secondary containment requirements under § 112.7(c), are not practicable for motive power containers. It has never been EPA's intent to regulate motive power containers. Therefore, EPA is proposing to exempt such motive power containers from the SPCC regulation.

In the July 17, 2002 final SPCC rule, the Agency promulgated general

requirements for SPCC Plans for all facilities and all types of oil in § 112.7. In response to the Edible Oil Regulatory Reform Act (EORRA), EPA promulgated separate subparts in part 112 for facilities storing or using various classes of oil, but the requirements in each subpart are the same. EORRA required most Federal agencies to differentiate between and establish separate classes for various types of oil, specifically, between animal fats and oils and greases, and fish and marine mammal oils and oils of vegetable origin, including oils from seeds, nuts, and kernels; and other oils and greases, including petroleum. The result of this approach was that the new Subpart C included requirements for animal fat and vegetable oil (AFVO) facilities—onshore facilities (excluding production facilities) (§ 112.12), onshore oil production facilities, (§ 112.14) onshore oil drilling and workover facilities (§ 112.13), and requirements for offshore oil drilling, production, or workover facilities (§ 112.15). While the Agency recognized that some of these requirements are not applicable to facilities that handle, store or transport AFVO, these sections were promulgated because the Agency had not proposed differentiated SPCC requirements for public notice and comment. As a result, the current requirements for petroleum oils were also applied to animal fats and vegetable oils. EPA is today proposing to remove those sections from the SPCC requirements that are not applicable or appropriate to animal fats and vegetable oils.

Additionally, EPA has issued the SPCC Guidance for Regional Inspectors. The guidance document is intended to assist regional inspectors in reviewing a facility's implementation of the SPCC rule. The document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of the inspector in the review and evaluation of the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. The guidance is also available to both the owners and operators of facilities that may be subject to the requirements of the SPCC rule and to the general public on the Agency's website at www.epa.gov/oilspill. This guidance is a living document and will be revised, as necessary, to reflect any relevant future regulatory amendments in a timely manner. Accordingly, EPA welcomes comments from the regulated community and the public on the guidance document within 60 days of this NPRM, as described on the website.

The guidance document is a separate effort from this rulemaking. EPA does not plan to address comments on the guidance document when taking final action on this rule. Comments on the guidance document should not be submitted to the docket for this rulemaking. Refer to the website www.epa.gov/oilspill for the text of the guidance document and for instructions for providing suggestions on the guidance document. The EPA urges readers to review the guidance document for assistance in understanding the SPCC rule and today's proposal. Pursuant to today's proposal, EPA anticipates issuing an updated guidance document in 2006 to reflect finalization of this rulemaking such that inspectors and the regulated community have accurate and timely information on SPCC requirements.

Although the scope of today's proposal was originally intended to address only certain targeted areas of the SPCC requirements, the Agency is including several additional proposed modifications to address a number of issues and concerns raised by the regulated community. As highlighted in the EPA Regulatory Agenda and the 2005 OMB report on "Regulatory Reform of the U.S. Manufacturing Sector," there are other issues under consideration for possible future rulemaking action. The modifications proposed today do not preclude a future rulemaking on other issues not addressed in today's proposal. Rather, EPA is working to identify additional areas where regulatory reform may be appropriate. For these additional areas, the Agency expects to issue a proposed rule in 2007. Additionally, EPA in conjunction with DOE will be conducting an energy impact analysis of the SPCC requirements, and will consider the results of this analysis to inform the Agency's deliberations over any future rulemaking. EPA is interested in whether there are other aspects of the SPCC regulatory requirements, beyond those that are addressed in today's proposal, that should be the focus of future rulemaking. The Agency also requests that commenters who provide suggestions regarding future rulemaking clearly differentiate them from comments submitted on today's proposal (e.g., label Suggestions for Future Rulemaking and Comments on Current Proposal). The Agency will not address these suggestions when taking final action on this proposed rule, but will take them into consideration in future rulemaking decisions.

V. Today's Action

A. Qualified Facilities

EPA proposes to amend the Oil Pollution Prevention regulation (40 CFR part 112) to provide an option to allow the owner or operator of a facility that meets the qualifying criteria (hereafter referred to as a "qualified facility") to self-certify the facility's SPCC Plan in lieu of certification by a licensed professional engineer (PE). EPA proposes to amend § 112.3 to describe the SPCC eligibility criteria that a regulated facility must meet in order to be considered a qualified facility. A qualified facility would be a facility subject to the SPCC rule that (1) has an aggregate facility oil storage capacity of 10,000 gallons or less; and (2) had no discharges as described in § 112.1(b) during the ten years prior to self-certification or since becoming subject to the SPCC requirements if less than ten years. Facilities that have been subject to SPCC for less than ten years, including new facilities, would need to demonstrate no discharges as described in § 112.1(b) only for the period of time they have been subject to the SPCC rule. Self-certified Plans would not be allowed to include "environmentally equivalent" alternatives to required Plan elements as provided in § 112.7(a)(2) or to claim impracticability with respect to any secondary containment requirements as provided in § 112.7(d). The two exceptions for which the owner and operator would still be allowed to use environmentally equivalent measures are with respect to security and integrity testing. Facilities with complicated operations and lower capacities may find that the current rule offers a more cost-effective method of achieving compliance than the proposed option. Therefore, a qualified facility could choose to follow the current SPCC requirements (including the PE certification) to take advantage of the flexibility offered by PE-certified impracticability determinations and environmentally equivalent measures.

1. Eligibility Criteria

a. Total Facility Oil Storage Capacity Threshold

EPA proposes to limit qualified facilities to a total maximum storage capacity of 10,000 gallons of oil. EPA considered many different factors before selecting this storage capacity. First, EPA has established 10,000 gallons as a threshold in several other rules relating to oil discharges. This threshold quantity is used in the National Oil and Hazardous Substances Pollution Contingency Plan (National

Contingency Plan or NCP) to classify oil discharges based on the location and size of the discharge (see 40 CFR 300.5). The NCP refers to discharges greater than 10,000 gallons to inland waters as "major," while other thresholds are used to classify "minor" and "medium" discharges. The classes are provided as guidance to the On-Scene Coordinator (OSC), and serve as criteria for the actions delineated in the NCP. It is important to note, however, that the NCP quantitative thresholds are only provided to help the OSC determine response action, and do not imply associated degrees of hazard to the public health or welfare, or environmental damage. The NCP size classes nevertheless define an oil discharge to inland waters exceeding 10,000 gallons as a major discharge.

A discharge of 10,000 gallons or more is also one of the factors used in identifying facilities that must prepare and submit a Facility Response Plan (FRP) under § 112.20(f)(1). The FRP rule applies to facilities that could reasonably be expected to cause substantial harm to the environment due to a discharge to waters of the U.S. and adjoining shorelines.

Second, state regulations also provide support for the use of a 10,000-gallon threshold. A number of states differentiate regulatory requirements based on a facility's total storage capacity, with some states specifying a 10,000-gallon threshold. For example, Maryland requires that all commercial facilities storing more than 10,000 gallons of oil obtain an oil operations permit; Minnesota requires facilities storing between 10,000 and 1,000,000 gallons of oil to prepare a prevention and response plan; and Oregon places special requirements on marine facilities storing more than 10,000 gallons of oil. The 10,000-gallon threshold is also frequently used in setting requirements for certain storage tanks. For example, New York requires a "secondary containment system" around all aboveground storage tanks (ASTs) with a storage capacity greater than or equal to 10,000 gallons, and Wisconsin caps the size of ASTs that can be used for fueling vehicles at 10,000 gallons.

Finally, 10,000 gallons is a common storage tank size, and EPA believes that setting a maximum capacity at 10,000 gallons would address the concerns that smaller facilities have raised. In fact, the Small Business Administration Office of Advocacy suggested that a 10,000-gallon threshold is a reasonable volume to address the concerns of facilities with relatively smaller volumes of oil. The Agency seeks comments on whether this

threshold appropriately addresses the concerns of facilities with relatively smaller volumes of oil, while maintaining the environmental protection intended by the regulation. If commenters suggest alternative volume thresholds, it will be important for the comments to also include a justification for such alternative volume thresholds in order for the Agency to adequately consider the comments submitted. This data would be useful in final rule deliberations.

While EPA recognizes that a discharge of less than 10,000 gallons can be harmful, regardless of how the NCP defines "major discharge," EPA believes that it is reasonable to allow facilities with a capacity of no more than 10,000 gallons to prepare and implement a Plan that complies with the SPCC rule requirements and provides adequate protection against discharges without the involvement of a PE. These facilities generally have less complex operations and petroleum system configurations, and smaller oil storage capacities than other types of facilities subject to the SPCC requirements. Thus, the Agency believes that a responsible owner or operator at these facilities should be able to comply with the SPCC rule provisions without review and certification of the SPCC Plan by a PE, and that simplifying the rule will result in greater environmental protection by improving compliance.

b. Reportable Discharge History

EPA proposes that a qualified facility subject to the SPCC requirements must have no reportable oil discharges as described in § 112.1(b) during the ten years prior to self-certification or since becoming subject to the SPCC requirements, whichever is less. Facilities that have been subject to SPCC for less than ten years, including new facilities, would need to demonstrate no discharges as described in § 112.1(b) only for the period they have been subject to SPCC. This criterion is based on a proposal regarding oil-filled electrical equipment submitted by the Utility Solid Waste Activities Group (USWAG), as described in the documents supplementing the September 20, 2004 NODA at 69 FR 56184. In its proposal, USWAG recognized that facilities that pose a risk, in terms of oil discharges in quantities that are harmful (reportable under 40 CFR part 110), should not be granted relief. USWAG specifically proposed a ten-year spill history as a potential criterion to be eligible for relief. In general, NODA commenters expressed strong support for the USWAG proposal. As in the case of oil-

filled operational equipment, the Agency believes that a clean spill history is a suitable criterion for demonstrating eligibility for Plan self-certification, while still effectively maintaining good prevention practices.

Part 110 defines a discharge of oil in such quantities that may be harmful to the public health, welfare, or the environment of the United States as a discharge of oil that violates applicable water quality standards; a discharge of oil that causes a film or sheen upon the surface of the water or on adjoining shorelines; or a discharge of oil that causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines (40 CFR 110.3). The Agency refers to such discharges in § 112.1(b) of the rule. Any person in charge of a facility must report any such discharge of oil from the facility to the National Response Center (NRC) at 1-800-424-8802 immediately. While EPA recognizes that past release history does not necessarily translate into a predictor of future performance, the Agency believes that discharge history is a reasonable indicator of a facility owner or operator's ability to develop an SPCC Plan for the facility without the involvement of a PE. Hence, EPA proposes to use a facility's discharge history as a qualification criterion indicating the facility's ability to effectively develop and implement its SPCC Plan. By establishing a good oil spill prevention history, a facility qualifies for the self-certification option offered in this proposal.

The Agency requests comments on the appropriateness of a reportable discharge history criterion for determining the qualification of a facility for the self-certification option, whether it is necessary, and whether there are other indicators of a facility's effective implementation of the oil pollution prevention requirements under part 112 that should be considered. In addition, the Agency also specifically requests comments on the proposed ten-year period for which facilities would be required to have had no reportable discharges in order to meet this qualification. The Agency requests that any alternative criterion or time period suggested include an appropriate rationale and supporting data to assist the Agency in considering them for final action. The Agency is also aware that events such as natural disasters, acts of war or terrorism, sabotage, or other calamities, beyond the control or planning ability of the facility owner or operator, may cause a reportable oil discharge. The Agency therefore requests comments on how to

account for such occurrences in the discharge history criterion.

2. Proposed Requirements for Qualified Facilities

a. Self-Certification and Plan Amendments

Some in the regulated community, particularly facilities with relatively smaller volumes of oil, identified the cost of the PE certification of SPCC Plans as one of its major concerns. This view was echoed in the comments submitted in response to the NODAs. The Agency has reviewed the requirements in light of the information provided and today proposes to allow for self-certification of SPCC Plans by owners and operators of qualified facilities. With this proposal, the Agency is responding to those concerns. The elements of the proposed self-certification requirement are very similar in scope to those of the PE certification: owners and operators that choose to self-certify their Plans must certify that they are familiar with the requirements of the SPCC rule; they have visited and examined the facility; the Plan has been prepared in accordance with accepted and sound industry practices and standards; procedures for required inspections and testing have been established; the Plan is being fully implemented; the facility meets the qualification criteria set forth under § 112.3(g)(1); the Plan does not include any environmental equivalence measures as described in § 112.7(a)(2); the Plan contains no determinations of impracticability under § 112.7(d); and the Plan and the individual(s) responsible for implementing the Plan have the full approval of management and the facility has committed the necessary resources to fully implement the Plan. The self-certification provision would be optional. Under today's proposal, an owner or operator of a qualified facility could choose to comply with the current requirements under part 112 if that is more suitable to his/her particular situation.

Qualified facilities that choose to self-certify would not automatically lose eligibility for a self-certified Plan and be required to obtain PE certification in the event of a discharge as described in § 112.1(b). EPA has the authority to require SPCC Plan amendments under § 112.4. Section 112.4(a) requires a facility that has discharged more than 1,000 gallons of oil in a single discharge as described in 40 CFR part 110, or that has discharged more than 42 gallons of oil in each of two discharges as described in 40 CFR part 110 in any 12-month period, to submit information to

the EPA Regional Administrator (RA) within 60 days of the date of the discharge. As per § 112.4(d), the RA may require the facility to amend its SPCC Plan in order to prevent and contain discharges, and the RA could require a facility to obtain PE-certification of its SPCC Plan. In addition, a discharge of oil "in such quantities as may be harmful", as defined in 40 CFR 110.3 that does not trigger the reporting requirements of § 112.4(a) must still be reported to the National Response Center. Criminal action can be taken against an owner or operator of a facility if discharges are not reported. EPA also receives copies of the NRC reports and has the authority under § 112.1(f) to require a facility to prepare and implement an SPCC Plan or any applicable part of a Plan. The time frame for this review and amendment process is described in § 112.4. The facility may choose to appeal the RA's decision to require a Plan amendment under § 112.4. The RA also has authority to require preparation and implementation of a Plan or applicable part of a Plan under § 112.1(f).

The Agency requests comment on the appropriateness of using the existing authorities under the SPCC regulations rather than establishing a separate process that would automatically require a facility to obtain PE review and certification of the facility's SPCC Plan in the event of a reportable discharge. The Agency requests that any alternative approaches presented include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

Under § 112.5 of the SPCC rule, an owner or operator must review and amend the SPCC Plan following any change in facility design, construction, operation or maintenance that materially affects its potential for a discharge as described in § 112.1(b). A PE must then certify any and all of these technical amendments to the SPCC Plan, as currently required under § 112.3(d). Under today's proposal, technical amendments to SPCC Plans of qualified facilities would not be required to be certified by a PE. Instead, an owner or operator would be allowed to self-certify technical amendments to the Plan under the proposed § 112.3(g)(2) provision, and facilities with PE-certified Plans which qualify for self-certification would be allowed to choose to self-certify future technical amendments rather than hire a professional engineer to certify the technical amendment. Facilities would be required to document the self-certification of a technical amendment

in the SPCC Plan in accordance with § 112.3(g)(2).

b. Environmental Equivalence and Impracticability Determinations

Under § 112.7, facility owners and operators have the flexibility to deviate from specific rule provisions if the Plan states the reason for nonconformance and if equivalent environmental protection is provided by some other means of spill prevention, control or countermeasure. These "environmentally equivalent" measures must be described in the SPCC Plan, including how the equivalent environmental protection will be achieved based on good engineering practice. Allowance for "environmentally equivalent" deviations is provided in § 112.7(a)(2) and are only available for requirements not related to secondary containment, such as fencing and other security measures, preventing catastrophic tank failure due to brittle fracture, integrity testing, and liquid level alarms. As part of the SPCC Plan, any environmentally equivalent measures are also required to be certified by a PE. The PE's SPCC Plan certification requirements include consideration of industry standards for the Plan, which would include equivalent environmental protection measures.

The SPCC rule also provides flexibility for owners/operators who determine that the general secondary containment requirements in § 112.7(c) or any of the applicable additional requirements for secondary containment in subparts B and C are impracticable. Where impracticability is demonstrated, the SPCC rule allows facility owners and operators the flexibility to instead develop a contingency plan and comply with additional requirements as described in § 112.7(d). The SPCC Plan must explain why containment measures are not practicable, provide an oil spill contingency plan that follows the provisions of 40 CFR part 109 (Criteria for State, Local and Regional Oil Removal Contingency Plans), and provide a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful as described in 40 CFR part 110. A PE must certify any impracticability determinations, as well as the contingency plan and additional measures implemented in lieu of containment. Because of the expertise that a PE has in evaluating whether particular measures provide equivalent environmental protection and in knowing how to effectively implement such measures, EPA believes that the

flexibility in these performance-based provisions is best suited to SPCC Plans that are reviewed and certified by a PE.

Today's proposed amendment would allow qualified facilities to opt out of the PE certification, but would not allow facilities that take advantage of this option to include environmentally equivalent measures in their SPCC Plans pursuant to § 112.7(a)(2). EPA is proposing this limitation on qualified facilities because EPA believes that in general, without the advantage of the expertise and knowledge that a PE brings to the development of an SPCC Plan, deviations based on environmental equivalence may not be adequate. However, as discussed below, EPA believes that allowing certain deviations may be appropriate for at least some owners of qualified facilities, without employing PE expertise. Therefore, EPA is proposing to allow certain deviations with respect to facility security and integrity testing of bulk storage containers.

EPA is also proposing that qualified facilities be precluded from claiming impracticability and using contingency planning in lieu of secondary containment. EPA believes that a PE's knowledge and expertise is needed for appropriate contingency planning and other measures that must be put in place in the absence of secondary containment. Thus, requiring qualified facilities that opt out of PE certification to adhere to the current set of requirements would maintain the same standard of environmental protection provided in the existing rule.

Today's proposal would not preclude a qualified facility from choosing environmentally equivalent measures or from demonstrating impracticability with respect to secondary containment requirements, although the qualified facility would need to comply with the current SPCC requirements (including the PE certification) in order to utilize the flexibility offered by PE-developed impracticability determinations and environmentally equivalent measures. In some circumstances, it may be more cost effective for a PE to prepare an SPCC Plan which utilizes environmentally equivalent measures or contingency planning, than for the owner/operator to comply with the SPCC provisions as outlined in today's proposal. Also, facilities with unconventional operations which qualify for this alternative may find that the current rule requirement for PE certification offers a more cost-effective method of achieving compliance because it provides additional flexibility through performance-based provisions. The Agency requests comments on the

appropriateness of restricting the use of impracticability determinations and environmentally equivalent measures by those qualified facilities that choose the option of self-certification in order to ensure an adequate level of environmental protection. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

c. SPCC Plan Exceptions

Today's proposal for self-certification of qualified facilities would restrict the use of alternative environmentally equivalent measures for qualified facilities that elect to develop their SPCC Plan without the services of a PE. The Agency's concern is that these facilities would no longer have a trained professional, with knowledge to make site-specific equivalence determinations, reviewing and certifying their Plan. However, EPA recognizes that some of the prescriptive provisions in the current regulatory requirements may prove difficult for some qualified facilities to meet.

While the Agency still believes that generally allowing use of environmentally equivalent measures in self-certified Plans is not appropriate, some degree of flexibility in two areas may be appropriate for qualified facilities. The Agency believes that it can allow qualified facilities to comply with a streamlined set of basic security measures and integrity testing requirements. The flexibility in these proposed exceptions would be analogous to the flexibility provided under § 112.7(a)(2), which allows for deviations from § 112.7(g) (security) and § 112.8(c)(6) (integrity testing) that would not be available for these facilities under today's proposal.

EPA recognizes that there is no one single approach to ensure proper facility security. For example, the security requirements of fencing and lighting may not always be appropriate for sites such as a national, state or local park subject to SPCC, where the site layout may be too extensive to fence, and where perhaps the lighting of a solitary field tank would invite, rather than deter, would-be intruders. Qualified facilities, in lieu of the requirements under § 112.7(g) of this part, would be allowed to prepare a security plan that describes how the facility controls access to the oil handling, processing and storage areas; secures master flow and drain valves; prevents unauthorized access to starter controls on oil pumps; secures out-of-service and loading/unloading connections of oil pipelines; prevents acts of vandalism; and assists

in the discovery of oil discharges. (Note that the security requirements in § 112.7(g) do not apply to production facilities.)

Today's proposal would allow a qualified facility to develop a general security plan that provides equivalent environmental protection to the requirements in § 112.7(g). The Agency recognizes that these security provisions can be approached differently by the variety of facilities that would qualify for self-certification under today's proposal. It should be noted that this is an option and a qualified facility in compliance with the current requirements under § 112.7(g) would not be required to develop a security plan under the proposed § 112.3(g).

The security plan would be required to address how the owner or operator will:

- Secure all bulk storage containers, piping and oil-filled equipment from unauthorized access or acts of vandalism which could result in a discharge of oil;
- Secure appurtenances (valves and/or drains) in the closed position to prevent the flow of the contents of the container which could result in a discharge of oil;
- Secure pump controls in the "off" position when not in use and locate facility pump controls to prevent unauthorized access;
- Secure all loading or unloading transfer connections for facility piping; and
- Address whether security lighting is appropriate to both ensuring the discovery of oil discharges, and deter vandalism.

This security plan would be required to be documented in the qualified facility's SPCC Plan, and would include a discussion of how the security plan will be implemented and the required training/inspections/maintenance for security related equipment and activities. The Agency recognizes the unique nature of many of the facilities that would qualify for Plan self-certification, and as such, some flexibility is appropriate so these facilities can achieve compliance with the security provisions of the current SPCC rule. The application of the SPCC security measures is often determined by the facility's geographical/spatial factors and there is no "one-size-fits-all" answer to this serious compliance requirement. For example, facilities such as farms or national parks may have unique characteristics that make compliance with the current security measures, such as potentially fencing the entire facility footprint, inappropriate.

The Agency is also proposing to provide flexibility in the area of integrity testing for qualified facilities. The Agency continues to believe that owners and operators should rely on the appropriate use of industry standards for the integrity testing requirements. As EPA stated in its May 2004 letter to the Petroleum Marketers Association of America (available at http://www.epa.gov/oilspill/pdfs/PMAA_letter.pdf), the Agency recognizes that in certain site-specific circumstances, visual inspection may be appropriate and sufficient for compliance with the integrity testing requirement. The Agency expects that the selection of particular testing methods to comply with the integrity testing requirements in the current rule and today's proposal would be based on industry inspection standards such as the Steel Tank Institute (STI) SP-001, American Petroleum Institute (API) Standard 653 and API Recommended Practice 12-R1. These industry standards address the qualifications of the tank inspector and the scope/frequency of the testing/inspections. Thus, in effect, the Agency is proposing to allow owners and operators of qualified facilities to consult and rely on industry standards or qualified container inspectors/testing personnel to determine the appropriate qualifications for tank inspectors/testing personnel and the type/frequency of integrity testing required for a particular container size and configuration. The Agency is proposing to allow qualified facilities to make this determination in accordance with industry standards without the need to develop a PE-approved environmentally equivalent deviation, as is currently required under § 112.7(a)(2). The Agency believes that allowing this flexibility for qualified facilities would increase compliance and thus environmental protection.

The U.S. Small Business Administration (SBA) Office of Advocacy has suggested an additional alternative approach for allowing flexibility for integrity testing of small shop-built tanks that is based on the current SP001 standard. The current SP001 standard allows periodic visual inspections for shop-fabricated aboveground storage tanks with a total capacity of 5,000 gallons, and for which there is spill control and a continuous release detection method (*i.e.*, Category 1 tanks). SBA Office of Advocacy has suggested that EPA allow periodic visual inspections for shop-fabricated aboveground storage tanks at qualified facilities, in accordance with this SP001 standard, but broaden the applicability

to include shop-fabricated aboveground storage tanks that have an oil capacity of between 5,000 and 10,000 gallons. In all other respects, the SP001 standard would apply. In the SBA's view, due to the presence of spill control and a continuous release detection method (in accordance with the SP001 standard), there appears to be little likelihood for a discharge into navigable waters. The SBA Office of Advocacy also believes this additional option would make the visual inspection option available to all, and not a subset of, qualified facilities and it would benefit those qualified facilities having one tank above 5,000 gallons.

EPA is not proposing the SBA additional approach for several reasons. First the SBA approach would deviate from the industry standards noted above. Second, the Agency is unaware of a technical basis to justify this deviation. EPA must justify divergence from accepted industry standards under the National Technology Transfer and Advancement Act (NTTAA) (see section VII (I) for a description of NTTAA). Third, industry standards are periodically updated and revised to account for changes in technology and to remain consistent with good engineering practice while this approach would need to be revised through rulemaking. Finally, EPA believes that by allowing for a deviation from existing industry standards, compliance would become more complex as facilities try to understand the circumstances under which this additional approach can be employed. The Agency welcomes comment on this additional approach as well as on the proposed approach for integrity testing for qualified facilities. In addition, once the modifications proposed today are promulgated, the Agency is willing to continue to work with industry tank inspection standard setting organizations to update applicable industry standards. Commenters who have information on the scope and criteria associated with the industry visual inspection standards should provide it to the standards setting organizations and their national experts for consideration.

At this time, EPA is aware that a number of industry standards are changing. Nevertheless, the Agency believes that it may be appropriate to allow the flexibility of alternative integrity testing methods for these qualified facilities to be consistent with relevant industry standards. For example, visual inspections may be appropriate for the lower volume shop-built containers in certain configurations that are likely to be

present at most of these qualified facilities. In the absence of an environmental equivalency provision that would allow an alternative integrity testing method for qualified facilities, the owner or operator would be required to perform visual inspections plus non-destructive testing on all classes of containers, regardless of size and configuration. Qualified facilities would have to bear the cost and burden of conducting non-destructive testing that may not be necessary under industry standards. The Agency continues to strongly recommend that facilities, qualified for self-certification or otherwise, utilize industry standards that are appropriate to their particular tank configurations in developing and conducting tank inspection and testing programs and when determining inspector/testing personnel qualifications.

The Agency requests comments on whether the proposed requirements for security and integrity testing for qualified facilities provide appropriate flexibility, while maintaining environmental protection. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

3. Alternative Options Considered

EPA considered other options for this proposal. These options included (1) providing an indefinite extension of deadlines or a suspension of all SPCC requirements; and (2) a multi-tiered structure of requirements based on a facility's total regulated storage based on the SBA proposal described in the Certain Facilities NODA published last year. The Agency also considered requiring qualified facilities to make a one-time notification to EPA they have been in operation or subject to the SPCC requirements for a period less than ten years from the time of Plan certification, and therefore could not show a ten-year clean spill history as a qualifier. All of these options would apply to a defined set of "qualified facilities".

a. Extension/Suspension Options

Two additional options were considered: An indefinite compliance date extension and a suspension of all requirements. Both options would apply to a defined universe of "qualified" SPCC-regulated facilities. An indefinite extension would provide an undetermined future date for compliance with the rule. As in past extensions, all facilities that should have had a Plan as of August 16, 2002 would be required to be in compliance with the pre-2002 SPCC requirements

during the interim period, including those that could potentially take advantage of today's qualified facilities proposal. A suspension of requirements for qualified facilities would provide relief for the affected universe until EPA takes further action.

Both of these options would allow EPA more time to decide how to regulate qualified facilities without delaying compliance for the entire universe of SPCC-regulated facilities. In contrast, the proposed option would set forth explicit requirements for qualified facilities that reduce compliance costs within the current compliance date schedule. Because these options would only postpone the rule's requirements for qualified facilities and because the Agency believes that the modifications proposed today address the major concerns raised by facilities that store lower volumes of oil, EPA believes it appropriate to go forward with today's proposal.

b. Multi-Tiered Structure

A multi-tiered structure option was developed in response to comments EPA received following publication of the NODA for facilities that handle oil below a certain threshold amount (69 FR 56182, September 20, 2004) and is based on a previous analysis prepared for the SBA Office of Advocacy (Jack Faucett Associates, 2004) (hereafter "SBA proposal"). This revised regulatory structure would not only relax requirements for PE certification, but also requirements for preparing an SPCC Plan itself, although under this approach, the facility would still be responsible for complying with the substantive requirements of the SPCC rule. It includes a tiered system based on the total storage capacity of a facility, as follows:

- Tier I would include facilities that handle between 1,321 and 5,000 gallons of oil (total storage capacity). These facilities would not need a written SPCC Plan (and therefore no PE certification would be needed), but would have to adhere to all other SPCC requirements.
- Tier II would include facilities handling between 5,001 and 10,000 gallons of oil (total storage capacity). These facilities would be required to have a written SPCC Plan, but the Plan would not need to be certified by a PE, and a PE site visit would not be required. Standardized plans could be adopted by a facility conforming to standard design and operating procedures, without requiring PE certification.
- Tier III would include the remaining SPCC-regulated facilities (total storage capacity greater than

10,000 gallons). These facilities would be required to have a written SPCC Plan certified by a PE, as currently required by the 2002 revised SPCC rule.

SBA also suggested that EPA promulgate an interim final rule that excludes small facilities with storage of less than 10,000 gallons (the first two tiers of their three-tier approach) from SPCC Plan requirements, pending completion of the full notice and comment rulemaking for small facilities to develop the aforementioned tiered requirements. In order to provide environmental protection in the interim period, SBA recommended that EPA require: (1) Regular visual inspections of containers, (2) replacement or retirement of leaking tanks, and (3) compliance with the part 109 contingency plan requirements or their equivalent. In this manner (according to SBA), the EPA could address the reality of the extremely low SPCC compliance rate among small facilities, and would work toward creating a rule that small facilities would be likely to comply with. SBA stated that such a move would enhance, rather than detract from, environmental protection.

This approach would provide different levels of regulatory relief based on total oil storage capacity alone, basing degree of risk on the surrogate measure facility size. Many commenters on the NODA supported this approach, which would reduce compliance costs by eliminating the PE certification requirement for facilities under 10,000 gallons. However, EPA believes that such an approach poses significant implementation problems both for the regulated community and the regulators. In particular, the Agency believes that without the owner/operator developing a Plan or documentation on how the facility will comply or expects to comply with the SPCC requirements, it will be challenging for the facility to both meet the substantive requirements (for example, spill notification, response and preparedness planning, equipment maintenance, inspection and training, secondary containment), as well as provide documentation to the regulators that the facility is in compliance. Additionally, EPA inspectors conducting site visits would have no written Plan or documentation to assess the facility's effectiveness in implementing its spill prevention strategy.

Although EPA received general comments supporting this option on a conceptual level, neither the information presented in the NODA nor the comments addressed the practical application of this alternative. The Agency welcomes comments on this

approach, as well as on the proposed approach, the practical application of the proposal and the rationale for its adoption.

c. One-Time Notification

The Agency recognizes that some facilities otherwise qualifying for owner/operator self-certification will have been in existence for fewer than ten years and will consequently be unable to demonstrate ten years without a discharge as described in § 112.1(b). Some of these facilities will have come into existence after August 16, 2002, and will not have been subject to SPCC regulation until August 18, 2006; some will be new facilities beginning operation after that date. EPA agrees with the USWAG comments that a compliant discharge history of ten years or more provides a higher degree of assurance of continuing compliance than a history of ten years or less. This is particularly true when comparing ten-year compliant facilities to otherwise qualified facilities which began operations after August 16, 2002, and whose owners or operators, to date, have not been subject to the requirements of the SPCC program, as well as start-up facilities without any operating history. EPA considered whether owners or operators of newer facilities that do not have ten years of compliance and operation without a discharge should be required to provide a one-time notification to the Agency. This notification would be submitted to the Administrator within 30 days of self-certifying a facility's SPCC Plan and would include the following information: (1) Name of the facility owner/operator; (2) mailing address of the facility owner/operator; (3) type of business conducted at the facility that is subject to the requirements of this part; (4) above-ground capacity of the facility; (5) location of the facility by street address or, if there is no street address, by longitude and latitude; and (6) year the facility began operations. These notices could be provided by either regular or electronic mail. The Agency would have the opportunity to provide some basic SPCC outreach and educational support to these owners and operators who, while otherwise demonstrating the prerequisites for self-certification, are unable to demonstrate ten years without a discharge as described in § 112.1(b). This one-time notification requirement, if adopted, would modify today's proposed qualified facilities option by increasing its burden for some facilities. EPA decided not to pursue this option because it does not differ substantively from the proposed action and the

additional burden of a notification requirement was not considered necessary.

The Agency welcomes comments on these or other alternatives that could serve to reduce the burden to smaller oil-handling facilities in particular, while at the same time maintaining appropriate levels of environmental protection by preventing discharges of oil. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

B. Qualified Oil-Filled Operational Equipment

EPA proposes to amend the Oil Pollution Prevention regulation (40 CFR part 112) to provide a definition of oil-filled operational equipment and an optional alternative to the general secondary containment requirements for oil-filled operational equipment that meets the qualifying criterion (hereafter referred to as "qualified oil-filled operational equipment"). The proposal would allow owners and operators of facilities with qualified oil-filled operational equipment to have the alternative of preparing an oil spill contingency plan and a written commitment of manpower, equipment and materials to expeditiously control and remove any oil discharged that may be harmful, without having to make an individual impracticability determination as required in § 112.7(d). The owner or operator would also be required to establish and document an inspection or monitoring program for this qualified oil-filled operational equipment to detect equipment failure and/or a discharge, in lieu of providing secondary containment.

EPA proposes to add § 112.7(k) to define the SPCC eligibility criterion that qualified oil-filled operational equipment must meet in order to be considered qualified oil-filled operational equipment. Eligibility of a facility with oil-filled operational equipment would be determined by considering the reportable discharge history from any oil-filled operational equipment. The qualified oil-filled operational equipment criterion specifically requires that the facility had no discharges as described in § 112.1(b) from any oil-filled operational equipment in the ten years prior to the SPCC Plan certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than ten years.

This proposed action would provide an alternative means of SPCC compliance for this equipment;

therefore, an owner/operator could choose to follow the current SPCC requirements to provide secondary containment for each piece of qualified oil-filled operational equipment in accordance with § 112.7(c) if desired. For example, oil-filled operational equipment at electrical substations is often surrounded by a gravel bed, which serves as a passive fire quench system and support for the facility grounding network and can provide a restriction to movement of any oil that may be released. Gravel beds, if designed to prevent a discharge as described in § 112.1(b) (*i.e.*, drainage systems that do not serve as a conduit to surface waters) may meet the general secondary containment requirements of § 112.7(c). EPA further notes that facilities with oil-filled operational equipment located within buildings with limited drainage, which prevents a discharge as described in § 112.1(b), may already meet the requirements for general secondary containment of § 112.7(c). If so, a contingency plan for this equipment is not necessary. Ultimately, this would be a decision by the owner and/or operator.

1. Proposed Oil-Filled Operational Equipment Definition

In July 2002, EPA clarified that oil-filled equipment (*i.e.*, oil-filled electrical, operating, and manufacturing equipment) are not bulk storage containers and therefore are not subject to the bulk storage container provisions in § 112.8(c), including specifically sized secondary containment for bulk storage containers and integrity testing. However, as EPA stated in the preamble to the July 2002 amendments, oil-filled equipment is subject to general secondary containment requirements described in § 112.7(c), which can be provided by various means including drainage systems, spill diversion ponds, etc. EPA believes these measures provide for safety and also meet the needs of section 311(j)(1)(C) of the CWA.

Though there are times when general secondary containment is practicable for oil-filled operational equipment, the Agency agreed to 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. On September 20, 2004, EPA published a NODA which made available and solicited comments on submissions to EPA suggesting that alternate regulatory requirements for facilities with oil-filled and process equipment would be appropriate (69 FR 56184). EPA has reviewed the public comments and data

submitted in response to this NODA and presents today's proposal in accordance with our intention to consider alternative containment options for electrical and operational equipment.

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

Oil-filled operational equipment differs from bulk storage containers in several ways. Oil-filled operational equipment typically has minimal oil throughput because such equipment does not require frequent transfers of oil. Further, the oil contained in oil-filled operational equipment, such as cooling or lubricating oil, is intrinsic to the operation of the device and facilitates the function of the equipment. A leak of oil from some oil-filled operational equipment can be detected by low-level alarms and remote monitoring of the performance of the equipment. For example, the loss of oil from electrical equipment will result in the equipment ceasing to operate, which will result in a power outage. Utilities have strong economic incentives to prevent power outages, to discover and respond to an outage, and to correct the conditions that produced the outage as quickly as possible. In addition, oil-filled operational equipment is often subject to routine maintenance and inspections to ensure proper operation. Finally, oil-filled operational equipment is designed, constructed, and maintained according to specifications for its particular operation and construction materials are corrosion-resistant.

However, the oil storage capacity of oil-filled operational equipment still counts towards the total oil storage capacity of the facility. The SPCC regulation defines storage capacity of a container as the shell capacity of the container. This definition applies to all oil storage containers including bulk storage containers and all oil-filled

equipment. In order to determine the storage capacity of an individual piece of oil-filled operational equipment, the owner/operator would consider the total storage capacity of the piece of equipment (*i.e.*, add together the capacity of multiple compartments or reservoirs of oil storage). The owner or operator must include the storage capacity of oil-filled operational equipment in order to determine applicability of the SPCC regulation to the facility.

As proposed today, oil-filled manufacturing equipment (which involves a flow-through process) would not qualify for this alternative. Under the current rule, oil-filled manufacturing equipment (which is a subset of oil-filled equipment) is not defined as a bulk storage container. Oil-filled manufacturing equipment includes, for example, process vessels, conveyances such as piping associated with a process, and equipment used in the alteration, processing or refining of crude oil and other non-petroleum oils, including animal fats and vegetable oils. Oil-filled manufacturing equipment is inherently more complicated than oil-filled operational equipment because it typically involves a flow-through process and is commonly interconnected through piping. For example, oil-filled manufacturing equipment receives a continuous source of oil, in contrast to the static capacity of other, non-flow-through oil-filled equipment.

Today's proposal would not change any requirements for oil-filled manufacturing equipment. Oil-filled manufacturing equipment remains subject to the general SPCC requirements under § 112.7, including a demonstration of impracticability under § 112.7(d) if the SPCC Plan does not provide for secondary containment as required by § 112.7(c). The containers associated with storage of raw products, or the finished oil products are bulk storage containers and are not considered oil-filled manufacturing equipment or oil-filled operational equipment. Additionally, piping systems not associated with the alteration, processing or refining of crude oil and other non-petroleum oils, including animal fats and vegetable oils are not considered oil-filled manufacturing equipment. EPA expects the owner/operator to delineate bulk storage containers from the oil-filled manufacturing equipment in the facility SPCC Plan (*e.g.*, on the facility diagram and in discussion of compliance with inspection requirements of the rule). Additionally, while oil-filled manufacturing equipment is not a bulk

storage container and is therefore not subject to the frequent visual inspection requirement for bulk storage containers under § 112.8(c)(6), EPA believes that it is good engineering practice to have some form of visual inspection or monitoring for oil-filled manufacturing equipment in order to prevent discharges as described in § 112.1(b). Furthermore, it is a challenge to comply with several of the SPCC provisions (for example, requirements for security under § 112.7(g) and for countermeasures for discharge discovery under § 112.7(a)(3)(iv)) without some form of inspection or monitoring program.

2. Eligibility Criteria—Reportable Discharge History

Under today's proposal, the alternative to secondary containment for qualified oil-filled operational equipment would not be available to facilities that have had a reportable discharge from any oil-filled operational equipment in the ten years prior to the SPCC Plan certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than ten years. This criterion is based on a proposal submitted by USWAG, as described in the documents supplementing the September 20, 2004 NODA at 69 FR 56184. In its proposal, USWAG recognized that facilities that pose a risk, in the form of discharges of oil in quantities that are harmful (reportable under 40 CFR part 110), should not be granted regulatory relief. In general, NODA commenters expressed strong support for the USWAG proposal.

40 CFR 110.3 defines a discharge of oil "in such quantities that may be harmful to the public health, welfare, or the environment of the United States as a discharge of oil that violates applicable water quality standards; a discharge of oil that causes a film or sheen upon the surface of the water or adjoining shorelines; or a discharge of oil that causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines. The Agency refers to such discharges in § 112.1(b) of the rule. Any person in charge of a facility must report any such discharge of oil from the facility to the National Response Center (NRC) at 1-800-424-8802 immediately. While EPA recognizes that past discharge history does not necessarily predict future performance, the Agency believes that discharge history can be used as a surrogate measure for a facility's ability to appropriately manage its oil. Hence, as with the "qualified facilities" proposal, EPA proposes to use this

discharge history criterion to identify a facility's ability to effectively implement its SPCC Plan and prevent discharges in quantities that may be harmful. In establishing a good oil spill prevention history, a facility then qualifies for the oil spill contingency plan option offered in this proposal. Because the Agency is proposing to extend this relief to all oil-filled operational equipment, regardless of the oil storage capacity of the equipment, this criterion is critical in establishing an appropriate balance between environmental protection and burden relief by identifying those facilities which have demonstrated good spill prevention practices in the past.

The Agency requests comments on the appropriateness of a reportable discharge history criterion for determining the qualifications of a facility with oil-filled operational equipment for this alternative, whether it is necessary, and whether there are other measures of a facility's effective implementation of the oil pollution prevention requirements for oil-filled operational equipment under 40 CFR part 112 that should be considered. In addition, the Agency also specifically requests comments on the proposed ten-year period by which facilities can meet the discharge history criterion. Any alternative time periods suggested must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action. The Agency is also aware that events such as natural disasters, acts of war or terrorism, sabotage, or other calamities, beyond the control or planning ability of the facility owner or operator, may cause a reportable oil discharge. The Agency therefore requests comments on how to account for such occurrences in the discharge history criterion.

3. Proposed Requirements for Qualified Oil-Filled Operational Equipment in Lieu of Secondary Containment

a. Contingency Plans and a Written Commitment of Manpower, Equipment and Materials

The regulated community, particularly electrical facilities, identified secondary containment for oil-filled operational equipment as one of its major cost concerns. This sentiment was echoed in the comments submitted in response to the NODAs. With this proposal, the Agency is responding to those concerns by providing targeted relief without compromising on environmental protection. EPA believes that secondary containment may be often impracticable for oil-filled operational equipment due

to inherent design and safety considerations, as well as site configuration. The oil associated with oil-filled operational equipment remains inside the equipment and transfers do not occur regularly; for oil-filled electrical equipment (e.g., transformers) transfers may occur infrequently, if at all. Operational equipment is designed, constructed, and maintained according to specifications for its particular operation and construction materials are corrosion-resistant. The complexity of the equipment and the nature of the use of this equipment may not lend itself to traditional bulk storage containment methods and thus flexibility is appropriate in this area and may improve compliance with oil pollution prevention measures. The proposed amendments to § 112.7 would give a facility with qualified oil-filled operational equipment the option of implementing an oil spill contingency plan and written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful in lieu of secondary containment for this equipment, without having to make an impracticability determination for each piece of equipment. It should be noted that the use of a contingency plan does not relieve the owner/operator of liability associated with an oil discharge to navigable waters or adjoining shorelines that violates the provisions of 40 CFR part 110.

In the preamble to the 2002 amendments, EPA discusses how any facility which makes a determination of impracticability and has submitted a Facility Response Plan (FRP) under § 112.20 is exempt from the contingency planning requirement because such a response plan is more comprehensive than a contingency plan following 40 CFR part 109. The Agency believes that this should also apply to a facility with qualified oil-filled operational equipment which would choose to utilize contingency planning in lieu of secondary containment in accordance with today's proposal. If such a facility has already developed an FRP to comply with § 112.20, then it would not need to also develop a contingency plan in accordance with 40 CFR part 109 for the qualified oil-filled operational equipment.

Since, by definition, oil-filled operational equipment is not considered a bulk storage container, the facility owner or operator is not required to comply with the bulk storage requirements under § 112.8(c) or to conduct both periodic integrity testing of the containers and periodic integrity

and leak testing of the valves and piping as described under § 112.7(d). However, EPA believes that inspections or monitoring are important when there is no secondary containment in place. Therefore, EPA is proposing to require facilities with qualified oil-filled operational equipment choosing the proposed alternative to secondary containment to develop and implement an inspection or monitoring program, as further discussed in section B.3.b. of this section of the preamble. Since this proposal for qualified oil-filled operational equipment would provide an optional method of SPCC compliance, a facility with such equipment could choose to follow the current SPCC requirements and provide general secondary containment in accordance with § 112.7(c) for this equipment if desired. Ultimately, this would be a decision of the owner and/or operator.

Facilities with qualified oil-filled operational equipment that choose the proposed alternative to secondary containment and that subsequently experience a discharge would not automatically lose eligibility for today's proposed relief. Owners/operators of facilities which discharge oil in quantities that may be harmful from oil-filled operational equipment should re-evaluate the effectiveness of the SPCC Plan (specifically the contingency plan, written commitment of resources and inspections/monitoring alternative discussed in today's proposal) and determine the need for secondary containment measures in lieu of contingency planning. Additionally, the Regional Administrator (RA) may determine that a facility is no longer eligible to have a contingency plan in lieu of secondary containment without making an impracticability determination, and such facilities may be required to amend their Plans to provide secondary containment for their oil-filled operational equipment. The RA has the authority to require SPCC Plan amendments under § 112.4. Section 112.4(a) requires a facility that has discharged more than 1,000 gallons of oil in a single discharge as described in 40 CFR part 110, or that discharged more than 42 gallons of oil in each of two discharges as described in 40 CFR part 110 in any 12-month period to submit information to the RA within 60 days of the date of the discharge. As per § 112.4(d), the RA has the authority to require the facility to amend its SPCC Plan in order to prevent and contain discharges; e.g., the RA may require a facility to install secondary containment for oil-filled operational equipment. In

addition, a discharge of oil under 40 CFR part 110 that does not trigger the reporting requirements of § 112.4(a) must still be reported to the National Response Center. EPA also receives copies of the NRC reports and has the authority under § 112.1(f) to require a facility to prepare and implement an SPCC Plan or any applicable part of a Plan. Thus, the RA may require a Plan, partial Plan, or amendments to the Plan to achieve full compliance with the rule, as deemed appropriate to prevent further discharges in quantities that may be harmful.

b. Inspections or Monitoring Program

Facility owners or operators that wish to take advantage of this proposed alternative would be required to develop an appropriate set of procedures for inspections or a monitoring program for qualified oil-filled operational equipment. For facilities that rely on contingency planning in lieu of secondary containment for qualified oil-filled operational equipment, discharge discovery by inspection or monitoring is of paramount importance for effective and timely implementation of the contingency plan. An inspection or a monitoring program would ensure that facilities are alerted quickly of equipment failures and/or discharges. A written description of the inspection or monitoring program would be required to be included in the SPCC Plan. Under the existing requirement in § 112.7(e), the owner or operator would be required to keep a record of inspections and tests, signed by the appropriate supervisor or inspector, for a period of three years. Records of inspections and tests kept under usual and customary business practices suffice (e.g., records of inspections and tests required by this rule may be maintained in electronic or any other format which is readily accessible to the facility and to EPA personnel).

While oil-filled operational equipment is not a bulk storage container and is therefore not subject to the frequent visual inspection requirement for bulk storage containers under § 112.8(c)(6), EPA believes that it is good engineering practice to have some form of visual inspection or monitoring for oil-filled operational equipment in order to prevent discharges as described in § 112.1(b). Additionally, it is a challenge to comply with several of the SPCC provisions (for example, requirements for security under § 112.7(g) and for countermeasures for discharge discovery under § 112.7(a)(3)(iv))

without some form of inspection or monitoring program.

A facility owner/operator must be able to quickly detect a discharge from qualified oil-filled operational equipment in order for a contingency plan to be effective. Oil-filled operational equipment may be frequently monitored by employees tending to the operation, and in such a case, discharges of oil would be noticed quickly. For many types of operational equipment, particularly oil-filled electrical equipment, releases of oil rapidly decrease the functionality of the equipment—for oil-filled electrical equipment, loss of dielectric fluid leads to equipment failure and an interruption of electric power transmission. The need for equipment reliability assures prompt detection of releases of oil, enhancing the probability of a prompt response action. Therefore, in lieu of secondary containment, today's proposal for qualified oil-filled operational equipment includes the requirement for a facility owner/operator to establish and document an inspection or monitoring program, in addition to the preparation of a contingency plan, and a written commitment of manpower, equipment, and materials to expeditiously control and remove oil discharged.

The Agency requests comments on the appropriateness of this requirement as a qualification for this alternative, and whether there are other measures that a facility could take to ensure that a contingency plan is activated in a timely manner upon equipment failure or discharge. The Agency also requests comments on whether there are other requirements that should be added for facilities with oil-filled operational equipment to be able to establish and document an inspection or monitoring program, use a contingency plan, and provide a written commitment of manpower, equipment and materials in lieu of secondary containment for qualified oil-filled operational equipment. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

Alternative Options Considered

EPA considered alternative approaches to address streamlined requirements for small oil-filled operational equipment. One option was similar to the qualified facilities proposal, in which eligibility of a facility with oil-filled operational equipment would be determined by considering capacity thresholds and reportable discharge history from any

oil-filled operational equipment. Another option would call for a tiered set of requirements for electrical and other oil-filled operational equipment. EPA also considered options similar to those presented for the qualified facilities proposal: (1) providing an indefinite extension of the Plan revision and implementation dates for certain types of oil-filled operational equipment; and (2) suspending all SPCC requirements for certain types of oil-filled operational equipment.

a. Capacity Threshold Qualifier

The Agency considered an alternative approach based on various levels of aggregate oil storage capacity at a facility for determining which facilities would be eligible for reduced burden as qualified oil-filled operational equipment. EPA considered limiting the proposed option by including two alternative storage capacity thresholds from which the owner/operator may determine the equipment or facility's eligibility: (1) The storage capacity of an individual piece of oil-filled operational equipment is 1,320 gallons or less, regardless of the facility's total oil-filled operational equipment aggregate capacity; or (2) the aggregate oil-filled operational equipment storage capacity at the facility is 10,000 gallons or less. EPA also considered an alternative range of thresholds for both an individual piece of oil-filled operational equipment (ranging from 2,640 to 5,000 gallons) and for the facility aggregate capacity of 20,000 gallons in order to provide a greater degree of burden reduction than the alternative thresholds considered by EPA. In determining potential threshold capacities, EPA considered current thresholds in the rule, as well as proposals by industry. This was intended to limit this relief to small pieces of oil-filled operational equipment or to facilities storing smaller aggregate volumes of oil in oil-filled operational equipment. The total facility oil-filled operational equipment storage capacity threshold addresses the co-location of oil-filled operational equipment within a facility.

The Agency decided not to propose a threshold criterion because we believe this equipment is unique and different from bulk storage containers and manufacturing equipment (flow-through process) such that the spill history alone suffices as a qualifying criterion to determine eligibility. The Agency was also concerned with the limited amount of information provided in response to the NODA. The data submitted in response to the NODA was primarily from the electrical industry and the

Agency has no information describing the types of oil-filled operational equipment, capacities and distribution for other industries. Additionally, we have limited specific information on the various sizes of oil-filled electrical equipment to assist in establishing a threshold for an individual piece of equipment.

The Agency seeks comments on whether eligibility for qualified oil-filled operational equipment status should be based on a specific level of aggregate oil-filled operational equipment storage capacity at a given facility. The Agency seeks comments on whether a threshold criterion achieves an appropriate balance of facility burden and environmental protection for oil-filled operational equipment. Any available data specific to either the capacity, location, or size distribution of oil-filled operational equipment within a facility or within a specific industry sector would be useful in Agency deliberations for final rulemaking. Comments specific to establishing a threshold criterion for oil-filled operational equipment should include supporting data that: (1) Demonstrates why the suggested volume threshold is preferred; and (2) estimates the number (or percentage) of facilities that would be eligible for qualified oil-filled operational equipment status. Any alternative approach presented should include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

b. Multi-Tiered Structure

The tiered structure option was considered in response to comments EPA received following publication of a Notice of Data Availability for oil-filled equipment (69 FR 56184, September 20, 2004) and is based on a previous proposal put forth by USWAG that focused on electrical equipment. A central element of this option would allow the facility owner or operator to define each discrete unit of this type of oil-filled equipment as a facility. This option would also establish three tiers for regulated onshore oil-filled operational equipment based on the storage capacity of the equipment. Individual pieces of oil-filled operational equipment with an oil storage capacity of 1,320 gallons or less (Tier 1) would have been exempt from all SPCC requirements. For individual pieces of oil-filled operational equipment with a capacity greater than 1,320 but less than 20,000 gallons and which meet additional qualifying criteria (Tier II), facility owners and operators would have the option of preparing a contingency plan in lieu of

an SPCC Plan. Such an approach would have exempted a significant portion of the regulated universe with oil-filled operational equipment from the development of an SPCC Plan entirely and instead would only need to develop a contingency plan and a written commitment of manpower, equipment and materials in the event of a discharge. Tier III would require that all other oil-filled operational equipment with capacities greater than 20,000 gallons for an individual piece of equipment be required to comply with the current SPCC rule.

Although the Agency agrees that some regulatory modifications are appropriate for facilities containing oil-filled operational equipment, there is still a reasonable potential for discharge from this equipment and coverage by some type of SPCC Plan is warranted. The Agency believes this is true even for facilities composed entirely of oil-filled operational equipment. EPA also has concerns about the suggestion to allow facility owners and operators to define each piece of oil-filled equipment as a separate facility because of the potential for greater rule complexity, implementation questions and confusion across the wide variety of facilities covered by the SPCC rule. For example, the Agency may have to define and develop criteria that would be used by the facility owner or operator to determine which equipment is a separate facility, which is not, and how the elements of a facility plan would address these differences. Uncertainty and confusion about the definition of a facility could lead to a greater lack of compliance and the potential for greater environmental harm.

c. Extension/Suspension Options

EPA could propose an indefinite extension to the compliance dates, similar to the previous extensions already granted, that would apply to oil-filled operational equipment. This action would allow EPA more time to decide how to regulate oil-filled operational equipment without delaying compliance for the entire universe of SPCC-regulated facilities and equipment. However, the extension would be for a yet-to-be-determined length of time, and for an unspecified set of requirements. Since so many facilities have oil-filled operational equipment, if changes to these requirements are delayed, a significant number of facilities might have to modify their existing Plans more than once to accommodate future rule changes. As with past extensions, EPA would continue to require that oil-filled operational equipment comply with pre-

2002 SPCC requirements during the interim period at facilities that should have had an SPCC Plan as of August 16, 2002, providing no immediate relief.

A suspension of all requirements for oil-filled operational equipment would provide immediate relief until further notice and provided EPA with more time to decide how to regulate this equipment. The Agency is concerned that this option provides no environmental protection during the time that new requirements are developed.

EPA welcomes comments on these or other alternatives that could reduce the burden at facilities with oil-filled operational equipment, while maintaining appropriate levels of environmental protection. The Agency is also interested in comments related to the application of the USWAG proposal to other types of oil-filled operational equipment. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

Qualified Facilities and Qualified Oil-Filled Operational Equipment Overlap

Some facilities would meet the criteria for both qualified facilities and qualified oil-filled operational equipment. Such facilities would be able to benefit from both of the burden-reduction options proposed under today's action. The owner or operator could choose to develop a contingency plan and a written commitment of manpower, equipment and materials in lieu of secondary containment for qualified oil-filled operational equipment. Since no impracticability determination would be required for qualified oil-filled operational equipment, the owner or operator could self-certify his/her SPCC Plan and would not be required to have a PE develop and certify the contingency plan for the qualified oil-filled operational equipment. The responsibility of preparing a contingency plan and identifying the necessary equipment, materials and manpower to implement the contingency plan would fall on the owner or operator of the qualified facility.

C. Motive Power

There are some motive power containers already exempt from the SPCC requirements based on the rule exemption for containers with an oil storage capacity of less than 55 gallons. However, there are certain motor vehicles (including aircraft) that contain oil in capacities greater than or equal to

55 gallons solely for the purpose of providing fuel for propulsion, or solely to facilitate the operation of the vehicle. The concept of "motive power" is not addressed in the SPCC regulations, but the EPA-DOT MOU in Appendix A to 40 CFR part 112 specifically refers to the transportation of oil, not to transportation in the general sense. As a result, oil storage containers with a capacity greater than 55 gallons used for motive power fall under the SPCC rule and secondary containment and other SPCC requirements apply. However, EPA never intended to regulate motive power containers on buses, sport utility vehicles, small construction vehicles, aircraft and farm equipment, or facilities or locations such as heavy equipment dealers, commercial truck dealers, or certain parking lots that may be subject to the SPCC requirements (including bulk storage containment, inspection, and overfill protection) solely because of the presence of motive power containers. Nor does EPA intend to require facilities otherwise subject to the SPCC rule to include motive power containers in their Plans.

1. Definition of Motive Power

EPA proposes to amend the Oil Pollution Prevention regulation (40 CFR part 112) to exempt motive power containers, defined as "onboard bulk storage containers used solely to power the movement of a motor vehicle, or ancillary onboard oil-filled operational equipment used solely to facilitate its operation." This definition is intended to describe containers such as the fuel tanks that are used solely to provide fuel for a motor vehicle's movement or the hydraulic and lubrication operational oil-filled containers used solely for other ancillary functions of a motor vehicle. This definition would not include transfers of fuel or other oil into motive power containers at an otherwise regulated facility, or a bulk storage container mounted on a vehicle for any purpose other than powering the vehicle itself, for example, a tanker truck or refueler. The definition of motive power containers would not include oil drilling or workover equipment. Specifically, it would not apply to the drilling or workover rigs themselves; however, other earthmoving equipment (such as a bulldozer, trucks, or earth-moving equipment) located at a drilling or workover facility would be included in the scope of the definition. Similarly, seismic exploration vehicles located at, for example, oil and gas drilling, workover and production facilities, would be included in the scope of the definition of motive power.

The Agency is seeking comments on the proposed definition of motive power containers or if there are any other definitions for "motive power" that would be more suitable. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Proposed Exemption

This proposed rule amendment would exempt motive power containers, as defined above, from SPCC rule applicability through a proposed additional paragraph under the general applicability section, § 112.1(d). Furthermore, these storage containers would not be counted toward facility capacity under § 112.1(d)(2). EPA recognizes that there is a potential for an oil discharge as described in § 112.1(b) from motive power containers, such as from a breach in the fuel storage container, from an overfill event, or from a rupture of oil-filled operational equipment such as a hydraulic line on heavy construction equipment. EPA has the authority, under 311(j)(1)(C) of the CWA, to impose requirements to prevent oil discharges from motive power containers. The Regional Administrator has the option under § 112.1(f) to require facilities with motive power containers to prepare and implement an SPCC Plan or any applicable part, if a determination is made that it is necessary in order to prevent a discharge of oil into waters of the United States.

EPA notes that although this proposal provides the fuel tanks and ancillary oil-filled operational equipment on motor vehicles with an exemption from SPCC requirements, oil transfer activities occurring within an SPCC covered facility would continue to be regulated. An example of such an activity would be the transfer from an onsite tank via a dispenser to motive power containers. This transfer activity is subject to the general secondary containment requirements of § 112.7(c), but is not subject to the requirements of § 112.7(h), because it does not occur across a loading/unloading rack. Regulating a transfer between unregulated motive power containers and a regulated tank is required by § 112.1(b), which requires that the SPCC rule apply to owners or operators of facilities that transfer oil and oil products. Another example would be an airport mobile refueler at an SPCC-regulated airport that transfers oil to motive power containers or to an aircraft. That transfer activity would again be subject to the general secondary containment requirements of § 112.7(c), but not subject to the

requirements of § 112.7(h), again because it does not generally occur across a loading/unloading rack.

An onboard bulk storage container that supplies oil for the movement of a vehicle or operation of onboard equipment, and at the same time is used for the distribution or storage of this oil is not subject to this proposed exemption. For example, a mobile refueler that has an onboard bulk storage container used to distribute fuel to other vehicles on a site may also draw its engine fuel (for propulsion) from that container. Because EPA continues to consider bulk storage containers mounted on vehicles or towed by a vehicle (such as a typical cargo tanker truck) subject to certain transfer-related SPCC requirements, these containers are not subject to today's proposed exemption. As noted above, the exemption applies only to onboard bulk storage containers used solely to provide motive power or to facilitate the operation of the vehicle.

EPA is not extending the exemption for motive power containers to oil drilling and workover equipment, including rigs. The Agency believes that due to the unique nature of oil drilling and workover rig operations and the large amounts and high flow rates of oil associated with these activities, it would not be appropriate or environmentally sound to exempt them from the SPCC requirements, and thus they should remain subject to 40 CFR part 112. The purpose of offering the exemption is to offer relief for a particular set of equipment (*e.g.*, automobiles) that may be present at an otherwise regulated SPCC facility, and not to offer relief for facilities that may be mobile and move from place to place as in the case of a drilling or workover rig. Although drilling and workover equipment, including rigs, are not exempt, other motive power equipment located at drilling or workover facilities (*e.g.*, trucks, automobiles, bulldozers, seismic exploration vehicles or other earth-moving equipment) would be exempted. The agency believes that the general protection and the spill response and planning activities provided at an otherwise regulated SPCC facility will help the facility to address the spills associated with these motive power containers. However, the specific provisions (such as blowout prevention) which are present in the current rule for drilling or workover rigs, need to be preserved to maintain an adequate level of environmental protection for these unique activities. Therefore, an exemption for drilling and workover equipment, including rigs, is inappropriate.

3. Alternative Options Considered

EPA considered other options to address motive power containers greater than 55 gallons in size. These options included: (1) Exemption of all motive power containers, except motive power containers on aircraft and mining equipment, which would be subject to the general requirements under § 112.7; (2) exemption of all motive power containers below a certain gallon threshold, with containers above this threshold remaining subject to the general requirements under § 112.7; and (3) exclusion of motive power containers only from the facility storage capacity calculation and bulk storage container requirements.

a. Equipment-Based Motive Power Exemption

EPA could choose to exempt motive power containers, except containers on aircraft and mining equipment, from the requirements of 40 CFR part 112. The majority of motive power containers would be exempt from the SPCC rule. EPA would require that the containers on aircraft and mining equipment be covered by the SPCC requirements because these containers typically have much larger volume than other motive power containers and potentially pose a greater threat to the environment in the event of a discharge as described in 112.1(b). However, in the context of motive power containers, there is no information on the degree of likelihood of a discharge from motive power containers of different oil storage capacities nor is there data available to EPA specific to mining and aircraft equipment discharges that would justify this option. Therefore, the Agency chose not to propose this option.

b. Threshold-Based Motive Power Exemption

Another option considered was to exempt motive power containers with a capacity below a certain threshold, and requiring containers with a capacity above the established threshold to have appropriate containment under § 112.7(c). Those motive power containers included in the rule would only be required to have general containment, and would be exempt from all other requirements in §§ 112.7 and 112.8(c). However, EPA rejected this option because it has no basis for choosing an appropriate threshold for these containers and there is no data that clearly supports any specific quantity. In addition, it would still present implementation problems for those motive power containers that were subject to the regulation.

c. Exclusion From Storage Capacity Calculation

EPA could exclude motive power containers from the storage capacity determination at a regulated facility and from the definition of bulk storage container to clarify that these containers are not counted towards the 1,320 gallon aboveground oil storage threshold for the regulation. Nevertheless, the facility would have to consider these containers in their overall facility SPCC Plan. Although motive power containers would not be considered bulk storage containers, they would be subject to the general requirements of the rule under § 112.7, including the provision for secondary containment. The facility SPCC Plan would have to identify the presence of motive power containers on-site, in addition to their reasonable potential for discharge as per § 112.7(b). This option is more complex for the regulated community and is not a clear exemption of motive power containers.

Each of these alternative options was rejected because they did not address the implementation issues with regulating motive power containers under the SPCC requirements. The Agency welcomes comments on these or other alternatives that could serve to reduce the burden for facilities with motive power containers, while at the same time maintaining appropriate levels of environmental protection. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

D. Airport Mobile Refuelers

Airport mobile refuelers are vehicles that are used on an airport to refuel aircraft and ground service equipment. Their onboard bulk storage containers are used to transport and transfer fuel and are subject to the SPCC rule because they are containers used to store oil prior to use, while being used, or prior to further distribution in commerce. As such, they are subject to all applicable SPCC rule provisions, including the secondary containment provisions of § 112.8(c)(2) (applicable to all bulk storage containers) and § 112.8(c)(11) (applicable more specifically to mobile/portable bulk storage containers). These provisions require a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

Regulated community members in the aviation sector have expressed concern that requiring sized secondary containment for airport mobile refuelers is not practicable for safety and security reasons. They argue that requiring refuelers to park in specially designed secondary containment areas located within an airport's aircraft operations area could create a safety and security hazard because it entails grouping the vehicles or placing impediments in the operations area. In addition, they claim that requiring mobile refuelers to return to containment areas located within the airport's tank farm between refueling operations may increase the risk of accidents (and therefore accidental oil discharge), as the vehicles would travel with increased frequency through the busy aircraft operations area. They also claim that providing secondary containment for mobile refuelers during airport operations presents inherent difficulties and point to controls on design, inspection, maintenance and operation of mobile refuelers imposed by the Federal Aviation Administration's Advisory Circulars. For example, the storage containers on the mobile refuelers must be manufactured to U.S. DOT-406 specifications for pressure vessels (49 CFR 178.346).

EPA is aware that certain airports subject to FAA's regulations at 14 CFR part 139 require certification by the FAA Administrator or his delegated agent. As part of this certification, the Agency understands that compliance with Uniform Fire Code requirements, among other requirements in 14 CFR part 139, must be detailed in the Airport Certification Manual to obtain FAA approval and thus an Airport Operating Certificate per part 139. The Agency understands that the applicable Uniform Fire Code includes National Fire Protection Association's (NFPA) 30, *Flammable and Combustible Liquids Code*, NFPA 407, *Standard for Aircraft Fuel Servicing* and NFPA 415, *Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways*. In particular, NFPA 407 requires that aircraft fuel servicing vehicles and carts shall be positioned so that a clear path of egress from the aircraft for fuel servicing vehicles shall be maintained [5.12.1]. Further, in NFPA 415, the code specifically states that in no case shall the design of a drainage system of any aircraft fueling ramp allow fuel to collect on the aircraft fueling ramp or adjacent ground surfaces where it constitutes a fire hazard [5.1.4]. As such, EPA believes that subjecting mobile airport refuelers to the specifically sized

secondary containment requirements at § 112.8(c)(2) and (11) would directly conflict with the Uniform Fire Code applicable to fuel handling at airports. EPA believes, however, that these bulk storage containers should remain subject to the general secondary containment requirements at § 112.7(c) as this provision affords sufficient flexibility to the owner/operator and certifying PE to select a spill prevention method that would not conflict with the applicable Uniform Fire Code. Thus, EPA is proposing to exempt airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers in § 112.8(c)(2) and (11). EPA believes that this exemption is appropriate for airport mobile refuelers, so as not to conflict with the specific Uniform Fire Code requirements for airport fueling activities, while preserving environmental protection (especially for fuel transfers associated with airport mobile refuelers), afforded by the spill prevention provisions outlined in § 112.7(c). EPA also believes that this clarification for airport mobile refuelers applies to mobile refuelers operating at all airports, both those certified under 14 CFR part 139 and non-certified airports.

1. Definition of Airport Mobile Refueler

EPA proposes to amend the Oil Pollution Prevention regulation (40 CFR part 112) to exempt airport mobile refuelers from the requirements of § 112.8(c)(2) and (11). In today's proposal, EPA defines an airport mobile refueler as "a vehicle with an onboard bulk storage container designed for, or used to, store and transport fuel for transfer into or from an aircraft or ground service equipment." This definition is adapted from definitions in the U.S. DOT Federal Aviation Administration's Advisory Circular 150/5230-4 on Aircraft Fuel Storage, Handling, and Dispensing on Airports, and NFPA 407 for Aircraft Fuel Servicing. The definition is intended to describe vehicles of various sizes equipped with a bulk storage container such as a cargo tank (tank trucks, tank full trailers, tank semitrailers, etc.) that are used to fuel or defuel aircraft at airports.

2. Proposed Amended Requirements

This proposed amendment would revise § 112.8(c)(2) and (11) to specifically exempt airport mobile refuelers, as defined above, from these provisions. Since airport mobile refuelers are mobile or portable bulk storage containers, the other provisions of § 112.8(c) would still apply.

Secondary containment systems sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation would no longer be required. Notwithstanding, there is a potential for oil discharges as described in § 112.1(b) from airport mobile refuelers. Indeed, there are documented cases of reportable discharges while fuel is transferred from storage into the mobile refuelers and during aircraft refueling activities. Fuel leaks have occurred while the mobile refueler is parked or idle. Therefore, the general secondary containment requirements of § 112.7(c) would continue to apply to airport mobile refuelers under this proposal.

Section 112.7(c) lists several appropriate containment methods a facility owner or operator can provide, including curbs, gutters, barriers, or sorbent materials. However, EPA recognizes that permanent containment structures such as curbs may not be appropriate in all cases. The Agency made informal contact with nine airport engineering and construction firms who indicated that providing sized secondary containment areas for airport mobile refuelers is not a common practice. We also learned that mobile refuelers are not involved in every airport fueling operation, and when refuelers are present, there is no standard method for ensuring sized secondary containment. EPA cautions that these results are drawn from only a small number of firms that provide construction and engineering support for the aviation industry rather than directly from the airport owners or operators.

Appropriate containment and/or diversionary structures or equipment must be designed to prevent a discharge as described in § 112.1(b). The Agency believes general secondary containment should be designed to address the most likely discharge from the primary containment system. Section § 112.7(c) allows for the use of certain types of active containment measures (countermeasures or spill response capability) which prevent a discharge to navigable waters or adjoining shorelines. Active containment measures are those that require deployment or other specific action by the owner or operator. These measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a discharge so long as the active measure is designed and can reasonably be implemented to prevent an oil spill from reaching navigable water or adjoining shorelines. Passive measures are permanent

installations and do not require deployment or action by the owner/operator. The efficacy of active containment measures to prevent a discharge depends on their technical effectiveness (e.g., mode of operation, absorption rate), placement and quantity, and timely deployment prior to, or following a discharge. For discharges that occur only during manned activities, such as those occurring during transfers, an active measure (e.g. sock, mat, other portable barrier, or land-based response capability) may be appropriate, provided that the measure is capable of containing the oil discharge volume and rate, and is timely and properly constructed/deployed. The Agency also believes that these active measures may be appropriately applied to other situations (e.g., when the refueler is not engaged in transfer operations or moving around the facility).

EPA believes that the general provisions for secondary containment address the most likely spill scenarios associated with this equipment (i.e., transfers from the refuelers to the aircraft). Section 112.7(c) does not prescribe a size for a secondary containment structure but does require appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b). These proposed revisions would maintain environmental protection, while still allowing the necessary flexibility for compliance with the general secondary containment requirements of the rule.

Alternatively, EPA considered whether the general secondary containment requirements of § 112.7(c) should be applied to airport mobile refuelers only during any fuel transfer activity and not while the refueler is moving or out of service (e.g. parked or idle) provided that the facility is in compliance with current NFPA 407 and NFPA 415 requirements and any applicable FAA requirements that govern fuel handling. If a facility is not in compliance with NFPA 407, and 415 and FAA requirements, then it must comply with the general secondary containment requirements at all times. The Agency did not propose this approach because NFPA 407 and NFPA 415 are designed for fire protection rather than environmental protection; a properly designed drainage system that meets the intent of NFPA 407 and NFPA 415 might not adequately prevent fuel from being discharged in quantities that may be harmful. In addition, EPA has no information on the degree of compliance with, alternatives to, or applicability of, NFPA 407 and NFPA

415 to all airport facilities. Consequently, EPA did not propose this approach. EPA welcomes comment on this issue.

The Agency seeks comments on the proposed definition for “airport mobile refuelers,” the adequacy of general secondary containment requirements for preventing discharges as described in § 112.1(b) from airport mobile refuelers, whether the proposed regulatory relief satisfies the concerns of airport owners and/or operators, and the ability to apply active measures as described in § 112.7(c). Additionally, the Agency seeks comments on whether the relief provided specific to § 112.8(c)(2) and (11) should be more broadly applied to other types of mobile refuelers or railcars that are subject to § 112.8(c)(2) and (11) and § 112.12(c)(2) and (11). Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

E. Animal Fats and Vegetable Oils

In 1995, Congress enacted the Edible Oil Regulatory Reform Act (EORRA), 33 U.S.C. 2720. That statute requires most Federal agencies to differentiate between, and establish separate classes for, various types of oil, specifically, animal fats and oils and greases, and fish and marine mammal oils, and for oils of vegetable origin, including oils from seeds, nuts, and kernels; and other oils and greases, including petroleum. EORRA also requires affected agencies to apply standards to the different classes, based on considerations of differences in the physical, chemical, biological, and other properties of these oils and on the environmental effects of the oils.

In the July 17, 2002 final SPCC rule, the Agency promulgated general requirements in § 112.7 for SPCC Plans for all facilities and all types of oil, as well as additional requirements tailored to specific types of facilities in §§ 112.8 through 112.15. At that time, in response to EORRA, EPA established separate subparts in the rule for facilities storing or using the various classes of oil listed in that act. Subpart C (§§ 112.12 through 112.15) sets out the requirements for facilities with 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 (hereinafter “animal fats and vegetable oils” or “AFVO”). Subpart B (§§ 112.8 through 112.11) sets out the requirements for facilities with petroleum oils and non-petroleum oils other than AFVO. The Agency

promulgated the identical requirements for facilities storing or using all classes of oil in the final rule. As a result, certain requirements, including requirements for types of facilities that only exist in the petroleum sector, also apply to facilities handling animal fats and vegetable oils.²

In today’s proposal, the Agency proposes to amend Subpart C of part 112 by removing § 112.13 (requirements for onshore oil production facilities), § 112.14 (requirements for onshore oil drilling and workover facilities), and § 112.15 (requirements for offshore oil drilling, production, or workover facilities). As members of the regulated community pointed out, facilities that process, store, use, or transport animal fats and/or vegetable oils (AFVO) do not engage in production, drilling or workover. EPA agrees that these sections should not be included in part 112, subpart C and therefore proposes to remove them from the rule. The Agency seeks comment on the proposal to remove and reserve these sections of Subpart C of the regulation.

The Agency has not developed a proposal following the 1999 Advanced Notice of Proposed Rulemaking regarding differentiation of AFVO from petroleum and other oils in the SPCC rule (64 FR 17227). To assist the Agency in its ongoing consideration of this issue, EPA requests suggestions for additional amendments that would differentiate AFVOs from other classes of oils in the SPCC rule and scientific support for those amendments. In particular, EPA is seeking information that specifically addresses the criteria for differentiation set forth in EORRA, 33 U.S.C. 2720(b); that is, differences in the physical, chemical, biological, and other properties, as well as the environmental effects, of various types of oil, in order for the Agency to support a rationale for differentiation of oil spill prevention requirements. The Agency will continue to examine these issues to determine the appropriateness of amendments to the regulatory scheme which differentiate the SPCC requirements for AFVO from the requirements for petroleum and other oils.

VI. Proposed Extension of Compliance Dates for Farms

The agricultural community has provided EPA with additional

² The Agency also responded to a petition it received on August 12, 1994 to treat facilities that handle, store or transport animal fats and/or vegetable oils differently from those facilities that store petroleum based oil. EPA denied that petition, and published the denial in a **Federal Register** notice (see 62 FR 54508, October 20, 1997).

information and data which suggests that the universe of farms subject to the SPCC rule may be much larger than EPA estimated in the preparation of the 2002 SPCC rule revisions. EPA believes that the unique characteristics of farms pose particular challenges to SPCC compliance and that further consideration of the requirements as they relate to farms is warranted. We are particularly concerned that many of these farms are small and that subjecting them to these requirements may not be necessary. Therefore, EPA intends to review the impact of the SPCC requirements on farms and will take action in a future rulemaking.

While determining if the agriculture sector warrants specific consideration under the SPCC rule, EPA proposes to extend the compliance dates for preparing or amending and implementing SPCC Plans for farms that have a total storage capacity of less than 10,000 gallons. Our basis for taking this action is several fold. First, there are factors concerning the physical layout of a farm that make this sector unique within the universe of SPCC-regulated facilities. For example, farms vary considerably in design and size (less than an acre to many thousand acres). Further, the environment in which farms operate varies considerably from other industries. Farmers often own and/or farm land that are noncontiguous, and may be separated by roads and other obstacles. Oil is generally not centrally stored and oil containers may be widely dispersed. Certain SPCC requirements (such as fencing, lighting, etc.) may be disproportionately difficult and expensive for farmers to implement, and provide little environmental benefit. Also, because farms are often residential properties, under the existing rule, home heating oil tanks may be required to be covered by the farm's SPCC Plan. Other rule provisions, including security, would also affect the residential portions of a farm. For these reasons, we are proposing an extension of the compliance date for farms with a total storage capacity of less than 10,000 gallons. See Section B below, for details.

A. Eligibility Criteria

EPA proposes the 10,000-gallon threshold for farms to be consistent with the threshold quantity used in the NCP to classify oil discharges to inland waters as "major" (40 CFR 300.5). Thus, a facility storing less than 10,000 gallons of oil could not be involved in a major discharge based on the NCP quantitative criterion alone, although use of this numerical criteria is not meant to imply that smaller discharges are not harmful.

This same 10,000-gallon threshold discharge volume is also one factor used in identifying facilities that must prepare and submit a Facility Response Plan (FRP) under § 112.20(f)(1). In addition, 10,000 gallons is a common storage capacity and such a threshold would extend the compliance dates for a significant portion of the farm sector. Data provided by the agricultural industry and the U.S. Department of Agriculture indicate that the average aggregated aboveground oil storage capacity at farms surveyed in 2005 was 5,550 gallons; approximately 83 percent of surveyed farms have aggregated oil storage below 10,000 gallons. Farms with less than 1,000 acres had an average oil storage capacity of less than 2,500 gallons; farms with over 1,000 acres had an average oil storage capacity of almost 8,000 gallons. (See "Fuel/Oil Storage and Delivery for Farmers and Cooperatives," USDA, March 2005, in the docket for today's proposal.)

The Agency seeks comments on whether this threshold appropriately addresses the concerns of farms with relatively smaller volumes of oil, while maintaining the environmental protection intended by the regulation. If commenters suggest alternative volume thresholds, it will be important for the comments to also include a justification for such alternative volume thresholds in order for the Agency to adequately consider the comments submitted. This data would be useful in final rule deliberations.

The Agency considers a farm as a specific type of facility under the SPCC rule and proposes a specific definition for farm under today's proposal. For this proposed extension, EPA would define "farm," in part, by adapting the definition used by the National Agricultural Statistics Service (NASS) in its Census of Agriculture. NASS defines a farm as any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year. Operations receiving \$1,000 or more in Federal government payments are counted as farms, even if they have no sales and otherwise lack the potential to have \$1,000 or more in sales.

EPA also considered the definition it uses to exempt farm tanks under the Underground Storage Tank (UST) regulations at 40 CFR part 280. The Resource Conservation and Recovery Act (RCRA) as amended, section 9001(1)(A), exempts farm and residential USTs storing less than 1,100 gallons of motor fuel for "noncommercial" purposes. As defined in 40 CFR 280.12, a farm tank is a tank located on a tract of land devoted to the

production of crops or raising of animals, including fish. The preamble to the UST rule explains that the term "farm" includes fish hatcheries, rangeland, and nurseries with growing operations, but does not include laboratories where animals are raised, land used to grow timber, and pesticide aviation operations. This term also does not include retail stores or garden centers where the product of nursery farms is marketed, but not produced, nor does EPA interpret the term "farm" to include golf courses or other places dedicated primarily to recreational, aesthetic, or other non-agricultural activities. (See 53 FR 37082, 37117, September 23, 1988.)

EPA also considered defining a farm by listing the appropriate North American Industry Classification System (NAICS) codes, but we believe that the definition proposed today in § 112.2, along with the 10,000 gallon threshold quantity, more effectively identifies the sector to which the extension would appropriately apply. Potentially affected entities that fall within certain NAICS codes, including 111 (Crop Production) and 112 (Animal Production), are likely to fall within the proposed definition of farm and should consider the definition and eligibility criteria further to determine if the proposed extension applies.

EPA utilized elements of the UST definition of farm, in combination with the Census definition, in developing today's proposal. By combining elements of both of these approaches, the Agency believes the proposed definition more specifically targets the intended universe for the extension. EPA seeks comment on the proposed definition for farms, and whether an alternate definition of "farm" may be more appropriate. Comments may also address the proposed 10,000 gallon threshold for qualifying for the extension, and whether an alternative threshold may be more appropriate. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

B. Proposed Compliance Date Extension for Farms

With today's action, EPA proposes to extend the compliance dates for the owner or operator of a farm, as defined in proposed § 112.2, that has a total storage capacity of 10,000 gallons or less, to prepare or amend and implement the farm's SPCC Plan. The Agency proposes to extend the farm compliance dates until EPA completes information collection and analysis to

determine if differentiated SPCC requirements may be appropriate for farms. If the Agency determines that differentiated requirements for farms are warranted, the Agency will publish a notice in the **Federal Register** proposing new compliance dates for eligible farms.

In working to determine how to properly address farms under the SPCC regulation, EPA will be partnering with USDA to acquire information to determine if differentiation may be appropriate. EPA believes that, at this time, an extension is appropriate because of the large scope of the agricultural community that may be subject to the SPCC requirements, the fact that many farms are small, and the time needed to determine how the SPCC requirements should apply if at all, and the effect of today's proposal on the farm sector. We are also considering as an alternative approach to exempt farms below a set oil storage capacity threshold (such as 10,000 or 20,000 gallons) from the SPCC regulation.

EPA seeks comment on whether the proposed extension is warranted, or if a specific time period would be more appropriate than the proposed indefinite extension. EPA also requests comment on whether it is more appropriate to exempt all farms having less than a certain oil storage capacity threshold (such as 10,000 or 20,000 gallons) from all SPCC requirements. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, this action has been judged as a "significant regulatory action" because it will have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, this action was submitted to OMB for review and the Agency has prepared a regulatory analysis in support of today's action, titled, "Regulatory Analysis of the Spill Prevention, Control, and Countermeasure Proposed Rule" (November 2005). Changes made in response to OMB suggestions or recommendations will be documented in the public record. EPA requests comments from the public on the costs and benefits of any of the possible regulatory changes discussed in this proposed rulemaking, as well as on appropriate methodologies for assessing them.

1. Summary of Regulatory Analysis

The regulatory analysis developed in support of today's action considers changes in regulatory compliance costs for affected facility owners and operators, changes in paperwork burden, and impacts on small businesses. In addition, EPA examined qualitatively the potential impacts of the regulatory options on oil discharge risk. EPA intends to continue to update its estimates and assumptions for use in the analysis supporting the final rule.

a. General Approach

This analysis develops benefit and cost estimates for the proposed actions in the four major components of the proposed rule:

- Qualified facilities with smaller storage capacities;
- Oil-filled operational equipment;
- Motive power;
- Airport mobile refuelers.

The analysis then assesses the impacts of the alternative regulatory options that EPA considered.

For each of the components, the benefits consist of reductions in social costs accruing from reductions in compliance costs. The main steps used to estimate the compliance cost impacts

of the SPCC Proposed Rule are as follows:

Develop the baseline universe of SPCC-regulated facilities and unit cost of compliance estimates for the analysis;

- Estimate the number of facilities affected by each of the proposed options;
- Estimate unit compliance costs for all elements of the proposed options;
- Estimate compliance cost savings to potentially affected facilities; and
- Annualize compliance cost savings over a ten-year period and discount the estimates to the current year.

EPA also considered the potential impacts of the proposed rule and alternative options on the risk of oil discharges, which could lead to harmful environmental, human health, and welfare consequences. Because of the lack of data on regulated entities and their likely response to the regulatory options, the magnitude of such risks is highly uncertain. Therefore, EPA examined the general nature of the proposed and alternative changes to assess possible effects on risk.

b. Baseline for the Analysis

The impacts of the proposed regulation depend on the assumed baseline of industry behavior in the absence of a new rulemaking. EPA developed a baseline for the regulatory analysis to assess the change in regulatory compliance costs associated with each of the proposed options, mutually exclusive of each other. The baseline provides the benchmark from which changes in regulatory behavior, caused by the proposed options, are measured.

EPA is aware of industry concerns regarding potential non-compliance among certain facility sizes or sectors, although no reliable empirical evidence exists to assess the scope and magnitude of such non-compliance. EPA explicitly considered whether to incorporate non-compliance in its regulatory analysis of the 2002 revised rule: "It is possible that some facilities have misinterpreted the existing regulation and are not currently in full compliance with existing requirements, but there is no practical way to measure the level of non-compliance. Moreover, the costs of coming into compliance with the clarified requirements are not properly attributed to this final regulation."

This rule does not impact any facilities that are not already required to meet the standards of the SPCC rule. The costs of SPCC requirements were already imposed on the regulated community by prior rulemaking in 1973 and 2002. For the benefit-cost analysis, therefore, EPA is treating these costs as

liabilities the regulated entities currently have—whether or not they have actually made the capital expenditures to comply. In this analytical construct, these firms are simply delaying the expenditures for the costs they already carry. Therefore, EPA used as its baseline the requirements under 40 CFR part 112 (“SPCC rule”), as amended in 2002 (67 FR 47042). EPA does recognize, however, that there is non-compliance with the SPCC requirements by some portion of the regulated community.

c. Description of SPCC-Regulated Universe

This section describes the universe of facilities subject to current and proposed SPCC regulations. Calculating the number of regulated entities is not straightforward. The SPCC rule does not include a notification requirement and, with certain exceptions, owners and operators do not submit their SPCC Plans to EPA. The Agency has invested considerable resources into estimating the number of entities affected by the SPCC rule.

EPA has updated its previous estimates of the number of regulated facilities. The Agency used data from the 2002 Economic Census, the Census of Agriculture, and a variety of other governmental and non-governmental sources to estimate the number of regulated facilities in a large set of industrial and commercial sectors. Since data were not available for all states, the basic estimation procedure involved extrapolating from eight state databases using information from the U.S. Census Bureau. The estimates of the SPCC universe were developed for 31 industry sectors. Full documentation of the estimates appears in the Regulatory Analysis document accompanying this proposal.

In total, EPA estimates that 618,000 facilities are currently regulated under the SPCC rule. Oil production facilities (28 percent), farms (25 percent) and electric utility plants (8 percent) account for most of the SPCC-regulated facilities. Following is a table that summarizes the estimated number of regulated facilities, by size category:

Category	Aggregate capacity	Number of facilities
I	1,320 to 10,000 gallons.	322,000
II	10,001 to 42,000 gallons.	216,000
III	42,001 to 1 million gallons.	77,000
IV	greater than 1 million gallons.	3,000

2. Qualified Facilities

Today, EPA is proposing to provide an option for qualified facilities to eliminate the requirement for PE certification, and to provide flexibility with respect to security measures and integrity testing for these facilities. This proposed option would provide the greatest relief to owners and operators of new facilities that are preparing their first SPCC Plan, as well as cost savings for owners and operators of existing facilities that make substantive changes to their Plans in the future.

a. Universe of Affected Facilities

As noted above, EPA estimates that approximately 322,000 facilities with storage capacities below 10,000 gallons are subject to the SPCC requirements in the first year. Over the next ten years, approximately 335,000 facilities with storage capacities below 10,000 gallons would be subject to SPCC on average. As with all of the regulatory options considered in developing today’s proposed rule, facilities would have the choice of complying with the existing SPCC rule (as amended in 2002) or taking advantage of the proposed change. EPA assumes that facilities would likely choose an alternative requirement if (a) they met the criteria, and (b) it was less costly or otherwise offered greater benefits than the existing requirement. As with the other options being considered today, EPA does not know how many facilities would meet the criteria and choose to avail themselves of the “Qualified Facility” options. Therefore, EPA examined the impact of the “Qualified Facility” options under three scenarios: 25 percent, 50 percent, and 75 percent of Category I facilities would likely meet “Qualified Facility” status and decide to implement this approach. EPA estimated that the 84,000 facilities would choose to take advantage of this option under the 25-percent scenario; 167,000 facilities under the 50-percent scenario, and 251,000 facilities under the 75 percent scenario.

b. Compliance Cost Savings

The main assumptions affecting all regulatory options were based on updated assumptions from the analyses conducted for the 2002 final rule. For example, EPA revised the cost estimate for obtaining Professional Engineer (PE) certification of a new SPCC Plan. The estimate increased from \$1,120 to \$2,000 for a PE to certify a new Plan and from \$560 to \$750 for a PE to certify a technical change to an existing Plan. The estimates are based on findings

from discussions with several engineering firms.

The unit cost of integrity testing was estimated based on interviews with several tank inspectors. EPA calculated the total cost of integrity testing per facility by multiplying for a single tank by the number of tanks per facility.³

EPA multiplied burden hour estimates by the hourly wage rates for specific labor categories to determine the per-facility costs associated with the proposed rule’s paperwork requirements. The labor wage rates for private industry were derived from the March 2005 U.S. Department of Labor’s Employment Cost Indexes and Levels.⁴

EPA estimates that if 50 percent of the facilities complied with the alternative proposed today for qualified facilities that this option could reduce compliance costs by \$22.5 million and \$18.4 million per year, discounted at 3 percent and 7 percent, respectively. EPA assumed that the proposed flexibility for integrity testing would reduce the unit cost of testing by 50 percent. If 25 percent of facilities under 10,000 gallons qualified for this option, compliance costs would decrease by \$11.2 million and \$9.19 million per year, discounted at 3 percent and 7 percent, respectively. If 75 percent of facilities under 10,000 gallons qualified for this option, compliance costs would be reduced by \$33.7 million and \$27.6 million per year, discounted at 3 percent and 7 percent, respectively.

3. Oil-Filled Operational Equipment

Today, EPA is proposing to allow owners and operators of facilities featuring certain kinds of oil-filled operational equipment to establish and document an inspection or monitoring program, prepare an oil spill contingency plan and provide a written commitment of manpower, equipment, and materials in lieu of providing secondary containment without making an individual impracticability determination. The option is limited to facilities that have had no discharges as described in § 112.1(b) from any oil-filled operational equipment in the ten years prior to the SPCC Plan certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than ten years.

a. Universe of Affected Facilities

The proposed changes for qualified oil-filled operational equipment could

³ The number of tanks per facility was calculated using state oil tank databases.

⁴ United States Department of Labor, Bureau of Labor Statistics, Employer Costs for Employee Compensation, June 2005.

address such items as hydraulic systems, lubricating systems (e.g., those for pumps, compressors, pumpjacks, and other rotating equipment including pumpjack lubrication systems), gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, electrical switches, and other systems containing oil to enable operation of the devices. Due to data and time limitations, EPA focused its economic analysis on the electric utility sector. Consequently, the analysis likely underestimates the total cost savings from the proposed “qualified oil-filled operational equipment” action and the alternative options.

Specifically, EPA used data on the number of substations listed by each major utility reporting to the Federal Energy Regulatory Commission (FERC).⁵ A national estimate was extrapolated from these data using the ratio of the megawatt hours sold by utilities to the estimated total retail megawatt hours of electricity sold nationwide according to the EIA.

EPA estimated that the total number of new facilities with total oil-filled operational equipment would be approximately 2,040 in the first year. Over the next ten years, approximately 2,450 new facilities are expected to be added annually on average. This number underestimates the universe of facilities affected by the proposed change, since it does not include oil-filled operational equipment from other industries. Facilities with qualified oil-filled operational equipment are expected to use a contingency plan with a written commitment of manpower, equipment and materials and have an established inspections/monitoring program.

EPA assumed that existing SPCC-regulated facilities with qualified oil-filled operational equipment would already have secondary containment or a determination of impracticability of secondary containment with a contingency plan and a written commitment of manpower, equipment and materials in accordance with § 112.7(d). In such cases, facilities would not benefit from this option. EPA has provided an economic impact analysis (Appendix A to the Regulatory Analysis), which examines avoided facility expenditures.

⁵ Major regulated utilities must file FERC Form No. 1, on which utilities report information on their substations and electrical equipment. “Major” is defined as having (1) one million megawatt hours or more; (2) 100 megawatt hours of annual sales for resale; (3) 500 megawatt hours of annual power exchange delivered; or (4) 500 megawatt hours of annual wheeling for others (deliveries plus losses).

EPA acknowledges that some fraction of new facilities would, according to the current SPCC rule requirements, provide an impracticability determination and provide a contingency plan and a written commitment of manpower, equipment and materials, rather than pursue secondary containment. In these cases, the proposed action’s cost savings would be lower, since owners and operators would only be avoiding an impracticability determination rather than secondary containment. EPA does not know what fraction of facilities falls into this situation, and has decided not to incorporate the scenario in the analysis. As a result, EPA’s analysis likely overestimates the cost savings to facilities in the electric utility industry from the proposed action.

However, EPA believes that the overall assessment of cost savings from this component of the rule may be significantly underestimated. This is due to the omission of potential cost savings that would accrue to all other industries outside of electrical utilities.

b. Compliance Cost Savings

EPA estimates that this component of the proposal could reduce compliance costs by as much as \$56.7 million and \$45.9 million per year, discounted at 3 percent and 7 percent, respectively. EPA calculated cost savings based on the assumption that new facilities with qualified oil-filled operational equipment would save the difference between the cost of secondary containment and the cost of preparing a contingency plan and a written commitment of manpower, equipment and materials. EPA estimated annual per-facility cost savings of \$9,000 to \$61,000 for new facilities, depending on a facility’s size and other characteristics.

The Agency recognizes, that at some facilities, owners or operators with PE-certified SPCC Plans have made a determination that secondary containment is impracticable, and have implemented contingency plans and a written commitment of manpower, equipment and materials for the non-qualified oil-filled operational equipment. Such facilities would not see significant cost savings from this component of the current rule. The analysis of cost savings underestimate the number of facilities with qualified oil-filled operational equipment, but overestimates the cost savings for facilities that have been counted.

4. Motive Power

It is not EPA’s intent to regulate onboard bulk storage containers used solely to power the movement of a

motor vehicle, or ancillary onboard oil-filled operational equipment used solely to facilitate its operation. Although EPA has no empirical data on the amount of such storage at facilities regulated by the SPCC rule, EPA does not expect that many facility owners and operators have included motive power in their oil storage capacity calculations and SPCC Plans. For those who have considered motive power storage, EPA assumes that the volume that would be exempt under the proposed rule would not represent a large fraction of the facility’s aggregate capacity.

a. Universe of Affected Facilities

To identify industries that are potentially affected by motive power exemptions, EPA started with information from industry comments to the 2002 SPCC rule. Commenters from the crop production, forestry/logging, and utilities industries indicated they had motive power equipment. EPA identified additional industry groups by examining industries targeted by the major motive power equipment manufacturers. Caterpillar, Deere & Company, Kubota Corporation, Joy Global Inc., CNH Global NV, and Terex Corporation are some of the largest motive power equipment manufacturers. Each company lists the industries targeted by their products. EPA used these listings as the basis for classifying industries likely to have motive power containers.

EPA has no empirical data on the number of facilities with motive power containers with oil storage of 55 gallons or greater. To estimate the number of facilities affected by the “Motive Power” proposed rule, EPA examined three scenarios: 10 percent, 25 percent, and 50 percent of the facilities in sectors with motive power may be affected by the proposed regulatory option. EPA estimated that 29,000 facilities have “motive power” oil storage under the 10-percent scenario; 71,600 facilities under the 25-percent scenario; and 143,000 facilities under the 50-percent scenario.

b. Compliance Cost Savings

EPA assumed that ten percent of the facilities in industries identified as having motive power containers might take advantage of the proposed exemption. Other facilities could also have motive power containers, however EPA expects that they have not considered such storage as part of their compliance with the SPCC rule. Because EPA expects most facilities with motive power containers to meet the SPCC rule’s oil storage thresholds, regardless of motive power, EPA assumes that the

cost savings from the proposed exemption will be modest, with the possibility of saving small amounts of compliance costs, principally for secondary containment for these motive power containers. EPA estimates that the proposed option will reduce compliance costs by \$0.92 million and \$0.75 million per year, discounted at 3 percent and 7 percent, respectively. The main benefit of the proposed option would be to provide greater clarity of EPA's regulatory intent.

EPA also examined two other scenarios: 25 percent and 50 percent of facilities in industries identified as having motive power containers might take advantage of the proposed exemption. Under the 25-percent scenario, compliance costs would be reduced by \$2.29 million and \$1.87 million per year, discounted at 3 percent and 7 percent, respectively. Under the 50-percent scenario, compliance costs would be reduced by \$4.58 million and \$3.74 million, discounted at 3 percent and 7 percent, respectively.

5. Airport Mobile Refuelers

EPA proposes to exempt airport mobile refuelers from the specifically sized bulk storage secondary containment requirements of § 112.8(c)(2) and (11). EPA defines an airport mobile refueler as a "vehicle with an onboard bulk storage container designed for, or used to, store and transport fuel for transfer into or from aircraft or ground service equipment." The general secondary containment requirements of § 112.7(c) would still apply to these airport mobile refuelers and to the transfers associated with this equipment. Since airport mobile refuelers are mobile or portable bulk storage containers, the other provisions of § 112.8(c) would still apply.

The Agency researched regulatory compliance of airports with SPCC requirements for secondary containment, and found that some airports do not have sized secondary containment in place. EPA found that secondary containment for mobile refuelers is not a common practice and that mobile refuelers rarely have a designated area to park. Factors such as the land value at many commercial airports prohibits a single, designated parking area for mobile refuelers.⁶ EPA analyzed potential cost savings to the industry using an assumption that new facilities would have to provide secondary containment in accordance

with § 112.8(c)(2) and (11) for airport mobile refuelers. Therefore, the estimated annual cost savings consist of the potential expenditures avoided of providing secondary containment for new airport mobile refuelers.

The Agency estimated the total number of new airports at 479 in the first year. Over the next ten years, approximately 535 new airports are expected to be added annually on average. EPA assumed one to three mobile refuelers per airport,⁷ or approximately two per airport on average. EPA estimates that this component of the proposal could reduce compliance costs by \$6.43 million and \$5.23 million per year, discounted at 3 percent and 7 percent, respectively. The derivation of these estimates is explained in Chapter 8 of the Regulatory Analysis.

6. Projected Impacts on Human Health, Welfare, and the Environment

The main benefit of the proposed rule is lower compliance costs for certain types of facilities and equipment. EPA expects these reduced expenditures to translate to net social benefits. These benefits may be partially offset by potential increases in risk of oil discharges, due to less stringent requirements compared to the existing SPCC rule.

However, EPA has designed the proposed rule to minimize increases in environmental risk. For example, EPA is providing an option to avoid Professional Engineer certification for qualified facilities that have no history of reportable discharges. Any decision to apply environmental equivalence or pursue an impracticability determination would still require PE certification, except for security and integrity testing. For the other relief offered in the proposal, most facilities will have general secondary containment that would help prevent discharges as described in § 112.1(b). In summary, although the magnitude of any increase in risk under each of the proposed options is unclear, EPA does not believe that these changes in spill risk are significant.

To the extent that lower compliance costs encourage greater overall compliance, the proposed rule may actually prevent discharges from currently non-compliant facilities that would occur in its absence.

7. Alternative Regulatory Options

EPA considered other options for addressing public comments to the

NODAs published on September 20, 2004. Following are summaries of the changes in compliance costs estimated for each alternative option (for qualified facilities and qualified oil-filled operational equipment), as well as EPA's rationale for rejecting the alternative option.

a. Qualified Facilities

As an alternative option, EPA considered a notification requirement for qualified facilities that have been operating for less than ten years, along with eliminating the requirement for PE certification and providing flexibility for integrity testing and security for all qualified facilities. EPA estimates that the alternative option could reduce compliance costs by \$22.3 million and \$18.4 million per year, discounted at 3 percent and 7 percent, respectively. To arrive at these figures, EPA assumed that 50 percent of facilities under 10,000 gallons would qualify for this option. EPA also assumed that the proposed flexibility for integrity testing would reduce the unit cost of testing by 50 percent. EPA assumed that the total burden of notification for a facility would be three hours: one hour of managerial time, one hour of technical time, and one hour of clerical time. If 25 percent of facilities under 10,000 gallons qualified for this option, compliance costs would decrease by \$11.2 million and \$9.13 million per year, discounted at 3 percent and 7 percent, respectively. If 75 percent of facilities under 10,000 gallons qualified for this option, compliance costs would be reduced by \$33.5 million and \$27.4 million per year, discounted at 3 percent and 7 percent, respectively. EPA decided not to pursue this option because it does not differ substantively from the proposed option; an additional notification burden was not considered necessary.

As an alternative option, EPA considered establishing three facility-size tiers according to SBA's recommendations based on facility's total oil storage capacity (Jack Faucett Associates, 2004). EPA estimates that this alternative option could reduce compliance costs by \$42.9 million and \$35.0 million per year, discounted at 3 percent and 7 percent, respectively. To arrive at these estimates, EPA assumed that all SPCC-regulated facilities with oil storage capacity between 1,320 and 5,000 gallons would take advantage of the option, eliminating the cost of preparing and maintaining a written SPCC Plan. Additionally, EPA assumed that all SPCC-regulated facilities with oil storage capacity between 5,001 and 10,000 gallons would take advantage of

⁶ For detail, see "Results of Research Project on Airport Engineering and Construction Firms", Abt Associates Inc. memorandum, 2004.

⁷ Based on Federal Aviation Administration estimates (<http://www.faa.gov/data—statistics/>).

the option and eliminate the cost of PE certification.

The cost savings associated with the three-tier plans, however, come at the expense of losses in environmental protection. Although EPA agrees that a reduction in burden may be appropriate for facilities handling smaller quantities of oils, smaller facilities still pose risks to the environment given the nature of the product. Therefore, some type of Plan or documentation is warranted even for these smaller facilities. The tiered option also raises significant implementation issues. For example, certain facilities would require compliance with the SPCC rule without a written SPCC Plan. EPA believes that a facility would not be able to properly implement oil spill prevention measures—including notification, equipment maintenance, inspection and training—without written documentation to inform the owner or operator of his/her responsibilities. Additionally, EPA inspectors conducting on-site visits would have no written Plan or documentation to assess the facility's effectiveness in implementing their spill prevention strategy. Even with model plans, owners or operators of larger facilities may not have the expertise to create their own SPCC Plan without input from a PE.

EPA also considered two additional options to provide relief to qualified facilities: a compliance date extension and a suspension of all requirements. These options would not have an impact on compliance costs, but would only delay expenditures at affected facilities. EPA decided against these options because owners or operators of qualified facilities would remain uncertain about the timing and type of future requirements that would apply to them. The preferred option would set forth explicit requirements for qualified facilities that reduce compliance costs within the current compliance date schedule. The extension/suspension options also would pose additional problems related to implementation and environmental protection.

b. Oil-Filled Equipment

EPA explored a three-tiered structure option in response to comments on the Notice of Data Availability (NODA) for oil-filled operational equipment (69 FR 56184, September 20, 2004). The option is based on a proposal put forth by the Utility Solid Waste Activities Group (USWAG). The option would allow an owner or operator to define discrete units of equipment as individual facilities and reduce requirements imposed on units with capacities less than 20,000 gallons. EPA estimates that

this alternative option could reduce compliance costs by \$17.6 million and \$14.2 million per year, discounted at 3 percent and 7 percent, respectively.

EPA also considered two administrative options to provide relief to oil-filled operational equipment: a compliance date extension and a suspension of all requirements. These options would not have an impact on compliance costs, but would only delay expenditures at affected facilities. EPA decided against these options because facility owners or operators would remain uncertain about the timing and nature of requirements that eventually would apply to them. Since many facilities have oil-filled operational equipment, delaying changes to these requirements could lead to a significant number of facilities needing to modify their existing Plans more than once to accommodate future rule changes. A suspension would increase the risk of discharge at facilities with qualified oil-filled operational equipment during the interim period, due to the delayed implementation of preventive measures.

8. Key Limitations of the Analysis

One of the main limitations of the regulatory analysis is EPA's lack of data on facilities regulated under the SPCC rule. As mentioned earlier, the rule does not include (and never included) a notification requirement and, with certain exceptions, regulated entities do not need to submit their SPCC Plans to EPA. Without conducting a statistically valid survey, EPA is limited to data already collected by state or federal agencies or by proprietary sources. Such data are collected for diverse purposes and are not necessarily ideal for evaluating regulatory options, because they often omit portions of the regulated universe or lack sufficient detail to ascertain the impacts of changes in certain requirements. The type of information collected also varies among the different sources. Data provided by industry organizations or individual businesses are often anecdotal or based on surveys that are not statistically valid, and cannot be reliably extrapolated to a larger universe. As a result of this limitation of data on regulated facilities, EPA has had to rely on updated figures from 1996 for most industry sectors, as well as federal and proprietary sources for a small number of other sectors. Because none of these sources give adequate detail to evaluate the potential impacts of individual regulatory options, EPA has chosen to examine various scenarios for each option to bound the range of cost savings that could occur.

Approaches to compliance will depend on site-specific circumstances. For example, compliance costs vary not only on the volume of oil stored and handled, but also on the types of oil at a site, the number of tanks (and their volume), and the locations of the tanks across a site. Given the wide range of industries and facility sizes affected by the SPCC rule—as well as geographical and climatic conditions—it is difficult to specify a realistic baseline against which regulatory changes can be measured. Therefore, it is also difficult to estimate the changes that could occur under various regulatory options.

Finally, many of the cost assumptions used in the regulatory analysis are based on interviews with a limited number of PEs. It is very difficult to simply assess "typical" costs when the costs of compliance are closely related to site-specific factors. Ideally, future analyses could explicitly account for such variability in costs.

9. Conclusions

Applying both a 3 percent and a 7 percent discount rate, the proposed regulatory changes could yield compliance cost savings of \$22.5 million and \$18.4 million for the "qualified facility" option; \$56.7 million and \$45.9 million for the "qualified oil-filled operational equipment" option; \$0.92 million and \$0.75 million for "motive power" exemption; and \$6.43 million and \$5.23 million for airports with mobile refuelers, respectively. Costs of these components are not summed, since simple addition would overstate cost savings by not accounting for interactions between the impacts of the different components. EPA does not believe that these cost reductions would be offset by any significant losses in environmental protection.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 0328.12.

EPA does not collect the information required by SPCC rule on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must generally be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility helps prevent oil discharges, and mitigates the environmental damage caused by such discharges. Therefore, the primary user

of the data is the facility. While EPA may, from time to time, request information under these regulations, such requests are not routine.

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

In the absence of this proposed rulemaking, EPA estimates that approximately 618,000 facilities would be subject to the SPCC rule in 2006 and have SPCC Plans. In addition, EPA estimates that approximately 4,520 new facilities would become subject to SPCC requirements annually. In the absence of this proposed rulemaking, EPA projects that the average annual public reporting and recordkeeping burden for this information collection would be 1,980,000 hours.

Under today's proposed rulemaking, qualified facilities would no longer need a licensed Professional Engineer to certify their Plans. Facilities that store oil solely in motive power containers would no longer be regulated, while other facilities with oil storage in addition to motive power containers may incur lower compliance costs. Today's proposal would also allow greater use of contingency plans and written commitment of manpower, equipment and resources without requiring an impracticability determination when combined with an inspection or monitoring program as an alternative to secondary containment for qualified oil-filled operational equipment. It would also allow airport mobile refuelers to fall under a facility's general secondary containment requirements, rather than require specifically sized secondary containment.

Under the proposed rule, an estimated 372,000 regulated facilities would annually be subject to the SPCC information collection requirements of this rule during the information collection period. This figure excludes farms with oil storage capacity of 10,000 gallons or less, to reflect the proposed compliance extension. Under this proposed rule, the estimated annual average burden over the next 3-year ICR period would be approximately 1,490,000 hours, resulting in a 25

percent average reduction. The estimated average annual public reporting for individual facilities already regulated under the SPCC rule would range between 3.46 and 6.04 hours, while the burden for newly regulated facilities would range between 37.2 and 64.1 hours as a result of this proposal. The net annualized capital and start-up costs for the SPCC information collection portion of the rule would average \$0.32 million and net annualized operation and maintenance (O&M) costs are estimated to be \$26 million for all of these facilities combined.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-OPA-2005-0001. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 12, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by February 10, 2006. The final rule will respond to any OMB or public

comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined in the SBA's regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this proposed rule, generally defines small businesses as having less than \$500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

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

This proposed rule would reduce regulatory burden on qualified facilities and qualified oil-filled operational equipment. Qualified facilities would

no longer need a licensed Professional Engineer to certify their Plans. Facilities that store oil solely in motive power containers would no longer be regulated, while other facilities with oil storage in addition to motive power containers may incur lower compliance costs. Today's proposal would also allow greater use of contingency plans and a written commitment of manpower, equipment and materials without requiring an impracticability determination as an alternative to secondary containment for qualified oil-filled operational equipment when combined with an established and documented inspection or monitoring program. It would also allow airport mobile refuelers to fall under a facility's general secondary containment requirements rather than require specifically sized secondary containment. We have therefore concluded that today's proposed rule would relieve regulatory burden for small entities and welcome comments on issues related to such impacts.

Overall, EPA estimates that today's proposal would reduce annual compliance costs by \$81 million (net present value) using nominal dollars and \$98 million using annualized values with constant dollars. Small facilities, in particular, would benefit. For example, EPA estimates that the proposed rule would lower compliance costs by \$22.5 million and \$18.4 million at 3 percent and 7 percent discount rate for facilities with less than 10,000 gallons of oil storage capacity.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-

effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed rule would reduce burden and costs on affected facilities by approximately \$81 million per year (net present value) using nominal dollars and \$98 million per year using annualized values with constant dollars.

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

E. *Executive Order 13132—Federalism*

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

This proposed rule does not have federalism implications. It would not have substantial direct effects on the

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

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

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's proposed rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, we have not consulted with a representative organization of tribal groups.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health or safety risks

addressed by this action present a disproportionate risk to children.

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

This proposed rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

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

This proposed rule does not involve technical standards. Therefore, NTTAA does not apply.

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: December 2, 2005.

Stephen L. Johnson, Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 112 as follows:

PART 112—OIL POLLUTION PREVENTION

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

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

Subpart A [Amended]

2. Amend § 112.1 by revising paragraph (d)(2)(ii) and adding paragraph (d)(7) to read as follows:

§ 112.1 General applicability.

* * * * *

(d) * * *

(2) * * *

(ii) The aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. For the purposes of this exemption, only containers with a capacity of 55 gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes the capacity of a container that is “permanently closed,” or a “motive power container” as defined in § 112.2.

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

3. Amend § 112.2 by adding definitions for “Airport mobile refueler”, “Farm”, “Motive power container”, and “Oil-filled operational equipment” in alphabetical order to read as follows:

§ 112.2 Definitions.

* * * * *

Airport mobile refueler means a vehicle with an onboard bulk storage container designed, or used to store and transport fuel for transfer into or from aircraft or ground service equipment.

Farm means a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, \$1,000 or more of agricultural products during a year.

Motive power container means any onboard bulk storage containers used solely to power the movement of a motor vehicle, or ancillary onboard oil-filled operational equipment used solely to facilitate its operation. An onboard bulk storage container which is used to store or transfer oil for further distribution is not a motive power container. The definition of motive power equipment does not include oil drilling or workover equipment, including rigs.

Oil-filled operational equipment means equipment which includes an oil storage container (or multiple containers) in which the oil is present solely to support the function of the apparatus or the device. Oil-filled operational equipment is not considered a bulk storage container, and does not

include oil-filled manufacturing equipment (flow-through process).

4. Amend § 112.3 by designating the existing text of paragraph (a) as (a)(1) and adding (a)(2), designating the existing text of paragraph (b) as (b)(1) and adding (b)(2), revising the introductory text of paragraph (d), and adding paragraph (g) to read as follows:

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

* * * * *

(a)(1) * * *

(2) If your farm has a total oil storage capacity of 10,000 gallons or less, the compliance dates described in paragraph (a)(1) of this section are delayed indefinitely or until the Agency publishes a final rule in the Federal Register establishing a new compliance date.

(b)(1) * * *

(2) If your farm has a total oil storage capacity of 10,000 gallons or less, the compliance dates described in paragraph (b)(1) of this section are delayed indefinitely or until the Agency publishes a final rule in the Federal Register establishing a new compliance date.

(d) Except as provided in paragraph (g) of this section, a licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part.

(g) Qualified Facilities. The owner or operator of a facility that meets the qualification criteria in paragraph (g)(1) of this section may choose to self-certify the facility’s SPCC Plan and any technical amendments to the Plan in lieu of certification by a licensed Professional Engineer.

(1) Qualification Criteria. A facility is qualified for owner or operator self-certification of its SPCC Plan if it meets the following criteria:

(i) The aggregate aboveground storage capacity of the facility, as determined according to § 112.1, is 10,000 gallons or less; and

(ii) The facility either:

(A) Has been in operation for at least ten years immediately prior to the date of self-certification and in the ten-year period immediately prior to self-certification had no discharges as described in § 112.1(b); or

(B) Is beginning operations or has been in operation for fewer than ten years without any discharges of oil as described in § 112.1(b).

(2) Self-Certification. If you are the owner or operator of a qualified facility

and you choose to self-certify your Plan or technical amendments to your Plan, you must certify in the Plan that:

- (i) You are familiar with the requirements of this part;
- (ii) You or your agent have visited and examined the facility;
- (iii) The Plan has been prepared in accordance with accepted and sound industry practices and standards, and with the requirements of this part;
- (iv) Procedures for required inspections and testing have been established;
- (v) The Plan is being fully implemented;
- (vi) The facility meets the qualification criteria set forth under § 112.3(g)(1);
- (vii) The Plan does not utilize the environmental equivalence and impracticability provisions under § 112.7(a)(2) and 112.7(d), except as described in paragraph (g)(3) of this section; and
- (viii) The Plan and individual(s) responsible for implementing the Plan have the full approval of management and the facility has committed the necessary resources to fully implement the Plan.

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

- (i) *Environmental Equivalence.* The Plan may not include alternate methods to the applicable requirements listed in § 112.7(a)(2).
- (ii) *Impracticability.* The Plan may not include any impracticability determinations as described under § 112.7(d).
- (iii) *Security (excluding oil production facilities).* The owner or operator must choose to either:
 - (A) Comply with the requirements under § 112.7(g); or
 - (B) Prepare a security plan that describes how the facility controls access to the oil handling, processing and storage areas; secures master flow and drain valves; prevents unauthorized access to starter controls on oil pumps; secures out-of-service and loading/unloading connections of oil pipelines; addresses the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

(iv) *Bulk Storage Container Inspections.* In lieu of the requirements in §§ 112.8(c)(6) and 112.12(c)(6), an owner/operator must test/inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. The owner or operator

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

5. Amend § 112.5 by revising paragraph (c) to read as follows:

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

* * * * *

(c) Except as provided in § 112.3(g), have a Professional Engineer certify any technical amendments to your Plan in accordance with § 112.3(d).

6. Amend § 112.7 by revising paragraph (a)(2), (c) introductory text, (d) introductory text, and adding paragraph (k) to read as follows:

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

* * * * *

(a) * * *

(2) Comply with all applicable requirements listed in this part. Except as provided in § 112.3(g), your Plan may deviate from the requirements in paragraphs (g), (h)(2) and (3), and (i) of this section and the requirements in subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), where applicable to a specific facility, if you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure. Where your Plan does not conform to the applicable requirements in paragraphs (g), (h)(2) and (3), and (i) of this section, or the requirements of subparts B and C of this part, except the secondary containment

requirements in paragraph (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), you must state the reasons for nonconformance in your Plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your Plan do not provide equivalent environmental protection, he may require that you amend your Plan, following the procedures in § 112.4(d) and (e).

* * * * *

(c) Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b), except as provided in paragraph (k) of this section for qualified oil-filled operational equipment. The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs. At a minimum, you must use one of the following prevention systems or its equivalent:

* * * * *

(d) Provided your Plan is certified by a licensed Professional Engineer under § 112.3(d), if you determine that the installation of any of the structures or pieces of equipment listed in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2) and 112.12(c)(11) to prevent a discharge as described in § 112.1(b) from any onshore or offshore facility is not practicable, you must clearly explain in your Plan why such measures are not practicable; for bulk storage containers, conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping; and, unless you have submitted a response plan under § 112.20, provide in your Plan the following:

* * * * *

(k) *Qualified Oil-Filled Operational Equipment.* The owner or operator of a facility with oil-filled operational equipment that meets the qualification criteria in paragraph (k)(1) of this section may choose to implement for this qualified oil-filled operational equipment the alternate requirements as described in paragraph (k)(2) of this section in lieu of applying the general secondary containment requirements of paragraph (c) of this section.

(1) *Qualification Criteria—Reportable Discharge History:* The facility where

the oil-filled operational equipment is located either:

(i) Has been in operation for at least ten years immediately prior to the date of Plan certification and in the ten-year period immediately prior to the Plan certification date had no discharges as described in § 112.1(b) from any oil-filled operational equipment, or

(ii) Is beginning operations or has been in operation for fewer than ten years without any discharges as described in § 112.1(b) from any oil-filled operational equipment;

(2) *Alternative Requirements to General Secondary Containment.* The owner or operator of a facility with qualified oil-filled operational equipment must:

(i) Establish and document the facility procedures for inspections or a monitoring program to detect equipment failure and/or a discharge; and

(ii) Unless you have submitted a response plan under § 112.20, provide in your Plan the following:

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

(B) A written commitment of manpower, equipment, and materials required to expeditiously control and

remove any quantity of oil discharged that may be harmful.

Subpart B—[Amended]

7. Amend § 112.8 by revising paragraphs (c)(2) and (c)(11) to read as follows:

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

* * * * *

(c) * * *

(2) Construct all bulk storage tank installations (except airport mobile refuelers) so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

* * * * *

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

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Subpart C—[Amended]

§ 112.12 Specific Spill Prevention, Control, and Countermeasure Plan requirements.

8. Amend § 112.12 by revising the section heading to read as set forth above.

§ 112.13 [Removed and Reserved]

9. Remove and reserve § 112.13.

§ 112.14 [Removed and Reserved]

10. Remove and reserve § 112.14.

§ 112.15 [Removed and Reserved]

11. Remove and reserve § 112.15.

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